INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

Written Comments of the Republic of Mauritius

VOLUME II

(Annexes 201–235)

15 May 2018

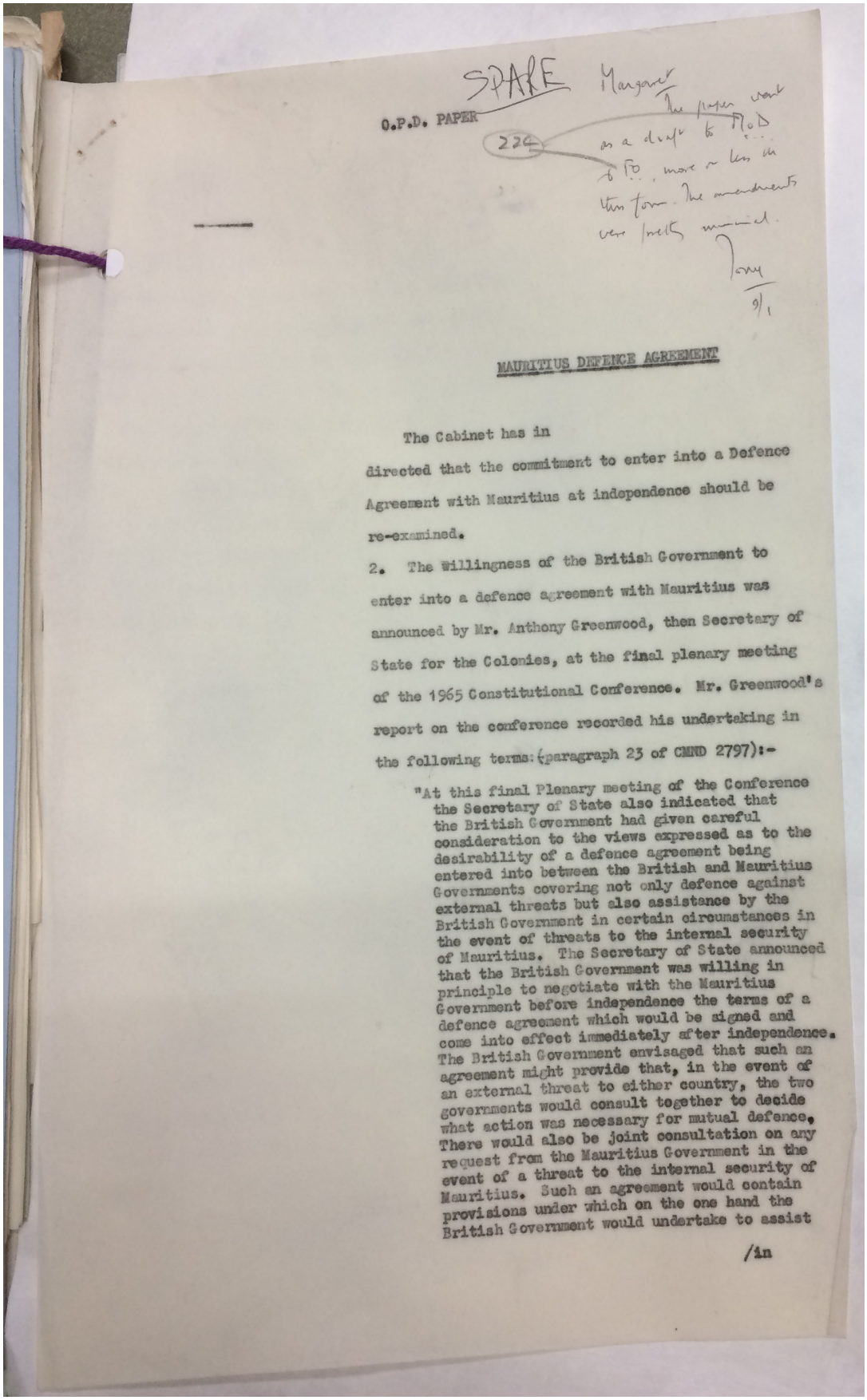
VOLUME II

ANNEXES

Annex 233	Jocelyn Chan Low, "The Making of the Chagos Affair: Myths and Reality" in Eviction from the Chagos Islands (S. Evers & M. Kooy eds., 2011)
Annex 234	John Tasioulas, "Custom, jus cogens, and human rights", forthcoming in Custom's Future: International Law in a Changing World (20 Mar. 2015)
Annex 235	N. Wenban-Smith & M. Carter, *Chagos: A History - Exploration, Exploitation, Expulsion* (2016)

Annex 201

United Kingdom, OPD Paper, *Mauritius Defence Agreement* (undated)



SPARE Margaret

O.P.D. PAPER

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The paper went as a draft to FCO, more or less in this form. The amendments were mostly minimal.

Tony

9/1

MAURITIUS DEFENCE AGREEMENT

The Cabinet has in directed that the commitment to enter into a Defence Agreement with Mauritius at independence should be re-examined.

2. The Willingness of the British Government to enter into a defence agreement with Mauritius was announced by Mr. Anthony Greenwood, then Secretary of State for the Colonies, at the final plenary meeting of the 1965 Constitutional Conference. Mr. Greenwood's report on the conference recorded his undertaking in the following terms: (paragraph 23 of CMND 2797):-

"At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist

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in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield."

3. The draft of an agreement covering the above-quoted matters has been prepared and was formally sent to the Mauritius Government in December 1967 for early discussion with them; we undertook that a British negotiating team would arrive in Mauritius in January.

on 24th November

~~early~~ "on 8th Jan"

4. In the debate in the House of Commons on the second reading of the Mauritius Independence Bill the present Commonwealth Secretary spoke on the defence agreement in the following terms (Official Report for 14 December, 1967, Cols.657 and 658):-

> "In accordance with the undertaking given at the 1965 conference, we have offered to enter into a defence agreement with Mauritius. Negotiations with the Mauritius Government concerning the terms of this agreement are planned to be held in January with a view to the agreement being signed and brought into effect at independence. I am sure that the House will understand that before these negotiations take place it would be inappropriate for me to go into any detail about the terms of the agreement. But I can confirm that, in general, the agreement will make provision on the lines set out in the 1965 White Paper.
>
> As the House will be aware, we at present enjoy certain defence facilities in Mauritius; in particular, we have an important communications centre there and also staging rights at Plaisance Airport. It is expected that the defence agreement will provide for Her Majesty's Government to continue to enjoy these rights and facilities."

5. In summing up in the same debate Mr. George Thomas, Minister of State for Commonwealth Affairs, had the following to say (Official Report for 14 December 1967, Col.713):-

> "On the question of defence, my right hon. Friend made it clear that the draft of the defence agreement is in harmony with the proposals already known to the House.

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The proposed agreement has been sent to Mauritius and we await their comments. Early next month a small official team will visit Mauritius and will continue discussion on the defence programme."

6. It is thus clear that our commitment to enter into a defence agreement with Mauritius at independence is a public and unqualified one which ha s been in existence since September 1965 and which has been reiterated in Parliament as recently as the middle of last month.

7. As will be plain from the above-quoted extract from Cmnd. 2797, the proposed defence agreement was in the nature of a bargain; the British Government for their part undertook to consult with Mauritius in the event of external or internal security threats and to provide assistance with training and the secondment of personnel to the Mauritius police and security forces whilst the Mauritius Government undertook to continue to make facilities available at H.M.S. Mauritius and Plaisance Airport.

8. From the point of view of the Mauritius Government the undertakings by the British Government to consult in the event of external or internal security threats was by far the most significant feature of what was agreed upon at the 1965 Conference. One of the parties represented at that conference (the Parti Mauricien, which was then part of the All-Party Government but which is now the sole opposition party) was vehemently opposed to independence and the other three parties represented at the conference (which now form the Government coalition, led by the Prime Minister, Sir Seewoosagur Ramgoolam) attached great importance to these undertakings both for themselves (ever since the Zanzibar revolution Sir Seewoosagur has been nervous about a possible post-independence coup) and as a means of reassuring the Parti Mauricien (and of persuading them to acquiesce should the decision be in favour of independence. In the event Mr. Greenwood decided that Mauritius should proceed to independence if a simple majority of a newly elected legislature voted for this. In the election /which

(and the minority communities from which their main support is derived

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which took place in August 1967 the Parti Mauricien campaigned vigorously against independence but, having lost the election, have given no indication to date of attempting to question the desire of the majority that Mauritius should move forward to independence and there is little doubt that one of the most important reasons for this is the sense of security which they derive from the undertakings on defence and internal security. Thus, for different reasons, both the Government and the Opposition in Mauritius attach great importance to these undertakings.

9. Attention should also perhaps be drawn to a further element in the bargain which was struck in 1965. Simultaneously with the Constitutional Conference negotiations proceeded in September 1965 between British and Mauritius Ministers about the separation from Mauritius of the Chagos Archipelago to form part of the British Indian Ocean Territory which was in due course established by Order in Council in November 1965. At the time, as indicated above, the present opposition in Mauritius formed part of an all-party coalition government and the then leader of the opposition accordingly participated in the discussions about separation of the Chagos Archipelago in his then capacity as a Minister. The Mauritius Ministers demanded astronomical sums by way of compensation for the separation of Chagos and far more than the British Government was prepared to contemplate. Arising out of these discussions and of an interview which Sir Seewoosagur Ramgoolam had with the Prime Minister on September 1965, the former may well have formed the impression that it would be prudent for him to acquiesce in the compensation offered by the British Government (£3m. as opposed to the £20+m. which Mauritius Ministers had sought) if he hoped to secure a favourable response from the British Government over his demand for independence and his wish for undertaking that assistance would be available after independence to deal with external and internal security threats. Certainly Sir Seewoosagur was subsequently accused in Mauritius, at the stage when the

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Parti Mauricien resigned from the All-Party Government to go into opposition over the issue of the amount of compensation for Chagos, of having "sold out" on Chagos far too cheaply in order to get a decision in favour of independence. Against this background the importance to Sir Seewoosagor of the undertakings in relation to external and internal security threats is obvious; without them all he would be able to show for having accepted what is regarded locally as far too little compensation for Chagos would be an independence for which Mauritius is in fact ill equipped economically and financially.

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10. It is understood that until British forces are finally withdrawn from Singapore and Malaysia, the Ministry of Defence regard the continued availability of H.M.S. Mauritius as essential and the facilities at Plaisance important. From the strictly British point of view it would clearly be preferable, in the changed situation in relation to overseas defence commitments, if it were possible for facilities at H.M.S. Mauritius and Plaisance to be retained after the independence of Mauritius without the necessity for the British Government to enter into the defence and internal security undertakings envisaged in 1965. The question therefore arises of whether Mr. Greenwood's undertaking at the end of the 1965 conference should now be repudiated. The further question also arises whether, if it were so repudiated, there would be any chance of securing the agreement of the Mauritius Government to the retention by Britain of facilities at H.M.S. Mauritius and Plaisance after independence.

11. In considering these questions it is necessary to bear in mind on the one hand that the British commitment to enter into a defence agreement on the lines of the draft which has recently been sent to the Mauritius Government was a firm and unqualified public undertaking which it would be extremely

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difficult to justify repudiating even if we ourselves no longer needed the advantages which it was proposed should be available to us under it. It is also necessary to bear in mind the background to the agreement from the Mauritius side outlined in paragraphs 8 and 9 above. In the light of these factors, it is the considered view of the Commonwealth Office that it is highly improbable that the Mauritius Government would be prepared to enter into an agreement according us facilities after independence at H.M.S. Mauritius and Plaisance if we for our part repudiated the defence and internal security undertakings. It follows that if, and so long as, we attach importance to facilities at H.M.S. Mauritius and Plaisance we must be prepared, at least for a like period, to be bound by undertakings on the lines envisaged in 1965 in relation to both external and internal security threats to Mauritius.

12. In this connection it should be pointed out that neither Cmnd. 2797 nor the draft agreement which has recently been sent to the Mauritius Government envisage that we would, under the agreement, be committed in any binding way to take any particular action in the event of either external or internal security threats. Our commitments would be limited in terms to consultation with the Mauritius Government; and it would be made absolutely plain to Mauritius in a Confidential Exchange of Letters (as directed at (1) of O.P.D.(67) 36th Meeting) that complete discretion as to the provision of any assistance in the event of a threat to internal security would rest with us. Whilst therefore entering into a defence agreement on the lines envisaged is bound to be noticed internationally, and whilst it is bound to carry with it some implication that in certain circumstances we might take action to assist in defending or maintaining the internal security of Mauritius, there would be no binding commitment on us to do so if in any particular case we either could not or did not choose to take action.

13. Finally, it should be stressed that, if it were decided

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that, if it were decided that our willingness to enter into undertakings related to external and internal security threats should be repudiated, there could well be serious adverse consequences in Mauritius which might affect our interests. The Governor's assessment as to what these might be is plain from the relevant extracts attached from a recent exchange of telegrams; the most important feature is that the Governor considers that it is possible that the Mauritius Government might seek to postpone independence.

Conclusion

14. Bearing in mind the considerations set out in the preceding paragraphs the conclusion appears inescapable that negotiations for the proposed defence agreement, on the lines envisaged in 1965, should be proceeded with as planned; but that as regards its duration our negotiators should be instructed to insist that it should be terminable on either side by a relatively short period of notice after an initial period corresponding to the minimum period for which our retention of facilities at H.M.S. Mauritius and Plaisance are essential to the Ministry of Defence.

Annex 202

United Kingdom, Draft OPD Paper, *Mauritius Defence Agreement* (including handwritten annotations) (undated)

Registry No.

DRAFT O.P.D. PAPER

with 223.

Type 1 +

SECURITY CLASSIFICATION

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> "At this final Plenary meeting of the Conference the Secretary of State also indicated that the British Government had given careful consideration to the views expressed as to the desirability of a defence agreement being entered into between the British and Mauritius Governments covering not only defence against external threats but also assistance by the British Government in certain circumstances in the event of threats to the internal security of Mauritius. The Secretary of State announced that the British Government was willing in principle to negotiate with the Mauritius Government before independence the terms of a defence agreement which would be signed and come into effect immediately after independence. The British Government envisaged that such an agreement might provide that, in the event of an external threat to either country, the two governments would consult together to decide what action was necessary for mutual defence. There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist

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3. The draft of an agreement covering the above-quoted matters has been prepared (OPD(67)81). It was approved by the Defence and Oversea Policy Committee on 15th November (OPD(67) 36th Meeting) as a basis for negotiation. ~~and was formally~~ The draft agreement was sent to the Mauritius Government in December 1967 for early discussion with them and we undertook that a British negotiating team would arrive in Mauritius in January. The draft as sent ~~to the Premier~~ ~~Government~~ contained no proposals as to ~~the~~ duration or termination; these matters were left to be dealt with in the course of the negotiations.

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> "In accordance with the undertaking given at the 1965 conference, we have offered to enter into a defence agreement with Mauritius. Negotiations with the Mauritius Government concerning the terms of this agreement are planned to be held in January with a view to the agreement being signed and brought into effect at independence. I am sure that the House will understand that before these negotiations take place it would be inappropriate for me to go into any detail about the terms of the agreement. But I can confirm that, in general, the agreement will make provision on the lines set out in the 1965 White Paper.
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9. ~~Attention should also perhaps be drawn to~~ Please note a further element in the bargain which was struck in 1965. Simultaneously with the Constitutional Conference negotiations proceeded in September 1965 between British and Mauritius Ministers about the separation from Mauritius of the Chagos Archipelago to form part of the British Indian Ocean Territory which was in due course established by Order in Council in November 1965. At the time, as indicated above, the present opposition in Mauritius formed part of an all-party coalition government and the then leader of the opposition accordingly participated in the discussions about separation of the Chagos Archipelago in his then capacity as a Minister. The Mauritius Ministers demanded astronomical sums by way of compensation for the separation of Chagos and far more than the British Government was prepared to contemplate. ~~Arising out of these discussions and of~~ After an interview which Sir Seewoosagur Ramgoolam had with the Prime Minister on 23rd September 1965, ~~the former may well have formed the impression that it would be prudent for him to acquiesce in~~ he agreed to accept the compensation offered by the British Government (£3m. as a single outright grant as opposed to the ~~£70m.~~ £7m p.a for 20 years which Mauritius Ministers had originally sought), ~~in~~ It is clear that one of his reasons for doing so was that he hoped to secure a favourable response from the British Government over his demand for independence and his wish for undertakings that assistance would be available after independence to deal with external and internal security threats. ~~Certainly~~ However Sir Seewoosagur was subsequently accused in Mauritius, at the stage when the

/Parti Mauricien

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See in this connection 'A' 'B' & 'C' of the attached copy of the record of the meeting between the PM & Sir SR

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Parti Mauricien resigned from the All-Party Government to go into opposition over the issue of the amount of compensation for Chagos, of having "sold out" on Chagos far too cheaply in order to get a decision in favour of independence. Against this background the local political importance to Sir Seewoosagur of the undertakings in relation to external and internal security threats is obvious; without them, all he would be able to show for having accepted what is regarded locally as far too little compensation for Chagos would be an independence for which Mauritius is in fact ill-equipped economically and financially and which 45% of the electorate opposed in the August, 1967 election.

10. It is understood that until British forces are finally withdrawn from Singapore and Malaysia, the Ministry of Defence regard the continued availability of H.M.S. Mauritius as essential and the facilities at Plaisance important. From the strictly British point of view it would clearly be preferable, in the changed situation in relation to overseas defence commitments, if it were possible for facilities at H.M.S. Mauritius and Plaisance to be retained after the independence of Mauritius without the necessity for the British Government to enter into the defence and internal security undertakings envisaged in 1965. The question therefore arises whether Mr. Greenwood's undertaking at the end of the 1965 conference should now be repudiated. The further question also arises whether, if it were so repudiated, there would be any chance of securing the agreement of the Mauritius Government to the retention by Britain of facilities at H.M.S. Mauritius and Plaisance after independence.

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11. ~~12.~~ In this connection it should be pointed out that neither Cmnd. 2797 nor the draft agreement which has recently been sent to the Mauritius Government envisage that we would, under the agreement, be committed in any binding way to take any particular action in the event of either external or internal security threats. Our commitments would be limited in terms to consultation with the Mauritius Government; and it would be made absolutely plain to Mauritius in a Confidential Exchange of Letters (as directed at (1) of O.P.D.(67) 36th Meeting) that complete discretion as to the provision of any assistance in the event of a threat to internal security would rest with us. ~~The~~ Whilst therefore ~~entering into a~~ the defence agreement (which would have to be registered with the United Nations) ~~on the lines envisaged is bound to~~ may well be noticed internationally, and whilst it is bound to carry with it some implication that in certain circumstances we might take action to assist in defending or maintaining the internal security of Mauritius, there would be no binding commitment on us to do so if in any particular case we either could not or did not choose to take action.

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12. ~~13.~~ Finally, it should be stressed that, ~~if it were decided~~ / that

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~~that~~, if it ~~were decided that our willingness to enter into~~ we were to attempt to withdraw from our undertakings related to external and internal security threats ~~should be repudiated~~, there could well be serious adverse consequences in Mauritius which might affect our interests. The Governor's assessment as to what these might be is plain from the relevant extracts attached from a recent exchange of telegrams; the most important feature is that the Governor considers that it is possible that the Mauritius Government might seek to postpone independence.

Conclusion

14. Bearing in mind the considerations set out in the preceding paragraphs the conclusion ~~appears inescapable~~ [15] that negotiations for the proposed defence agreement, on the lines envisaged in 1965, should be proceeded with as planned; but that as regards its duration our negotiators should be instructed to insist that it should be terminable on either side by a relatively short period of notice after an initial period corresponding to the minimum period for which our retention of facilities at H.M.S. Mauritius and Plaisance are essential ~~to the Ministry of Defence~~. in relation to our intention for withdrawal from the Far East.

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Annex 203

Note by the Crown Law Office (undated)

Enclosure to Giddens letter of 8/2/74
to Miss R.S. Bishop International Section
Research Dept FCO
about Mauritian Oil Concessions
copied to Holloway EAD

PL file 12/2

NOTE BY CROWN LAW OFFICE

STATE OF MAURITIUS

The Lesser Dependencies Ordinance (No 4 of 1904) listed the Lesser Dependencies of Mauritius as follows:

Diego Garcia
Six Islands
Peros Banhos
Coetivy
Salomon Islands
Agalega
St Brandon Group (otherwise called Cargados Carajos)
Juan de Nova (or Farquhar Islands)
Trois Freres, including Danger Island and Eagle Island.

2. By Ordinance No 7 of 1908 Coetivy was transferred to the Seychelles.

3. By Ordinance No 4 of 1922 Farquhar Islands were transferred to the Seychelles.

4. The British Indian Ocean Territory Order, 1965 (an Order in Council published as Government Notice No 100 of 1965) transferred the following islands to the BIOT:

Diego Garcia
Six Islands
Peros Banhos
Salomon Islands
Trois Freres.

5. Consequently the islands now comprising the State of Mauritius are:

Mauritius	23 S	58 E
Rodrigues	19 S	64 E
Agalega	11 S	57 E
St Brandon	17 S	59 E.

6. Nazareth Bank and Saya de Malha Bank are fishing grounds projecting roughly NNE from St Brandon between Latitudes 59 E to 63 E and up to roughly 8 S.

Annex 204

U.K. House of Lords, Debate, Second Reading, *Cayman Islands and Turks and Caicos Islands Bill*, Vol. 207, cc617-23 (11 Feb 1958)

CAYMAN ISLANDS AND TURKS AND CAICOS ISLANDS BILL

HL Deb 11 February 1958 vol 207 cc617-23

5.49 p.m.

Order of the Day for the Second Reading read.

THE EARL OF PERTH My Lords, I feel that I owe you an apology. You are hearing me a great deal this afternoon, but it is just an accident of events that there happen to be two Bills on colonial matters to be dealt with to-day. This Bill, I think, is less difficult to understand, and again I hope that it will not he a controversial one. Its purpose is simple. It is to separate the Turks and Caicos Islands from Jamaica, and to make fresh provision for the government of these islands and for that of the Cayman Islands. I might explain to your Lordships that the Cayman Islands do not have to be formally separated from Jamaica for, by the Act of 1863, they are administered "as if they were part of" Jamaica. On the other hand, the Turks and Caicos Islands were, in the words of the Order in Council of 1873 "annexed to and formed part of" Jamaica.

Let me give your Lordships a word on the history of the islands. The Cayman Islands are a group about 200 miles north-west of Jamaica. They have been British for nearly 300 years. Their population is about 9,000, most of whom are of European origin. Many of them originally came to the island as shipwrecked pirates who decided to settle there, or as marooned mariners. Curiously enough, the sea has remained in their blood, so that to-day the main occupa tion of the islanders is to provide seamen for ships.

LORD SILKIN Not pirates!

THE EARL OF PERTH Although the main revenue of the people is the seamen's remittances, there are two other sources of wealth—turtles and tourists, though these are not of great importance. The islands have always faced the danger of hurricanes. They are governed by a Commissioner appointed by the Governor of Jamaica, and the local Legislature consists of Justices and Vestrymen.

The Turks and Caicos Islands are about 450 miles north-east of Jamaica. They are a barren group of islands whose main industry—I can almost say their only industry—is salt. The salt-making industry has suffered over many years great ups and downs, but thanks to the technical advice of Imperial Chemical Industries it has now a better prospect. The population of the islands is about 6.600, and the method of administration is similar to that of the Cayman islands.

The Governor of Jamaica has been responsible for the administration of both these groups of islands and a Convention has been developed by which Jamaican legislation does not apply to them unless the islanders so wish. In practice, the administration and technical aid given by Jamaica has been of the greatest help, because these groups of islands cannot themselves provide the necessary staff, whether for roads or accounting, or what you will. I should like to say here how grateful we are for the services which Jamaica has so readily offered. I am glad, further, to say that the new arrangements proposed for administering the islands will not interfere with the continuance of this help from Jamaica. The islands will, in fact, be part of the Federation of the West Indies, but while no provision has been made for their representation in the Federal Legislature, generally it is not contemplated that the Federal laws will apply in the islands unless the Commissioners of the islands have been first consulted.

The arrangements outlined in this Bill are put forward with the approval of all concerned, and on the appointed day an Order in Council will be made. It will provide for increased local autonomy in Constitutions which have not yet been

settled, but it will be in the usual form of having legislative bodies containing ex officio and nominated members, as well as members elected by universal adult suffrage; and there will be an Executive Council which the Commissioner will normally consult. In addition, and most important, the islands will remain administratively linked with Jamaica. It will be for the Federal Government to decide what proportion of the block grant-in-aid given by Her Majesty's Government to the Federation may be distributed to the Turks and the Caymans, although at present the Caymans have no grant-in-aid. The eligibility of both groups of islands for Commonwealth Development and Welfare funds will not be altered.

At this stage I do not propose to go into any detail on the clauses of the Bill. I have said that Clause 1 provides for the separation of the Turks and Caicos Islands from Jamaica. Clause 2 (1) enables Her Majesty's Government to make fresh provision for governing the Cayman Islands. The rest of Clause 2 lays down government by Order in Council on the appointed day as outlined. Clause 3 deals with the power to authorise the making of emergency laws. That may arise from many causes—from natural causes, such as a hurricane in that part of the world, or from wars or rumours of wars. Clause 4 is the Short Title. It seems to me that this Bill is typical of so much in our colonial history. It follows no exact constitutional pattern, but rather works out a system of rule for these islands which retains past advantages, particularly the link with Jamaica, and at the same time takes into account the wishes and circumstances of the people. I beg to move that the Bill be now read a second time.

Moved. That the Bill be now read 2^{a}.—(The Earl of Perth.)

5.57 p.m.

THE EARL OF LUCAN My Lords, this Bill calls for little criticism and arouses no controversy of which I know. The noble Earl gave the House a sketch of the Islands and their condition. Politically, he assures us that the present arrangements have been arrived at after consultation and in agreement with all concerned. I suppose we must be content with that, although one might think that the setting up of the paraphernalia of Constitutions for these two groups of islands, whose populations amount together to about 12,000, might be rather top-heavy. One would have thought that something on the lines of local government as we know it here would have been adequate. But if the people of the islands and the Jamaican and Federal Governments are all in agreement, I think that we can accept it as a sound arrangement.

There is one point on the clause dealing with emergency powers which I feel was not quite satisfactorily cleared up when the matter was raised in another place. Under Clause 3 power can be conferred by Her Majesty, by Order in Council, upon "any authority" to make emergency laws. Presumably the authorities who may require to use such powers are those of the Jamaican Government or the Government of the Federation. But the words "any authority" are surely very wide: they might be applied, for instance, to the Flag Officer of the Royal Navy in these waters, or to any Service officer; or, indeed, to officers in the United States Services, who I understand have a small detachment there. If, in fact, powers are intended to be used only by the Governments constitutionally set up there, and there are only two or three of them, why should they not be specified in the Bill? I think we should hear a little more about that aspect.

It is good to hear from the Minister that grants under Colonial Development and Welfare funds will not be changed, and that the grants-in-aid which have hitherto been paid to the Turks and Caicos Islands may still be paid by the Federal Government. But clearly the economic conditions in those islands are not prosperous, and we should like to know what provisions have been made, and are likely to be made, for improving conditions. We know that the Colonial Development Corporation lent £50,000 for the construction of the airport on Cayman Islands, but that was some years ago. I cannot find that any enterprise was set up to improve the salt industry on the other islands, which one has heard has considerable scope and promise for the export of salt to the United States. Then there is the underlying question of the scope of the Colonial Development Corporation. I see that there is an Overseas Resources

Bill coming before us before long, and I hope the fact that the Federation of the West Indies has achieved independence will not mean that all help and investment by the Colonial Development Corporation will have to cease in those islands. Subject to those few questions, we on this side of the House support the Bill.

6.2 p.m.

LORD MILVERTON My Lords, I, too, must apologise for detaining your Lordships for a second time this evening, but I can assure you that it will only be for a moment or two. My only excuse for intervening in this debate is that I know these islands probably better than any of your Lordships, as they were my responsibility for five years when I was Governor of Jamaica. I have no reason or wish to add anything to the excellent summary given of the islands, historically, economically and ethnically, by the noble Earl who moved the Second Reading, and I will not attempt to say anything about that.

It is obvious that this position has arisen from the approach of Jamaica to self-government and the birth of Federation of the West Indies. The question was, I suppose: were the Turks and Caicos Islands to be left as part of Jamaica, which they were, and were the Cayman Islands to be embodied in Jamaica and given representation, presumably, in the Jamaican Legislature, or were they to be given a separate existence? The present arrangement is a peculiar one, for which I suppose there is hardly any precedent; they will be part of the Federation, and yet will have no representation, and will have this (the noble Earl will excuse me for saying so) rather cumbrous arrangement of Executive Councils, Legislative Councils and the rest of it. One can only hope that they will make the best of it.

I can think of only one question which might arise, and it is this. Supposing that these untutored democrats, with this new and dubious gift of adult suffrage, do not use it properly; and supposing that the control gets into utterly wrong hands, as may easily happen, who then is going to intervene and who will be responsible for setting that situation right? Especially might that arise after the Federation of the West Indies has attained complete independence as a member of the Commonwealth. I know that in the Bill the right is reserved for emergency powers and so forth, but the exercise of that right in those hypothetical circumstances would surely be fraught with a great deal of difficulty. I only mention the point, and there is perhaps no reason to advance to that stage. But I can see all sorts of possible difficulties arising even at an early date. For instance, to the Cayman Islands is now coming a relative prosperity, because they have luxury hotels, and even a night-club. Now, with adult suffrage added to those other modern pleasures, all sorts of things might happen in a community like that. The tourist traffic, with all respect to it, does not generally improve the behaviour of people in that stage of development.

However, I wish this Bill every success, and I sincerely hope that the experiment, as indeed I regard it, will be successful. I personally, had I a voice in the matter, should have thought the easiest solution would have been to give them representation in Jamaica and to have made them part of Jamaica. But if it was the wish of the islanders themselves, as we are told it was, then this experiment has that justification of being according to the will of the people. I support the Bill.

6.8 p.m.

THE EARL OF PERTH My Lords, both the noble Earl, Lord Lucan, and the noble Lord, Lord Milverton, have touched on the same point—namely, that it appears to be a rather heavy paraphernalia of government that has been outlined for these two small islands. I think I would agree that one should not take this too seriously. What I mean is that although you may give the people rather important-sounding names—and that is natural, I think, when they are going to govern themselves—in practice one will find that the machinery will be very much like that of a local government. There must be some form of election and of suffrage, and if, as a result of that, there is some form of a board which is going to govern or guide the island under the Commissioner, it warrants, since it has the main responsibility, the sort of set-up which has been outlined. But it does not need to be taken too seriously, in the sense

that it will be top-heavy and have everybody consisting of civil servants. In practice, the islands will continue to rely, as now, administrative help from Jamaica.

The noble Earl, Lord Lucan, raised a question, which was also raised in another place, as to what is meant by "any authority". It was said in another place—and I would confirm it—that what we had in mind was British authorities. It is difficult to know just which ones it might be—federal, if it was a question affecting the whole of the Federation; local, in which case you might call only on Jamaica to act; or completely local, in which case you would give authority to the Commissioner to act. So it is necessary to use these words, and I can give the same assurance which was given in another place in regard to them.

The noble Earl, Lord Lucan, asked whether the Colonial Development Corporation would continue to operate there. Certainly, at the present time, if they so choose they may do so. What may happen once the Federation has achieved independence, which is some time off, remains to be seen, but if they have started a scheme then, as noble Lords know, they can carry on with it after independence is achieved. The other point raised by the noble Lord, Lord Milverton, was: Who can step in if something goes wrong? The answer, surely, is the Commissioner or the Governor of Jamaica, or the Federal Government, depending on the seriousness of the crisis.

This is a simple Bill. It achieves, I hope and believe, the purpose which is the wish of the Islanders, as agreed with the authorities of Jamaica.

On Question, Bill read 2^{a}and committed to a Committee of the Whole House.

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United Kingdom, *Cayman Islands and Turks and Caicos Islands Act* 1958 (20 Feb. 1958)

CHAPTER 13

An Act to separate the Turks and Caicos Islands from the colony of Jamaica and to make fresh provision for the government of those Islands and of the Cayman Islands. [20th February, 1958]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Separation of Turks and Caicos Islands from colony of Jamaica.

1. On such day as Her Majesty may by Order in Council appoint (in this Act referred to as the " appointed day ") the Turks and Caicos Islands shall cease to be part of the colony of Jamaica.

Provisions as to government of Cayman Islands and Turks and Caicos Islands.

2.—(1) On the appointed day the Cayman Islands Act, 1863, and the Order in Council made under the Turks and Caicos Islands Act, 1873, shall cease to have effect.

(2) Her Majesty may by Order in Council make such provision as appears to Her expedient for the government on and after the appointed day of the Cayman Islands and the Turks and Caicos Islands as part of the West Indies (that is to say, the Federation established under the British Caribbean Federation Act, 1956), and any such Order may, in so far as may be consistent with the provisions of any Order in Council in force under section one of that Act,— 26 & 27 Vict. c. 31. 36 & 37 Vict. c. 6. 4 & 5 Eliz. 2. c. 63.

(*a*) confer power to make laws for any of the said Islands on authorities established under the Order, on the legislature of Jamaica, and on any other authority;

(*b*) confer or provide for conferring on any court of Jamaica original or other jurisdiction over matters arising in any of the said Islands;

(*c*) confer powers and impose duties on any authorities established under the Order or any other authorities of any of the said Islands or any authorities of Jamaica;

(*d*) make or provide for the making of such incidental, consequential or transitional provisions as may appear to Her Majesty to be necessary or expedient.

(3) The cesser of the provisions mentioned in subsection (1) of this section shall not affect the continued operation of any other law in force in any of the said Islands immediately before the appointed day; but an Order in Council under this section may make or provide for the making of such modifications or adaptations in, and such repeals of, any such laws as may appear to Her Majesty to be necessary or expedient in consequence of the passing of this Act.

(4) An Order in Council under this section made before the appointed day may be so framed as to enable any authority upon whom power is thereby conferred to make any provision or to adapt, modify or repeal any law to exercise that power before that day with effect from that or a later day.

(5) An Order in Council under this section may be revoked or varied by a subsequent Order in Council.

Power to authorise making of emergency laws.

3.—(1) Notwithstanding anything in section two of this Act or any Order in Council made under that section, Her Majesty may by Order in Council confer power on any authority to make, in relation to periods of emergency, such laws for any of the said Islands, to have effect notwithstanding the provisions of any other law, as may appear to that authority to be necessary or expedient for securing the public safety, the defence of that Island or the maintenance of public order or for maintaining supplies and services essential to the life of the community; but any power so conferred shall be exercisable only to the same extent and subject to the same restrictions as the power of the legislature of the Island to make laws in similar circumstances.

(2) In this section " period of emergency " means, in relation to any of the said Islands, a period beginning with a declaration made by such authority and in such manner as may be prescribed by an Order in Council under this section that a public emergency exists in that Island and ending with a declaration so made that a public emergency no longer exists therein.

(3) An Order in Council under this section may be revoked or varied by a subsequent Order in Council.

4. This Act may be cited as the Cayman Islands and Turks and Caicos Islands Act, 1958. Short title.

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Annex 206

U.K. Defence and Oversea Policy Committee, *Mauritius - Constitutional Developments: Note by the Secretary of State for the Colonies*, OPD (65) (May 1965)

SECRET Mr. Fairclough

DRAFT

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D.O.P.(65)

May, 1965.

CABINET

DEFENCE AND OVERSEA POLICY COMMITTEE

MAURITIUS - CONSTITUTIONAL DEVELOPMENTS

(Note by the Secretary of State for the Colonies)

The recent disturbances in Mauritius which necessitated the sending of British troops arose from communal tension caused at least in part by differences of view as to the constitutional future of the island. The Committee will wish to know my views, in the light of my recent visit, on the next steps in constitutional development.

Recent Events

2. In 1961 constitutional talks with all the political parties represented in the Legislature of Mauritius were held in London and a two-stage programme of constitutional advance was laid down. In the first stage, introduced at once, the leader of the majority party became Chief Minister and the Governor was required to consult him about various matters such as the appointment of Ministers. The second stage providing a more substantial advance towards internal self-government followed after elections in 1963. It was brought into force in February 1964, when the present all-party Government was formed and agreement was reached that the next constitutional discussions should be held "at any convenient time after October 1965".

/The Present Government

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SECRET

The Present Government

3. There is now, under the Second Stage arrangements, a Council of Ministers presided over by the Governor: the Chief Minister has become the Premier. The Ministers, who are appointed by the Governor in his discretion after consulting the Premier and other leaders, belong to different parties and accept the principle of collective responsibility. The Legislative Assembly includes a majority of popularly elected members but also a number of members nominated by the Governor. The Governor's powers, on paper, remain considerable. He is finally responsible for law and order, for appointments and promotions in the Public Service and the Police, and he is responsible to the Secretary of State for all senior appointments and promotions.

The situation since the British elections of October last

4. The effect of the British elections was to reopen the constitutional controversy in Mauritius. Within a few weeks I received visits from the Premier and other members of the Mauritius Labour Party who urged me to bring forward the next constitutional conference and to grant independence to Mauritius as soon as possible. At the same time pressure was put on me by the other side, the Parti Mauricien, who urged me to respect the inter-party agreement of February 1964 that no conference was to be held until after October next. My line was to say that I had no intention of breaking the 1964 agreement but would not object to an earlier conference if the parties themselves could agree on it. I decided, however, to visit Mauritius to get the feel of the place, discuss the constitutional questions with the leaders and with the Governor and to try to decide for myself when the next conference should be held and what we should try to achieve at it.

Political Parties

5. The policies of the main parties as expressed to me during my visit are broadly as follows:

/The Mauritius Labour Party

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The Mauritius Labour Party, the members of which belong mainly to the Hindu community, which is the largest in the island, have for some years consistently demanded independence within the Commonwealth. The party has been losing ground during the past year or so.

The Parti Mauricien Social Democrate whose members are mainly Creoles is supported financially by some of the sugar interests, and has always opposed independence. It is now demanding 'integration' with Britain more or less on the lines considered for Malta a few years ago. I think however that the party might settle for some form of association with Britain falling short of anything we would describe as 'integration'.

The Independent Forward Bloc is a radical party whose members are mostly poor low caste Hindu sugar workers and peasants. The party supports a long term policy of independence for Mauritius but is much more immediately concerned with policies of local reform. The party wants what the leader described to me as "the substance of internal self-government in a form that could be described as independence".

The Muslim Committee of Action. This party represents the majority of the Muslim community, about a sixth of the total population, and is primarily concerned with safeguarding Muslim rights. It has been in favour of independence in the past but is now wavering. The leader told me that he wanted a garrison of British troops to be stationed permanently in Mauritius as a prerequisite of independence.

Prospects for Conference

6. The most important parties are the Labour Party and the Parti Mauricien. Both have very considerable followings for their policies, and as a result the debate in Mauritius at the moment is

/between

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between independence on the one hand and some form of long-term association with Britain on the other. The views of the parties are strongly held and as the parties themselves are communally based and intercommunal suspicion is a permanent feature of Mauritius life, there is clearly a potentially dangerous situation. This is what lies behind the recent disturbances which have led to a small force of British troops being brought in.

7. The constitutional debate can be expected to continue until the conference takes place. I expect to be able to arrange it in September. I hope that a despatch which I shall shortly be sending to the Governor may contribute to a relaxation of tension and to constructive discussion of the issues the conference will have to settle. Meanwhile the Committee may wish to know my present views on these matters.

8. I am convinced that given the present tension and division of views in Mauritius it is not to be expected that the forthcoming conference can lead to a decision likely to be peacefully accepted by a majority of the people, that Mauritius should move to independence. Dr. Rumgoolam, the Premier and leader of the Labour Party, has shown himself disposed to compromise from his original demand for independence tout court. I am convinced that the Parti Mauricien can be persuaded to drop their demand for 'integration'. It seems likely therefore that the conference will succeed in making arrangements for the introduction of internal self-government, which would involve the withdrawal of the Governor from the Council of Ministers and the limitation of his discretionary powers to such matters as defence, external affairs and internal security only, and in reaching a compromise agreement on some form of association between Mauritius and Britain as the longer-term constitutional aim for the island. My own view is that given present attitudes in the island, this would be the most desirable outcome.

/9.

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9. An alternative might be that the conference would reach agreement that the people of Mauritius should be consulted on the longer-term future, and would identify two alternatives (which might be independence coupled with a treaty with Britain on the one hand or association on the other) which might be put to the people either in the course of a general election or in a referendum. This also would be a reasonably satisfactory outcome to the conference although, since it would leave the constitutional debate still under way, there might be some security risk associated with it.

Recommendation

10. I seek my colleagues' concurrence that I should

(a) aim at holding a Constitutional Conference in the near future (probably September),

(b) endeavour at it to reach a settlement on the lines indicated in paragraph 8 above.

Copies to:

Mrs. White
Sir Hilton Poynton
Mr. Galsworthy

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U.K. Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Wednesday, 2nd June, 1965, at 10:30 a.m.*, OPD (65) 28th Meeting (2 June 1965)

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O.P.D. (65) 28th Meeting Copy No. 25

CABINET

Defence and Oversea Policy Committee

MINUTES of a Meeting held at 10 Downing Street, S.W.1, on Wednesday, 2nd June, 1965, at 10.30 a.m.

Present:

The Right Hon. HAROLD WILSON, M.P., Prime Minister

The Right Hon. JAMES CALLAGHAN, M.P., Chancellor of the Exchequer

The Right Hon. MICHAEL STEWART, M.P., Secretary of State for Foreign Affairs

The Right Hon. DENIS HEALEY, M.P., Secretary of State for Defence

The Right Hon. ARTHUR BOTTOMLEY, M.P., Secretary of State for Commonwealth Relations

The Right Hon. ANTHONY GREENWOOD, M.P., Secretary of State for the Colonies

The following were also present:

The Right Hon. FRANK COUSINS, M.P., Minister of Technology (*Item 1*)

The Right Hon. BARBARA CASTLE, M.P., Minister of Overseas Development (*Items 4, 5, 6 and 7*)

The Right Hon. ROY JENKINS, M.P., Minister of Aviation (*Item 2*)

The Right Hon. FREDERICK MULLEY, M.P., Deputy Secretary of State for Defence and Minister of Defence for the Army

The Right Hon. GEORGE WIGG, M.P., Paymaster General

Mr. GEORGE THOMSON, M.P., Minister of State for Foreign Affairs (*Items 4 and 5*)

Mr. AUSTEN ALBU, M.P., Minister of State, Department of Economic Affairs

Sir MAURICE DEAN, Ministry of Technology (*Item 1*)

Secretariat:

Mr. P. ROGERS
Mr. D. S. LASKEY
Mr. G. PLOWDEN

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6. Mauritius

(Previous Reference: O.P.D. (65) 25th Meeting, Item 3)

The Committee considered a note by the Colonial Secretary (O.P.D. (65) 86) about constitutional developments in Mauritius.

The Colonial Secretary said that in 1961 constitutional talks with all the political parties represented in the Mauritius Legislature were held in London and a programme of constitutional advance in two stages was laid down. The second stage was brought into force in February 1964 when the present all-party Government was formed and agreement reached that the next constitutional discussions should be held at "any convenient time after October 1965". The present Constitution provided for a Council of Ministers presided over by the Governor, who appointed the Ministers in his discretion after consultation with the Premier and other leaders and retained final responsibility for law and order and for the Public Service.

The main parties were based primarily on racial or religious groups and the current political debate in Mauritius was between the aim of independence on the one hand and that of some form of association with Britain on the other. The inter-communal suspicion which was a standing feature of Mauritius life presented a potentially dangerous situation. In these circumstances, he proposed to instruct the Governor to invite the four parties represented in the Legislature to a constitutional conference in London in September to consider the next constitutional stage for Mauritius and whether its aim should be to seek independence or some form of special association either with the United Kingdom or with other independent Commonwealth countries.

In discussion there was general agreement with the proposal to arrange a conference in London. It would, however, be necessary to consider whether the detachment of the Island dependencies from Mauritius for the purpose of establishing Anglo-United States bases in the Indian Ocean should not be raised and decided either before or during the conference and as a part of any agreement leading to independence for Mauritius.

The following points were also made:

(*a*) The Governor had advised that it would be injudicious to raise the proposal relating to the bases with Mauritius Ministers during the current disturbances in the Island, but it was essential that such an approach should not be delayed until our negotiating position was weaker.

(*b*) It would be appropriate, particularly in the light of the views recently expressed by the Prime Minister of Canada on membership of the Commonwealth by the remaining Colonial territories which might attain independence, to make it clear to the Mauritius Ministers either in the Secretary of State's despatch to the Governor about the conference or on some other occasion in the near future that membership of the Commonwealth by Mauritius was a matter not solely for the United Kingdom, but for the members of the Commonwealth as a whole.

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The Committee—

(1) Invited the Colonial Secretary to consider further, in consultation with the Foreign Secretary and the Secretary of State for Defence, when it would be appropriate to raise with the Mauritius Government the detachment of Island dependencies from the Colony for the purpose of establishing Anglo-United States bases.

(2) Invited the Colonial Secretary, in consultation with the Commonwealth Secretary, to consider further the manner in which the Mauritius Government should be reminded that membership of the Commonwealth after independence would be a matter for the agreement of all Commonwealth members.

(3) Approved O.P.D. (65) 86 subject to Conclusions (1) and (2).

---

7. Future of the remaining British colonial territories

The Committee had before them a note by the Secretary (O.P.D. (65) 89) covering a minute by the Colonial Secretary on the future of the remaining British colonial territories.

The Colonial Secretary said that at this stage in our colonial history our main task must be to liquidate colonialism either by granting independence to a number of territories or by evolving for others forms of Government which secured basic democratic rights for the people, but which involved some degree of association with the United Kingdom. The remaining territories all presented special difficulties, and he had been conducting a general review of policy within the Colonial Office. He was also planning to consider the problem in a wider forum and to hold a conference for that purpose at Oxford in the middle of July to which he would invite a number of Colonial Governors and prominent persons with knowledge of colonial problems from the academic world, journalism, banking and business.

Of the remaining colonial territories a few could become independent, but a substantial degree of dependence on the United Kingdom seemed inevitable for the remainder in view of their small size. The problem was to devise a type of relationship between these territories and ourselves which accorded with their needs and which would be internationally acceptable. At present no final status other than independence or "free association" was recognised by the United Nations except integration, which would not be either acceptable or appropriate. The need was to work out a relationship for those territories which could not sustain independence which would ensure that their defence, finances and internal security were in safe hands while their peoples enjoyed at least the same freedom and dignity as the Channel Islanders and had no awareness of colonial status. There was no one answer which was appropriate to their widely varying circumstances, but we should formulate a general policy both to give coherence and pace to our efforts and to win

understanding and support from world opinion and the people in the territories themselves. Meanwhile efforts were being made to improve our relations with the United Nations in colonial affairs and there were some signs of a diminishing interest on their part in the future of the really small territories.

Discussion showed general agreement with the Colonial Secretary's views and proposals. It was noted that in considering these further it would be necessary to take into account the views recently expressed by the Prime Minister of Canada on the appropriateness of extending full membership of the Commonwealth to the remaining colonial territories which might attain independence.

The Committee—

Took note of O.P.D. (65) 89.

Cabinet Office, S.W.1,
2nd June, 1965.

Annex 208

Note from J. O. Wright to J. W. Stacpoole of the Colonial Office (21 Sept. 1965)

Copy

10, Downing Street,
Whitehall.

September 21, 1965.

I have now spoken to the Prime Minister about the revised timing of the Mauritius negotiations.

The Prime Minister could see Sir R. Ramgoolam at 10.00 a.m. on Thursday, September 23. He would then like the matter discussed either at a meeting of the Defence and Oversea Policy Committee, or alternatively at a smaller meeting of the Ministers most closely concerned, at 4.00 p.m. on Thursday, September 23, thus enabling the Colonial Secretary to bring the talks to the boil on Friday, September 24 as he now proposes.

Now a DaP meeting

I am sending copies of this letter to MacLehose (Foreign Office), Nairne (Ministry of Defence) and McIndoe (Cabinet Office).

(SGD.) J.O. WRIGHT

J.W. Stacpoole, Esq.,
Colonial Office.

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U.K. Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 23rd September, 1965, at 4 p.m.*, OPD (65) 41st Meeting (23 Sept. 1965)

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OPD (65) 41st Meeting

Copy No. 25

CABINET

Defence and Oversea Policy Committee

MINUTES of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 23rd September, 1965, at 4 p.m.

Present:

The Right Hon. HAROLD WILSON, M P, Prime Minister

The Right Hon. GEORGE BROWN, M P, First Secretary of State and Secretary of State for Economic Affairs

The Right Hon. MICHAEL STEWART, M P, Secretary of State for Foreign Affairs

The Right Hon. DENIS HEALEY, M P, Secretary of State for Defence

The Right Hon. ARTHUR BOTTOMLEY, M P, Secretary of State for Commonwealth Relations

The Right Hon. ANTHONY GREENWOOD, M P, Secretary of State for the Colonies

The following were also present:

The Right Hon. THE EARL OF LONGFORD, Lord Privy Seal

The Right Hon. GEORGE WIGG, M P, Paymaster General

Mr. GEORGE THOMSON, M P, Minister of State for Foreign Affairs

Mr. NIALL MACDERMOT, Q C, M P, Financial Secretary, Treasury

Mr. ALBERT E. ORAM, M P, Parliamentary Secretary, Ministry of Overseas Development

Field-Marshal Sir RICHARD HULL, Chief of the Defence Staff

Admiral Sir DAVID LUCE, Chief of Naval Staff and First Sea Lord

General Sir JAMES CASSELS, Chief of the General Staff

Air Chief Marshal Sir CHARLES ELWORTHY, Chief of Air Staff

Secretariat:

Sir BURKE TREND
Mr. P. ROGERS
Mr. D. S. LASKEY
Air Vice-Marshal J. H. LAPSLEY

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Forces and it should be made clear to him that he must ask for reinforcements if he thought these were necessary to enable him to deal with the situation. In making this decision public it would be necessary to emphasise that the United Kingdom Government maintained its intention of bringing South Arabia to independence by 1968 and everything possible should be done to mitigate the political repercussions in the United Nations and elsewhere.

The Committee—

(1) Agreed that an Order in Council should be submitted to Her Majesty in Council for approval which would suspend the operative part of the Aden Constitution and enable the High Commissioner to exercise direct rule.

(2) Invited the Secretary of State for the Colonies to inform the High Commissioner for South Arabia in the sense of Conclusion (1) and to be guided thereafter by the general sense of the Committee's discussion.

(3) Invited the Secretary of State for Defence to consult the Commander-in-Chief, Middle East, on the desirability of evacuating service wives and families and the possible need to reinforce the garrison in the sense indicated in discussion.

(4) Took note that the Prime Minister, in consultation with the Foreign Secretary, the Commonwealth Secretary and the Colonial Secretary, would consider how best to mitigate the political repercussions of the suspension of the Aden Constitution.

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2. Mauritius and Defence Facilities in the Indian Ocean

(Previous Reference: OPD (65) 39th Meeting, Minute 2)

The Colonial Secretary said that in the Mauritius Constitutional Conference some progress had been made on safeguards for minorities but there was no prospect of agreement on the ultimate status of the island or on the new electoral system. He proposed to inform the Conference that the United Kingdom Government could not agree to communal rolls; that Mauritius should become independent on a date to be agreed between the United Kingdom Government and Mauritius after the election of a new legislature and a vote by that body on the issue; and that a new electoral system would be prepared by an electoral commission. If the parties in favour of independence won the election, progress to independence would proceed on this basis; if the parties opposed to independence gained a majority there would have to be further consultation with the United Kingdom Government since the legislature would not then pass the requisite motion on a date for independence.

As regards the Indian Ocean Islands, the Parti Mauricien had informed him that since they were opposed to independence they

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could not agree to the detachment of the islands. He had however put to the leaders of the other parties and to the principal independent representative a solution on the following lines. Mauritius would receive £800,000 from Colonial Development and Welfare Funds for three years and would have access to Exchequer loan funds which might be of the order of £1 million a year. (These aid measures had already been agreed as part of the future aid programme.) There would be compensation of £3 million which might be spread over a number of years: we would be prepared to conclude a defence agreement covering external aggression and to consult with the Mauritius Government about possible United Kingdom help for internal security: if the need for the islands by the United Kingdom and United States disappeared we would be prepared to hand them back to Mauritius: we would use our good offices about the employment of Mauritian labour on any construction work in the islands and would also use our good offices with the United States Government about arrangements desired by the Mauritians over wheat and sugar. The independent representative had said that he considered the compensation offered too small but the representatives of the political parties had agreed to the proposal in principle.

The Prime Minister said that this seemed a very satisfactory arrangement. It would however be necessary to make it clear that a decision about the need to retain the islands must rest entirely with the United States and United Kingdom Governments and that it would not be open to the Government of Mauritius to raise the matter, or press for the return of the islands, on its own initiative. He had seen the Prime Minister of Mauritius that morning and had undertaken that we would also use our good offices with the United States Government about the supply of wheat under PL480.

The Committee—

Took note with approval of the statements by the Colonial Secretary and the Prime Minister.

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3. Singapore

(Previous Reference: OPD (65) 39th Meeting, Minute 3)

The Committee considered a memorandum by the Commonwealth Secretary covering a report by officials on the repercussions on British policy in South-East Asia of the separation of Singapore from Malaysia.

The Commonwealth Secretary said that in the quadripartite talks with Australia, New Zealand and the United States, our Allies had taken a different view from ourselves about the way in which the situation in South-East Asia might develop in the longer term and the effect on our security of tenure in Singapore. They had shown themselves to be firmly opposed to any idea of voluntary removal of our military presence from Singapore either in the near future or even after the end of the next five years. They were also

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Telegram from T. Smith to J. Rennie, Governor of Mauritius, No. 234 (1 Oct. 1965)

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OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

TO MAURITIUS (Sir J. Rennie)

Cypher

Sent 1st October, 1965, 23.00 hrs.

PRIORITY
SECRET AND PERSONAL
PERSONAL No. 234

Following from Trafford Smith.

Ramgoolam called to see Fairclough and myself today. He fulminated about Parti Mauricien and said that he was not going to work in the Government with them unless they accepted independence. He added that he did not mind working with them if their Ministers would get down to tackling important problems on which action was needed and would co-operate in working of government. He accused them of being responsible for numerous leaks. I commented that if they stayed in the Government the Parti Mauricien would have to take their share of collective responsibility.

2. Ramgoolam also enquired about personnel of Electoral Commission. Poynton and I have had preliminary discussion on this and I hope to telegraph shortly. Ramgoolam agreed that Silsoe and de Smith should be ruled out (though de Smith would obviously have to be consulted by Commission). Only name he mentioned was that of Professor MacKenzie of Manchester University.

3. Premier appeared distressed that full internal self-government would not be introduced until after election. He talked of resigning though I think not very seriously. We explained practical difficulties of preparing new constitution and stressed that many changes from present procedures were possible by administrative means and by convention without waiting for formal constitutional changes. We said that we presumed question of such changes would be one of matters you would wish to discuss with Premier immediately he returned to Mauritius. Points which appeared particularly to be exercising him were:-

(i) presiding in Council of Ministers;

(ii) Service Commissions becoming executive.

4. Fairclough saw Duval a few days ago. He seemed somewhat chastened and concentrated entirely on vital importance to Parti Mauricien of Electoral Commission. He said that Parti Mauricien Ministers would remain in Government until after Commission had reported. Depending on report of Commission Party supporters would then have to decide whether to leave Mauritius, fight it out or accept defeat. He argued strongly for Proportional Representation and asked why Mauritius could not have it when it had been imposed in British Guiana. He suggested that Secretary of State ought at Conference to have offered Premier choice between having a referendum or accepting an electoral system on lines desired by Parti Mauricien. He said Premier would certainly have accepted latter as he knew he could not win a referendum. Duval advocated as electoral system twenty two-member constituencies plus twelve members elected on party vote, plus eight good losers to correct under-representation of any party (you will recall this is same as one of systems which Lord Taylor discussed with Parti Mauricien during Conference).

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5. Koenig called on me without warning yesterday. He talked mainly about the Electoral Commission and seemed concerned lest it might do its work in London e.g. by combining existing constituencies etc. I said that I thought that everything possible in this line had already been tried during the conference, and that it would be necessary for the Commission to go into the whole question de novo in Mauritius. He too argued for proportional representation.

6. Koenig finished by referring to his absence from the final meeting on defence facilities. I told him in outline the conclusions reached and we discussed in a general way. He seemed quite relaxed and gave no (repeat no) indication of dissent. I informed Premier of what I had said.

(Encryption passed to Ministry of Defence for transmission to Mauritius)

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Letter from J. Rennie, Governor of Mauritius, to A. Greenwood, U.K. Secretary of State for the Colonies, CO 1036/1253 (15 Nov. 1965)

SECRET AND PERSONAL

R. S. 43/II

Government House,
Mauritius

15th November, 1965

Dear Secretary of State,

As you know, the Government of Mauritius confirmed its agreement to the detachment of the Chagos Archipelago on the conditions enumerated in your despatch No. 423 of 6th October on the understanding that their interpretation of certain points was correct. The Parti Mauricien Ministers were unable to accept this majority decision and resigned on the grounds that compensation to Mauritius and assurances given were inadequate.

The questions of interpretation were: (a) whether the statement that the British Government "had taken careful note of points (vii) and (viii)" meant that the British Government agreed to them; (b) whether the undertaking to return sovereignty if the Chagos Archipelago were no longer required for defence purposes implied that there could be no question of transfer or sale to a third party nor of any financial obligation by Mauritius as a condition of return; (c) the meaning of the expression "on or near" in relation to the discovery of oil or other minerals.

I told Ministers it seemed clear to me that the answer to (a) and (b) must be in the affirmative and that as regards (c) the expression could only mean "within the area in which Mauritius would be able to obtain benefit but for the change of sovereignty". I said, however, that in conveying the Council's decision to you I should seek confirmation. It had not occurred to me that there could be any doubt about (a) and (b), and I was therefore disconcerted when no categorical assurance was given in the reply (telegram No. 298). I hope all three points will be cleared up to the satisfaction of Ministers after the further consideration now being given to them in the Colonial Office. It would be very unfortunate if Ministers were given the impression of equivocation.

As regards the resignation of the PMSD Ministers, they all said they were agreeable in principle to detachment for defence purposes but found the terms unsatisfactory. In his letter of resignation Duval went so far as to say: "I do not believe that this very poor country should be made to align itself in the cold war unless it received considerable compensation", and he stated as his conditions to agreement (i) that Britain and America should grant special emigration facilities, and (ii) that Britain and America should buy the surplus sugar of Mauritius at a remunerative price. The PMSD have now begun a series of public meetings at which the main topic is "the base", and the ceremony at the War Memorial on Remembrance Sunday, yesterday, was exploited politically by placards and pro-French demonstrations.

There is little doubt that the PMSD Ministers have taken advantage of what they consider a favourable opportunity to withdraw from the Government. It is true to say also that the public expectation had been pitched much too high. Nevertheless,

the/

The Right Honourable Anthony Greenwood, M. P.,
Secretary of State for the Colonies,
COLONIAL OFFICE.

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the public and, I should say, all Ministers think the compensation inadequate. In particular, they are gravely disappointed that nothing could be done about sugar, they do not believe any real effort was made, and those present at the meetings in London resented very much being told it was not in the interest of the Commonwealth that special measures should be taken for Mauritius. They feel (as I do) that Mauritius has been poorly treated all along in this matter of the American allocation, and while the arrangements may have worked to the advantage of the Commonwealth in 1962, they worked very much to the disadvantage of Mauritius, which got nothing. I am personally far from convinced the U. S. Government cannot put pressure on Congress in this matter when it wants to: the Counsellor in the American Embassy in Tananarive recently told me how they had the Madagascar quota restored because of the American tracking station there. No other Commonwealth country - indeed, I suppose, no other country - is so dependent on sugar as Mauritius: why should Mauritius refrain from pressing a fortuitous advantage for the sake, say, of the Queensland sugar planters?

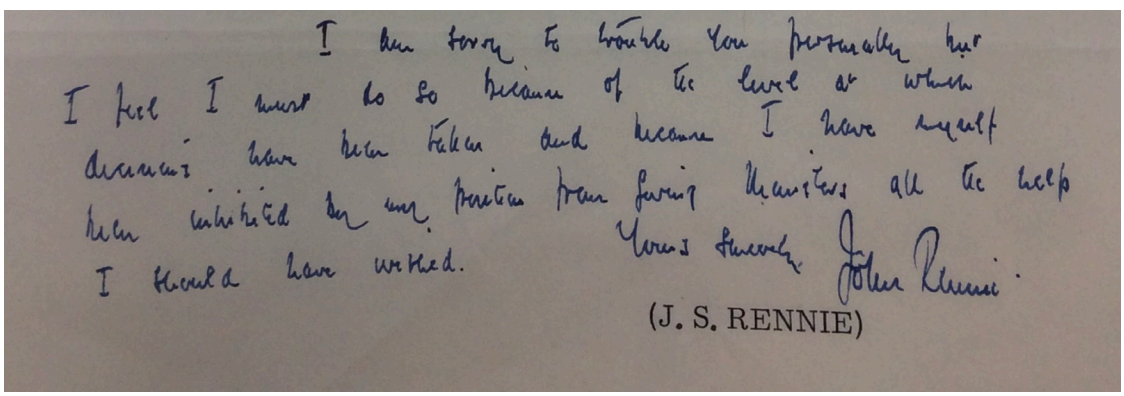
I must add also that there is a strong belief in certain quarters, even among those well-disposed to Britain, that there has been a deal between the British Government and the Mauritius Labour Party in which independence has been granted for the sake of Diego Garcia. The deal is said to have been arranged when the Premier met the Prime Minister. So far this line of attack has not been pressed and the PMSD have concentrated on the inadequacy of the compensation but I expect more to be heard of it, as their campaign intensifies. (I have, of course, done what I can in private conversation to refute the accusation).

The parties remaining in the Government have not wavered in their support of the British Government's proposals but they will be under fire from their left, as well as from the PMSD, and outside Mauritius as well as inside. I hope therefore that the various assurances given will be taken seriously and, especially, that a real effort will be made to give more favourable treatment to Mauritius in regard to sugar whenever opportunity offers through redistribution of quotas. I hope also that Mauritius will have generous treatment when the time comes for a "golden handshake" and not be given the minimum simply because her Ministers behave reasonably and refrain from mercilessly exploiting their nuisance value. In this connection I regard it as most important that Mauritius should not, in the final account, meet any part of the cost of compensating British civil servants. I appreciate that formally half may have to be borne by Mauritius but if so, the amount should clearly be offset by some other grant. If this is not done, the issue will undoubtedly be inflamed and do disproportionate damage to relations between Mauritius and Britain.

I am sorry to trouble you personally but I feel I must do so because of the time at which decisions have been taken and because I have myself been entrusted by my Minister from giving Ministers all the help I should have wished.

Yours sincerely, John Rennie.

(J. S. RENNIE)



I am sorry to trouble you personally but I feel I must do so because of the level at which decisions have been taken and because I have myself been entrusted by my parents from serving Ministers all the help I should have wished.

Yours sincerely, John Rennie.

(J. S. RENNIE)

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Mauritius Legislative Assembly, Written Answers to Questions, *Diego Garcia – Sale or Hire*, No. A/33 (14 Dec. 1965)

WRITTEN ANSWERS TO QUESTIONS

DIEGO GARCIA — SALE OR HIRE

(No. A/33) Mr. J. R. Rey (Moka) asked the Premier and Minister of Finance whether he will make a statement on the question of the sale or hire of the Island of Diego Garcia to either the United Kingdom Government or to the Government of the United States of America or to both jointly and state what is the price offered by the would-be purchasers and what is the minimum price insisted upon by the Government of Mauritius?

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

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

(*Communiqué*)

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

Defence facilities in the Indian Ocean

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

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

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

The population of the Chagos Archipelago consists, apart from civil servants and estate managers, of a labour

force, together with their dependants, which is drawn from Mauritius and Seychelles and employed on the copra plantations. The total number of Mauritians in the Chagos Archipelago is 638, of whom 176 are adult men, employed on the plantations.

EX-SERVICEMEN — WORLD WARS I AND II

(A/37) Mr. G. Marchand (Nominated Member) asked the Chief Secretary how many Mauritians served in the Armed Forces during World War I and World War II.

Mr. Vickers :

I regret there are no official records available showing the total number of Mauritians who served in the Armed Forces during World War I and World War II.

ECONOMIC PLANNING UNIT — REPORT

(A/38) Mr. J. N. Roy (Plaine Magnien) asked the Minister of State (Development) whether the Report of the Economic Planning Unit has been released for publication.

Mr. A. Jugnauth :

No, Sir. The report submitted by the Economic Planning Unit is not a plan but an interim report dealing with the objectives of economic policy and planning and the conditions to be satisfied for the development of the economy on a scale sufficient for the country's needs. The report is under consideration by Ministers and is not intended for publication although a version of it has appeared in the Press.

CARREAU ACCACIA — SOCIAL WELFARE CENTRE

(A/40) Mr. J. N. Roy (Plaine Magnien) asked the Minister of Social Security whether he will take steps to open a Social Welfare Centre at Carreau Accacia.

If so, when?

If not, why not?

Dr. B. Ghurburrun :

The current programme for the construction of Social Welfare Centres is nearing completion and the Sugar Industry Labour Welfare Fund Committee will shortly be considering the possibility of drawing up a further programme, bearing in mind the other activities of the Committee and availability of funds.

Requests for the setting up of Social Welfare Centres have been received from the inhabitants of many other localities and priorities will have to be decided. Carreau Accacia will be in the queue together with others.

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Report from J. Rennie, Governor of Mauritius, to H. Bowden, Secretary of State for Commonwealth Affairs (23 Jan. 1967)

(15)

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COMMONWEALTH OFFICE PRINT DISTRIBUTION
February 1967

CO Ref.: QM 1/5

Copy No. 63

MAURITIUS: A REVIEW OF RECENT DEVELOPMENTS

Governor of Mauritius to the Secretary of State for Commonwealth Affairs

(Personal No. 2)
Sir,

Government House, Port Louis
23 January, 1967

I have the honour to report to you on developments since agreement was reached on the new electoral system during the visit by the Parliamentary Under-Secretary of State last June. The stage has now been set for the elections that will precede Independence (or whatever alternative status acceptable to the British Government is requested by the new Legislative Assembly). The current registration of electors, the most important stages of which were observed by a Commonwealth team from Jamaica, Canada, India and Malta, under the Chairmanship of Sir Colin MacGregor (formerly Chief Justice of Jamaica) will be completed with the publication of the new registers to-day. As a result of discussions in the Commonwealth Office last month in which the Premier and I took part the Premier was assured that, in consulting him on dissolution of the Legislative Assembly in accordance with the present Constitution, I would normally be guided by his wishes in regard to the date, but he was left in no doubt regarding your desire that the elections should take place as early as possible. It remains for the Premier—in, for the present, his own time—to reach some conclusion about the most convenient date from his point of view within the limits set by various considerations, including the views expressed by Mr. Fred Lee in the communiqué published after last month's discussions.

2. Apart from belated and more than usually futile representations by the Muslim Committee of Action, there has been no local criticism and, indeed, little or no further public discussion of the electoral system on which agreement was reached during Mr. Stonehouse's visit. It is very satisfactory that the system should have been so well accepted in Mauritius. Much of the criticism that has been made outside Mauritius is wide of the mark. The system may appear complicated but no simple system would have met the demand by political parties that some means of automatically ensuring fair representation of the main communities in the Legislature must be devised to replace that provided at present by the Governor's power to nominate from 12 to 15 members. The charge that the system recommended by the Banwell Commission favoured communal politics in a colonialist spirit of "divide and rule" is absurd. One of the Commission's main aims was to discourage such politics, and much of the outcry against the report by the Government parties was due to the length to which the Commission had gone to do so. In fact, the minor changes subsequently made in their recommendations very slightly increase the communal element but fall far short of the demand made by the Premier at one stage—to be fair to him, against his principles and only under intense pressure from the Muslim Committee of Action—that reserved seats for Muslims and Chinese should be introduced. The system should be less complicated in practice than it appears on paper; most of the complication arises from the need to provide for remote contingencies, and the elector's task is simple—he need only cast three votes in favour of any three candidates standing in his constituency. Electors in Mauritius have experience of national and local government elections on a fairly wide franchise since 1948, and under universal adult suffrage since 1958, and this experience includes multi-member constituencies or their equivalent. The sole innovation as far as they are concerned will be the obligation to cast all three votes on pain of invalidating their ballot papers. As I said in discussions in the Commonwealth Office during my recent leave, I am still apprehensive about the determination of challenges to the statutory declaration of community by candidates in view of the difficulty of settling border-line cases on the basis of "way of life" with no past jurisprudence as a guide. I can only hope there will be few or no challenges

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and that the Chief Justice will not be hard put to it to make good his assurance that the Judiciary can be relied on to deal with them expeditiously.

3. As you are aware, registration has not been free from problems, and I am relieved that the Commonwealth Observers felt able to report so favourably on the conduct of the operation, with the exception of their doubts in regard to the local interpretation of Section 9 of the Representation of the People Ordinance. I have explained the origin of our legislation and the practice followed in the past, as on this occasion. There can be no doubt that the system of registration in Mauritius has always been a " voluntary " one in which each elector is obliged to complete (or have completed for him) a form of claim on first registration. The proceedings of the Legislature when the Ordinance was amended in 1960 to repeal the inoperative sections relating to electors' cards made quite clear the intention of the Legislature in this respect and show that the requirement that a form of claim should be completed was regarded as a safeguard against personation, justifying the dropping of the provision for electors' cards.

4. There may, however, be some criticism of the registers on account of the large number of persons disqualified under Section 37 (2) (*b*) of the present Constitution because they have changed residence and so lost their entitlement in their former constituency but have not completed the necessary six months residence in their new constituency. This residential requirement has, however, been in existence, in more or less the same form, since 1948 and has been regarded as a safeguard against the " dumping " of electors in a constituency immediately prior to registration in order to increase the vote of a political party (Muslims and Chinese in certain Port Louis constituencies are the main concern). The requirement is being modified in the next Constitution but there had been no decision to amend the present Constitution in this respect, and though the point was mentioned in my discussions here with representatives of political parties before registration began, the position was accepted and there was no pressure for amendment. (As you are aware, the electoral system was not in issue between the Eve Commission of 1958 and the Banwell Commission of 1966.)

5. Needless to say, the Premier's desire is to hold the elections at a moment when the country is reasonably happy, that is to say when there is maximum employment, the shock of the increases in his last Budget has worn off (and the next Budget has not yet appeared), and there is as little trouble as possible for the Opposition to exploit. He would normally prefer therefore to avoid the sugar " inter-crop ", which runs from now until July (when employment on estates gradually picks up for the harvest). The financial year begins on 1st July, and the Budget is usually introduced in April or May, but he can count on deferring the introduction of the Budget and operating on a " vote-on-account " if necessary. An important factor this year may be the refund to small sugar planters, an electorally influential group, of sugar export duty. This concession was announced in the 1966–67 Budget but for administrative reasons connected with the centralised marketing and insurance against cyclone and drought of the Mauritius sugar crop it must assume the form of refund rather than non-payment. Refund may not be possible before July (though this is not certain) and the Premier may await this beneficial irrigation before harvesting his votes. A factor of delay that must also be reckoned with is natural reluctance to make a decision before it is forced upon him. And while, on the one hand, he may be tempted to surprise his opponents by an earlier date, he will also be tempted to exhaust their resources by delay.

6. Some of the Premier's colleagues, their nerves tried by uncertainty, are critical of delay (and I may add of lack of decision generally) and would be glad to get the elections over. The argument for waiting until the " crop " is weakened by the growing unemployment even during the " crop "; the final period of the " inter-crop " sees the gradual discharge from estates of men who have completed their entitlement to " inter-crop " employment; and, now that there is this legal obligation to grant proportionate employment during " inter-crop ", estates are in no hurry to expand their labour forces. There are now about 20,000 unemployed on Government paid " relief work ", and with the annual growth of the labour force at three or four times the rate of growth of jobs, there is no assurance that this figure will drop substantially when the " crop " starts. And of course, the longer the Premier waits, the more chance there is something unpleasant will happen for which the Government can be blamed. The Premier must also bear in mind an invitation from the Canadian Government to attend the Montreal Exhibition in May.

7. The major issue at the elections will be Independence, and the Premier knows marginal voters will be persuaded by his opponents to see in current economic difficulties a foretaste of what Independence will bring and a demonstration of the incapacity of the present Government to manage an independent Mauritius. In short, the Opposition will say they have seen the future and it doesn't work. It must be acknowledged that the Premier and his Ministers do little these days to inspire confidence; indeed, they are fast becoming the despair of their friends in Britain who wish them and Mauritius well.

8. The Mauritius Labour Party have been the " party of Government " since the first formation of a ministerial form of government in July 1957 and they have been the leading party in the Legislature ever since the first widening of the franchise in 1948. The last elections, in 1963, no longer gave them a majority on their own (they hold 19 out of the 40 elected seats and after nominations 25 out of 52). An all-party Government held office from March 1964 to November 1965, when the PMSD Ministers resigned, ostensibly over the terms of the Chagos (of British Indian Ocean Territory) settlement but really for local political reasons arising out of the British Government's decision that Mauritius should become independent. In the surviving coalition the MLP hold 9 out of the 14 Ministerial posts (a nominated Independent subsequently resigned for personal reasons), three are held by Mr. Bissoondoyal's Independent Forward *Bloc*, and two by Mr. Mohamed's Muslim Committee of Action.

9. The MLP would describe themselves as an orthodox social democratic Labour party on the British model: they recently gained admission to the Socialist International (though they very nearly had their clothes stolen by the PMSD). From further Left they would be described as typical " bourgeois nationalists ", if nothing worse. Their policies have been those of old-fashioned social welfare socialism (" le socialisme de papa ", to use the phrase of the delegate from Madagascar to their last annual congress, who presumably didn't appreciate how near the bone he was cutting—but then neither did his hosts). With one or two possible exceptions (not, unfortunately, including the Premier) the leadership have so far failed to adapt their policies to the requirements of present-day Mauritius and to assimilate current doctrine and practice in development economics. To some extent this failure can be attributed to the erosion of any cutting edge by the comforts and distractions of office over so many years, to the domination of the party by the Premier, and to the absence of new blood at the top, but there is a disappointing lack of any serious study and rethinking of policy by the younger Ministers, some of whom would nevertheless like to regard themselves as socialist intellectuals. They behave as if, in Professor Oakeshott's phrase, they were " making the necessary arrangements for a set of castaways who have always in reserve the thought that they are going to be rescued ". It is doubtful if there ever was any original thinking: the MLP leadership have free-wheeled on the impetus of the movement for colonial freedom and their internal programmes have been a prefabricated import.

10. The party seems to have little active " grass-roots " organisation, no charismatic leader (Sir Seewoosagur is now rather a " father-figure ", though a heavy one), no very obvious widespread and enthusiastic support: indeed, they have none of the attributes of a party of " mass politics " on the Afro-Asian model, and while this is a blessing from some points of view, it has disadvantages both electorally and nationally. In the past the MLP, under the leadership that was mainly professional in class and was genuinely inter-communal, were able to combine solid working-class support among the coloured population of the towns with support from Hindu small planters and labourers in the rural areas to provide a comfortable majority (against an inept conservative opposition). They have no longer a leader who can swing the coloured working-class (the " creoles " in the narrower sense of local usage) in their favour, and their Hindu support is liable to fragmentation by movements based on racial or caste sub-divisions. The threat of fragmentation becomes menacing at the stage when candidates are being selected before general elections: outsiders try to mobilise some section of the Hindu community—Yamil or Telegu speakers or low-caste groups such as Chamars (collectively known here as " petite nation ")—by playing on real or imagined grievances in order to improve their chance of selection.

11. With the consolidation in the PMSD's favour of middle-class support in the general (*i.e.*, white and coloured) population, the weakening of MLP support among the coloured working-class and the weakened position of the MCA in the Muslim population (see below), the MLP must maintain as solid a base in the

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Hindu community as possible. It is doubtless for this reason that the Premier was careful to preserve a united front in the Government against the Banwell Report and that by appearing on the same platform as the All Mauritius Hindu Congress (AMHC) on this issue he accepted their support (though, again, the selection of candidates will place great strain on the grand alliance). If the MLP were opposed in the rural areas by an IFB/AMHC combination (there is some common membership and affinity between the two), as well as by a rejuvenated PMSD in the urban areas, they would be in very serious danger indeed. I do not think Sir Seewoosagur has much confidence in Mr. Bissoondoyal's loyalty but he should be able to bind him tight enough. Sir Seewoosagur himself is a genuine seeker after "consensus" and even offered MLP support to Mr. Paturau, a Franco-Mauritian (and until last June a nominated independent Minister), if he would stand as an independent in sympathy with the Government.

12. As I have suggested, the leadership of the MLP gives cause for anxiety in other respects. Sir Seewoosagur is nearly 67, had a major operation at the end of 1965, and does not give the Government the direction and drive required. To escape from the strain of life in Mauritius he resorts to frequent travel abroad and these absences are another cause of delay and indecision. His deputy, Mr. Forget, is also over 60, not robust, and hardly credible as more than an interim successor, if that. In many ways the most competent Minister is Mr. Ringadoo, Minister of Education, despite an obstinate reluctance to face facts where his prejudices are involved, but he seems to lack a solid base of political support in the country. Mr. Boolell, the Minister of Agriculture, is a protégé of the Premier's, but has neither strength of character nor industry (and was only prevented from taking up a post with FAO last year by the Premier's refusal to give him his blessing). Mr. Walter, the Minister of Health, obviously sees himself as the "Dauphin", but it is doubtful if his colleagues would stand him, and his fitful bursts of energy, now rarer and less sustained, are no substitute for the qualities, such as balance and judgment, that he lacks. He is another member of the international "jet set" and a compulsive name-dropper.

13. As for the MLP's partners, the Independent Forward *Bloc* is very much the personal creation of Mr. Bissoondoyal, who may be described, in Weberian terms, as a charismatic leader in process of being bureaucratised by office. The IFB, and prior to its formal establishment Mr. Bissoondoyal's patronage before the electorate, have long provided a vehicle for the politically ambitious who disliked the MLP or who found their way blocked by its establishment of place-men. In more than one case—Mr. Boolell is an example—they crossed the floor after election because Mr. Bissoondoyal had neither coherent programme nor hope of office to offer. This past history was a major reason for Mr. Bissoondoyal's anxiety to enter the Government after the 1963 elections (he had made the mistake in 1959 of trying, or appearing to try, to have it both ways by asking for office for a member of his party while himself retaining freedom).

14. The IFB draws its support from Hindu voters in the rural areas, mainly the South, by offering an alternative to the MLP and, in the past, outbidding the Government in exploiting the grievances of the "have-nots". Mr. Bissoondoyal has tried to escape from the communal label by running non-Hindu candidates (*e.g.*, Dr. Curé, the founder of the MLP, during one of his spells of dissidence), and he gained his first success in 1963 when he elected a Muslim in a rural constituency as a result of a split in the MLP Hindu vote. The IFB ideology, if one can so term anything as personal as Mr. Bissoondoyal's collection of prejudices and aspirations, is a rather old-fashioned "radical-populism" deriving from Indian pre-independence politics rather than any Westminster or Marxist model. Mr. Bissoondoyal is an eloquent orator of the classic "rabble-rousing" type (and in opposition gave at least one visitor the distinct impression of paranoia). As a Minister he has little opportunity for oratory of this kind and he has been content sedately to play second-fiddle to the MLP, warning them from time to time of their mistakes. With advice of better quality he would be quite an effective, though not outstanding, Minister, since he is shrewd, understands the rural electorate, and has some of the right ideas about austerity and development. His main political aim is to maintain, and if possible increase, the strength of his party, and to avoid being outflanked by the MLP (which would make an IFB/PMSD rapprochement difficult) in the hope that he may some day be the senior partner in the Independence Alliance. He will be content to field fewer candidates than the MLP but his men will be in safe seats if he gets his way. His leading supporters are a mixed bunch: one passable, and one even promising Minister (by local

standards), and a few nonentities, one or two of whom flirt or have flirted clandestinely with the Communist Left. The IFB have had close links with the AMHC (one of the IFB Ministers appointed when the PMSD left the Government had been a AMHC office-bearer). I should think Mr. Bissoondoyal still respects "the doctor" (Sir Seewoosagur) as a politician, and on occasion statesman, but is critical of many of his policies and probably reciprocates Sir Seewoosagur's suspicions of him.

15. The MCA is the one avowedly communal party represented in the Legislature, and in the opinion of some MLP Ministers the heaviest cross they have to bear. Strongly influenced by a complex of inferiority in numbers, education and ability, and by pre-partition politics in India, the MCA have one political idea: separate representation for Muslims. Their insistence on placing the welfare of the Muslim community above that of the country as a whole, the narrow practical equation of that welfare with jobs for Muslims in the civil service, and the tedious raking over of past quarrels by Mr. Mohamed, make them their own worst enemies in constitutional discussion. After exposure to Mr. Mohamed in this vein for several hours it requires an enormous effort of sympathy for any Secretary of State, or Commissioner (or Governor) to concede the case for any special consideration for Muslims. Whether even with skilful leadership the MCA could have had more success with the Banwell Commission is doubtful, but, as I tried to warn him beforehand, Mr. Mohamed's tactics were calculated to alienate sympathy.

16. Until the constitutional discussions of 1957 and 1958 (including the Eve Report) the MCA were in alliance with the Parti Mauricien. Sir Seewoosagur then offered a better electoral bargain and the MCA have since remained in alliance with the MLP, though without merging. Mr. Mohamed's problem is that the Muslim community (including himself) is fearful of Independence. He has until recently maintained his ascendancy among Muslims by political manipulation of one kind and another and by using the argument that since Independence is inevitable, it is better to avoid retribution from the Hindu-dominated Government by climbing on the band-wagon and making the best bargain possible with the MLP for the safeguard of Muslim interests. Muslims form 16 per cent of the population and, while they cannot elect a proportionate number of members under any simple electoral system (hence the specially elected seats of the new system), they hold the balance in a number of constituencies other than the few in which they can themselves hope for success.

17. The PMSD are making a strong bid for Muslim support and on the latest indications may have reversed the proportions and reckon on sixty per cent. (The transfer of allegiance from the MCA to the PMSD of a prominent Muslim businessman, Mr. Ebrahim Dawood, has created some stir.) If Mr. Mohamed ever thought the PMSD had a real chance of winning a majority and staving off Independence, he would be in a dilemma. It would not be scruples—he is very far from the scholar and gentleman in politics—that would restrain him from ditching the MLP, with whom his marriage of convenience has been uneasy, of whose capacities he has a low opinion, and of whose conventional Left-wing views, mild as they are, he is contemptuous (one visiting MP was visibly startled by Mr. Mohamed's private opinions on world issues). The obstacle would rather be the reluctance of the PMSD Muslims to accept him; and, although Mr. Mohamed has always kept a line out to Mr. Koenig, the titular Leader (if he is now even that) of the PMSD, his public exchanges with Mr. Duval have been marked by the most vulgar personal abuse. I do not think Mr. Mohamed will bolt the Independence Alliance after all these years; if he did, it would mean the writing had already appeared on the wall. On the other hand, if some agreement between the MLP and the PMSD were attempted—still not too remote for private political speculation—Mr. Mohamed would be a stumbling block.

18. The All Mauritius Hindu Congress (AMHC) is a pressure group rather than a party, though one possessing a daily newspaper. It owes its existence to the grievance of a disappointed Hindu politician, P. Dabee, a lawyer, who was dropped as a Labour candidate in 1963 but appointed Temporary Town Clerk of the new town of Vacoas-Phoenix in compensation and promised he would retain the post when a permanent appointment was made after the local government elections. Unfortunately for him the PMSD defeated the MLP in Vacoas-Phoenix and appointed a Muslim instead of Dabee (against the advice, I understand, of the Leader of the PMSD, Jules Koenig). Dabee was enraged and started a bitter

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campaign against the PMSD, appealing to all who, like himself, felt they were being discriminated against because they were Hindus. There is always backing for a campaign of this kind and on this occasion, with an all-party Government in office (including the PMSD), the AMHC were able to fill a vacuum (normally filled by the IFB). They drew some support from the rank and file of the MLP and, both openly and probably covertly also, from higher up in the IFB. In so doing they played on the feeling that the MLP were allowing far too much scope to the PMSD, who were abusing their position in the all-party Government and becoming more aggressive. The AMHC also exploited the death of a Hindu in a brawl involving PMSD supporters close to Duval, and the violent and provocative tone of their meetings, inter-acting with violent and provocative behaviour by PMSD " toughs ", was a major factor in raising the politico-communal temperature and sparking off the disorders of May 1965.

19. The AMHC were accepted by the Premier as part of the " Independence Front " after the publication of the Banwell Report. Their main function now is to act as a " ginger group " in the Hindu interest and to press the claims of their candidates for election, but they are an obvious target for Communist penetration (though their Hindu nationalism makes them also receptive to anti-Chinese propaganda). Their newspaper " Congress " specialises in the exposure of alleged discrimination against Hindus, advocacy of Independence on doctrinaire lines, and frequent attacks on the Police. " Congress " has the dullness of " Advance ", the MLP-MCA newspaper, to thank for some of its success.

20. Such then are the forces that, with varying degrees of enthusiasm and confidence, will go to the country on the platform of Independence. Opposing them will be the Parti Mauricien Social Démocrate National, *ci-devant* Parti Mauricien, broadening its appeal as it lengthens its name; for all are socialists now and all (save the MCA and the AMHC) national, *i.e.*, multi-communal. However fraudulent the MLP may consider the transformation of the " party of the white capitalists " into a party whose Secretary-General is a Vice-President of the Young Socialists International, that chose a Hindu (albeit a Tamil) as Mayor of Port Louis in the year of attainment of city status, and that has the impertinence to campaign in the Hindu " baitkas " (village meeting houses), they are alarmed by its success—or at any rate the success of its propaganda.

21. The PMSD harbours a wide range of political views, from those of its right wing, whose spiritual home is the Smith régime of Rhodesia (where some of their money has been invested in sugar) to those of Mr. Duval, who is perfectly at ease in the Afro-Asian world. What unites the PMSD is fear of Independence: economic and communal fear. The core of the PMSD is the General Population, the community of white (" Franco-Mauritian ") and mixed (" Creole "—in the local sense—or " coloured ") race that remains after Hindus, Muslims and Chinese have been subtracted. The General Population numbered 203,652 in 1962 out of a total population of 681,419 in the island of Mauritius (without Rodrigues—about 20,000) *i.e.*, just under 30 per cent. (The total population in Mauritius by the end of 1967 will be approaching 800,000, such is the rate of increase). Hindus form just over 50 per cent of the population and Muslim 16 per cent; and the Indo-Mauritian rate of increase is higher. Within the General Population, those " whites " who meet the strict test of their endogamous group are no more than 10,000 or 15,000.

22. The General Population is further distinguished by its Roman Catholic religion and its attachment to the French language and (colonial) French ways. The former has until recently been an obstacle to family planning. The latter is a remarkable phenomenon in a Colony that has been British for over 150 years. Visitors are always astonished by the persistence of French as the language of most of the Press (including " Advance " and even much of " Congress ") and of social intercourse among educated Mauritians of all communities. This " fidélité à la France " is combined with a traditional resentment against the " outremérien " officials who formerly occupied many posts in the civil service to which Mauritians, especially of the General Population, aspired and who more recently have been seen as the instruments of gradual abandonment of Mauritius to " the Indians ". (To applaud French feats is a way of letting off steam at the British: when, not long after the last Constitutional Conference, the 250th anniversary of the taking possession of Mauritius by the French in 1715 was being celebrated by the unveiling of a monument, a reference to the French victory at Grand Port in 1810 was greeted with applause by a General Population group—as Mr. Duval

remarked to me afterwards, it was the reaction of someone who has been jilted. In the same fashion there was applause for the French Consul when he laid his wreath at the War Memorial the following month on Remembrance Day.) Conversely, much is forgiven those who can show an acquaintance with the French language and culture. The General Population is expected to vote fairly solidly for the PMSD and against Independence in 1967 as in 1963. (Some are already " voting with their feet " by emigrating, especially now that entry to Australia is easier for those who, like most of the General Population, can claim to be of European descent. In so doing they are not voting so much against political Independence, however, as against the economic future with its threat to their children of harsher conditions and growing unemployment.)

23. The increased strength of the PMSD is, in part, the result of the concentration of mind induced by the approach of Independence: into political channels has been directed some of the energy and organising skill hitherto reserved for business and pleasure. And, of course, nothing succeeds like success: enthusiasm has been raised and maintained by the huge rallies the PMSD has shown itself able to mount in a small, densely populated island, *e.g.*, upwards of 30,000 at a meeting after publication of the Banwell Report—and this was nothing compared with the crowd of 80,000 to 100,000 assembled in Curepipe for Mr. Greenwood's visit in April 1965. The PMSD have also found a major, uniting issue in opposition to Independence, and even, in " Association ", an alternative to Independence plausible enough for the purpose (though it tends to be popularly conceived in terms of neighbouring Reunion, a French department). Last, but not least, the PMSD have found in Mr. Gaetan Duval an effective demagogue and " homme-drapeau ".

24. Mr. Duval, elected for the first time in 1960 (at a by-election in Curepipe after disallowance of the result at the general elections), was for me the new figure in the political landscape on my return to Mauritius from the Pacific in 1962. Since then he has gradually supplanted Mr. Jules Koenig in the effective leadership and, forcing the issue in November against some opposition, he was appointed Leader-Designate to succeed Mr. Koenig at the end of the Parliamentary Session. There are doubtless restrictions on his freedom of action but he can no longer be discounted as the " stooge " of the PMSD's wealthy backers.

25. Mr. Duval is a coloured barrister in his thirties who received his higher education in London and Paris and shares the attitudes of the General Population described above. He is separated from his wife and leads a rather irregular life (we are never quite sure where we can lay hands on him). He is more intelligent and quick-witted than any MLP Minister save the Premier at his now infrequent best but emotionally excitable and unstable. He is rather too confident in his ability to charm the birds off the trees but undoubtedly has a way with him. The Premier has not been immune to his charm and recognises his ability and political influence; and Mr. Duval, who likes to be liked and to like, has responded to overtures in the past. His bitterest enemy is Mr. Walter (Minister of Health), who will certainly do his best to poison the Premier's mind against Mr. Duval (as against others) and to wreck any attempt at a rapprochement. Under Mr. Duval the PMSD is naturally making a strong appeal to young voters, and in consequence the Minister of Education has never had so much time for his Youth Division.

26. Mr. Duval's moral dilemma—in the political field—is that while he sympathises with the ideal of Independence and is temperamentally a radical, he knows his own community are strongly opposed to Independence and he shares their doubts about the economic viability of an independent Mauritius. In advocating association with Britain he has argued that if the connection is preserved it will be easier for Mauritius to enter the Common Market with Britain, thus ensuring continued ties with Western Europe (and European values) and obtaining various (rather vague) economic advantages. On one occasion he went so far as to say he was not unalterably opposed to Independence but simply pleaded for delay until the question of British entry to the Common Market had been settled. (Much of the local discussion of Mauritius and the Common Market has been confused and unrealistic but both Mr. Duval and, for the Government, Mr. Ringadoo, have made an effort to brief themselves on the subject, the latter by a visit to Brussels.)

27. As you know, the PMSD are pressing for early elections on the grounds that delay is bad for the country. On the other hand, Mr. Duval at one time said

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delay would play into his hands, as the economic situation and the difficulties of the Government could only get worse. It is not certain how far he will go in forcing this issue. PMSD electoral tactics will be to concentrate on the urban areas of Plaines Wilhems and Port Louis and perhaps on a few constituencies in rural areas where the composition of the population is such as to give them a chance, *e.g.*, Rivière des Anguilles with its Muslims and Tamils. For a majority they will have to win all ten constituencies in Plaines Wilhems and Port Louis (or pick up one outside), returning 30 members, plus the two seats in Rodrigues. To do so, however, they will have to improve on their performance in 1963, and obtain most of the Muslim and some of the Hindu (Tamil) vote. In six of these ten constituencies in Plaines Wilhems and Port Louis the Muslims hold the balance. Success for the PMSD is not entirely out of the question, but such a clean sweep would take some doing, and it would require the co-operation of a degree of MLP ineptitude.

28. The allocation of candidates to constituencies by the Premier may show just how unsafe some seats are considered by the Government parties. Certainly the present MLP members from the General Population, whose constituencies are in Plaines Wilhems and Port Louis, will have a hard fight. If, despite victory for the MLP and their allies, this element in the MLP were eliminated or seriously reduced, it would be most unfortunate, since Government and Opposition would be more obviously divided on communal lines, and the General Population would have little or no voice in the Government. Mr. Forget and his General Population colleagues in the Government are constantly accused by the Opposition of being unrepresentative and owing their election to Hindu votes, but they form a political bridge between the General Population and the Government (and the Hindu community). They are very conscious of the dangers and it was between them and a group in the PMSD that secret negotiations took place for an MLP-PMSD-MCA alliance before the 1963 elections. It is understandable that secret discussions should be reported as taking place now, though whether they are concerned solely with Mr. Forget's own personal position or have a wider scope is not certain.

29. I ought to say something about Communist influence, though a fuller account and assessment must await a later despatch. The local Communist parties are weak and their candidates should have no hope of success. Their members may well be enlisted by the "Independence Alliance", however, in the electoral campaign. More important in this respect may be the group of Trade Unions led by Mr. L. Badry (a Hindu) and affiliated to the WFTU. Mr. Badry himself is now a member of the Executive Council (a very large body) of the WFTU and still manages to combine Russian with Chinese contacts. His own union, the Agricultural and Other Workers Union, claims 6,000 members and he is a skilful bargainer in industrial disputes at field level. In the past he has been denied an MLP ticket but Sir Seewoosagur has canvassed his name for nomination. Mr. Badry has talked about developing a Left-wing rival to the MLP but my guess is he will throw his support in the end to the MLP. He does not carry great political weight, and he competes with the more influential Mr. Ramnarain, who is an MLP member (ex-IFB), whose Plantation Workers Union is the biggest union (18,000 members) and who holds an official position under the ICFTU. Mr. Badry's value to the Communists outside is as a regular channel for propaganda and penetration. I should add that generally the trade union movement has been weakened by personal rivalries and by the substitution of wages councils for collective bargaining.

30. Of the 70 odd students behind the Iron Curtain (including a nephew of the Premier, studying medicine at Kiev) only one has returned after completing a university course but he is a portent. He is married to a Russian (who has not yet arrived), has been indoctrinated, has taken over a private school and intends to be politically active.

31. The Chinese community (23,000 in 1962, or three per cent of the population) are said to divide their sympathies between Formosa and Peking in the proportions 70:30. As a whole their main concern is stability and freedom to trade without discrimination, and they are apprehensive about Independence. The pro-Peking section have contacts outside and Chinese Communist propaganda is distributed extensively. In the past they have kept to themselves, *e.g.*, they are not active in the trade union movement, but recently with the Chinese export drive Badry's "Mauritius Association for Friendship with Overseas" has attracted a

few Hindu traders who would like to break into the import business through the Chinese. There is as yet no indication of any determined effort by the CPG to exploit the situation in Mauritius: there is plenty of time for that. On the other hand, the Chinese in Mauritius, like the Indians in East Africa, are a minority engaged in keen trading and Indo-Chinese relations are also a factor.

32. During this period of uncertainty and electoral manoeuvres a major consideration is to prevent further damage to the prospects for economic development. In 1963, just before the elections, wages in the sugar industry and in Government were raised substantially against the advice given in both the Meade and the Balogh Reports. Last year on the Premier's unreasoning insistence the law on severance pay was amended to raise the rate from two weeks to three months if the discharge of more than ten workers by an enterprise was not found to be necessary by a Board of Inquiry (and it was only after very strong pleas by the then Parliamentary Under-Secretary of State and myself that the Premier agreed not to make the rate of three months of general application). The Government intended to apply this measure in the first instance to the sugar industry only, but the Opposition tried to outbid them and it was hastily extended to all industry without any examination of the economic consequences, especially the deterrent effect on new industry. I am very apprehensive about the possibility during the next few months of some ill-considered measure that will sound electorally attractive but will drive another nail into the coffin of the economy.

33. The economic outlook is gloomy; for the problem is an appallingly difficult one. Mauritius is a classic case of the population explosion in a one-crop economy with little land and no raw materials for industry: this is, indeed, *Fertilia Densa* itself, to use Professor Meade's term (in his Presidential Address, in the year of the Malthus bi-centenary, to the Royal Economic Society).

34. When I first came here in 1951 the population was just over 500,000; since my return it has exceeded 750,000. By the end of this year it will approach 800,000; even if there is some decline in fertility, it will be over 1,000,000 by 1977; and even if there is rapidly declining fertility this figure will be exceeded between 1977 and 1982. (Population control can do little to affect the absolute size of the population during the next decade but it can reduce the burden of dependency, *i.e.*, the proportion to the total of unproductive children that must be fed, clothed, educated and otherwise cared for.) The reason for this upsurge is, of course, the sharp drop in the death rate due to preventive medicine, principally to the eradication of malaria. The crude death rate is now under 9 per 1,000 (one must bear in mind, of course, the age structure of the current predominantly young population, with more than 50 per cent under 21 and more than 45 per cent under 15 at the time of the 1962 census); the crude birthrate was 39·9 per 1,000 in 1963; and the rate of increase is of the order of 3 per cent per annum. The need for family planning is now widely accepted in all communities and faiths and a modest start has been made with a Government-supported campaign using two voluntary agencies (one sponsored by the Roman Catholic Church, the other affiliated to the IPPF). It is far too soon to describe this campaign as a success but the prospects for success are more promising than ever before.

35. How is this exploding population to maintain even its present inadequate standard of living (though the figure for national income per head, about Rs1,000, is still much above the African or Indian level)? Above all, how is employment to be found for the growing numbers entering the labour market on an island with an area of only 720 square miles, isolated in the Indian Ocean? In the past Mauritius has lived entirely off sugar, producing and exporting the commodity in which she had a comparative advantage and importing almost all her requirements, including the bulk foodstuffs, rice and flour. Nearly half the *total* area of the island is under sugar. Sugar and sugar by-products account for over 95 per cent of the value of exports; this is an extraordinary degree of dependence on one crop, and the National Income is largely a function of sugar earnings. The potential sugar crop has increased since the war by more extensive and more intensive cultivation from just over 300,000 tons in 1929–48 to a record of 686,000 tons in the *annus mirabilis* 1963 when the world spot price at one moment exceeded £100 per ton. But sugar yields are very sensitive to weather, including cyclones, and last year's crop was only about 565,000 tons. Nevertheless, the average crop could be even further increased if more sugar could be sold at a remunerative price. As you well know, the world market is depressed and there seems little hope of improvement in the near future. It is only the Commonwealth Sugar

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Agreement (under which 386,000 tons is allocated to Mauritius) that enables the industry to survive, and even then some estates made a loss in 1965 and 1966 and the position may be worse this year. Whatever failings the sugar industry may have, it is generally recognised to be technically efficient; but it is no longer earning sufficient to maintain its efficiency in the not very long run. In these circumstances the industry is alarmed at the apparent indifference of the Government to its problems and to the effect of Government measures on costs, profitability and efficiency. Because of the known PMSD sympathies of some of the "sugar barons" Ministers are prone to accuse the industry of political machinations when labour is laid off during the "inter-crop" and to overlook the effect of the legislation they themselves have enacted. The gulf between Government and the industry on which the whole economy still depends is worrying but efforts to throw more than a temporary bridge over it have so far failed. The immediate reaction of Ministers to any problem is to direct the Crown Law Office to draft a new law for more control over the industry, without any serious consideration whether legislative action would really be helpful or even practicable. I see little chance of any genuine and fruitful co-operation this side of the elections but I am in consultation with the President of the Chamber of Agriculture and the Minister of Labour in the hope of avoiding a crisis in a few months over the discharge of labour that has completed its "inter-crop" entitlement.

36. Similarly, I see little chance of any effective action in other agricultural or in industrial development until well after the elections—indeed until after Independence (or whatever other final solution is arrived at if any other can be final). The creation and maintenance of an economic environment favourable to development is now far more important in Mauritius than further infrastructure: development is not so much a programme as a way of life, and an austere one which a Government on the eve of elections will not offer to the electorate.

37. I have already referred to the 20,000 "relief workers". Their cost this year will be of the order of Rs20 million and unless their number can be reduced by stricter control (there is ample room for abuse) and a substantial proportion transferred to works financed from the Capital Budget, there will be a further deficit in 1967–68 that the Revenue Reserve Fund will be unable to meet. As it is, the Fund will not be exhausted on 30th June this year only because the contribution of Rs12 million from revenue to the Capital Fund will be forgone. Already a cash shortage is foreseen because part of the Revenue Reserve Fund is tied up in financing the bulk purchase of rice and flour (and the Fund will have to be written down to the extent of losses on this account, on the Milk Marketing Scheme, and on the Central Housing Authority). You are as a result being asked to approve a loan of £1 million to the Government from the Currency Fund for the period of a year. With inescapable recurrent commitments coming up next year and little scope for new revenue, there is a strong possibility that the attainment of Independence will coincide with a financial crisis. Economies can be made—there is a good deal of "fat" to be pared off and some austerity will be salutary—but the process will be painful. More intractable may be the future balance of payments problem. The economic situation merits a fuller account, however, that must await a later despatch.

38. Most of this despatch must make depressing reading, as it has made depressing writing. I believe no true, objective account could be anything else, so daunting is the economic problem of Mauritius and so ineffectual are the present efforts to tackle it. There is, however, one hopeful note on which I can end. So far it appears that both sides in the forthcoming elections will appeal to all communities for support. Thus, though the parties will derive their main support from particular communities, the Independence Alliance and the PMSD will each strive to be more than community writ large. Communal pressures will continue to operate within each, the tension between them will not be free from communal under-currents, and political feelings may run very high during the campaign, but there is now less likelihood than in 1965 that the political struggle will degenerate into a naked communal struggle with its attendant risk of rapidly spreading violence. This is the generally-held opinion and, while the irresponsible and the ill-intentioned may prove it false in the event, it is encouraging that it should be generally held.

I have, &c.

JOHN RENNIE.

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Note from A. J. Fairclough to T. Smith (7 Feb. 1967)

(11)

Mr. Trafford Smith

I submit these papers to you for authority to print the Governor's despatch at (6) below (the first of the three pre-independence periodic despatches suggested in Sir Hilton Poynton's letter at (9) on INF 90/151/02.

2. If you have time to read the despatch itself - which is I fear long - I think you will find it rewarding. It is an excellent and comprehensive survey of the Mauritius scene. My only criticism of it would be that here and there it assumes more knowledge of the background than most of the readers of it will have; however, this is a very slight fault set against the very full flavour it gives of life in Mauritius and its thorough exposée of the country's many problems.

3. You may also wish to read Miss Terry's helpful analysis in her minute of 2 February below. I agree with her that it is a pity that the Governor does not say more about Mr. Duval's "new leaf" and, like her, I am surprised that a wish for associated state status is ascribed to the P.M.S.D. when Mr. Duval in December was so definite that if he won the election he would stand pat with full internal self-government at least until the Common Market issue was settled.

4. As always these days in any survey of the Mauritius scene, economic problems and financial difficulties loom large and are the most depressing part of the picture. I would agree with Miss Terry that, as the picture now looks, it would be in Mauritius' best interests not to proceed to independence. You will also wish to note that we are warned of a likely demand for budgetary assistance in relation to the 1967/68 budget.

5. If you will now give authority for the printing of the despatch, I will put the necessary steps in hand.

(A. J. Fairclough)
7 February, 1967

This is a fascinating despatch. For Mr. Poynton. I think Sir J. Rennie has gone into far too much detail on the political side. The new reader is bound to get lost in the jungle. But the economic features are extremely well done, - and sobering reading.

I authorise the printing. No doubt Miss Terry will do a little subediting where necessary as her manuscript

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Note from T. Smith to Sir Arthur Galsworthy (14 Feb. 1967)

SECRET

Sir Arthur Galsworthy

Mauritius

I agree generally with the line taken in Mr.Fairclough's note attached, especially with his contention that we cannot use the arguments about possible defects subsequently discovered in the system of registration of electors to upset the validity of the 1965 Constitutional Conference. I also agree that if H.M.G. are to reconsider the outcome of that Conference in any way, the right time would be after the forthcoming Mauritius elections, and as a result of a very narrow margin between the protagonists of independence and association/integration. If there were a reasonable majority (I know that the word 'reasonable' begs the question) for one course or the other, there would be very strong grounds for regarding this as a verdict of the people of Mauritius and it would be difficult to find valid reasons for trying to put the clock back to the time before the Conference and starting all over again.

To me the most compelling reasons why we cannot upset the 1965 Conference and look at the problem de novo are (1) it would be impossible effectively to rebut charges of bad faith on the part of H.M.G., especially by Sir S. Ramgoolam and his Labour and M.C.A. colleagues in the context of the agreement to detach the Chagos Archipelago; (2) having gone as far as we have in public, I don't see how we could face the storm the withdrawal of independence would undoubtedly cause in the United Nations - except, of course, on the basis of a clear cut vote by the Mauritian people against independence. It seems to me that the one solid rock on which we have based policy in these matters in the changing circumstances of recent years is the wishes of the people, and we could not overturn an arrangement made with the accepted representatives of all sides of Mauritius public opinion (which is what the delegates to the Conference were, whatever the technicalities about the registration system etc.) unless there were a subsequent equally valid expression of Mauritius public opinion in the other direction.*

I am sending copies of this minute to the recipients of Mr. Fairclough's.

(Trafford Smith)
14th February, 1967.

Minister of State
Can will wish to look at this upon our meeting on Monday about Mauritius. I entirely agree with the line taken by Mr. Fairclough.
A.G. 12/2

Copies to:
Mr.Fairclough
Miss Terry
Sir A.Grattan-Bellew
Mr. Godden.

* But I must confess that this argument is weakened by the fact that the Conference outcome was not unanimous, but was a 'decision' by Mr Greenwood in favour of the three majority parties.

Annex 216

Note from A. J. Fairclough to T. Smith, attaching a note on *Considerations arising from and since the 1965 Constitutional Conference related to the question of Independence* (14 Feb. 1967)

SECRET

14A

Mr. Trafford Smith

Mauritius

At our meeting last week with the Minister of State, Mrs. Hart asked that the question of permitting Mauritius to become independent should be further examined in view of the gloomy prospect for the island as an independent nation. I attach a commentary on the matter setting out my views and referring in particular, as requested, to the conclusions reached at the 1965 Constitutional Conference. As will be clear from the attached note, I believe that we are firmly committed to independence should the Legislature vote for this; but that if we seek to withdraw from the decision announced at the 1965 Conference to this effect, the best time to do so will be after the elections rather than before.

2. I have asked Miss Terry to produce the facts and figures referred to in paragraph 4 of the attached note.

(A. J. Fairclough)
14 February, 1967

Copies to:

Sir A. Galsworthy
Miss Terry
Sir A. Grattan-Bellew
Mr. Godden

Annex 216

SECRET

MAURITIUS

Considerations arising from and since the 1965 Constitutional Conference related to the question of Independence

Mrs. Hart has asked that the outcome of the 1965 Mauritius Constitutional Conference should be examined, from the point of view of considering what arguments might be deployed in support of such a change of policy, if Her Majesty's Government were to decide that the decision announced in paragraph 20 of the Conference Report that in consultation with the Government to be elected at the forthcoming general election, "Her Majesty's Government would be prepared to fix a date and take the necessary steps to declare Mauritius independent, after a period of six months full internal self-government if a resolution asking for this was passed by a simple majority of the new Assembly" should be withdrawn.

2. Such a change of policy could I presume only come about as a result of a clear decision by H.M.G. that the view recorded in paragraph 20 of the Conference White Paper "that it was right that Mauritius should be independent and take her place among the sovereign nations of the world", was in the changed circumstances of 1967 no longer the right view and that some alternative ultimate status should be aimed at. This alternative could presumably only be Associated State status.

3. The most significant changes in circumstances affecting Mauritius since 1965 which might be held to justify such a change of policy are:-

(i) the continued decline in the price of sugar (on which economically Mauritius depends) to an all-time low;

(ii) the state of near-bankruptcy in which Mauritius now finds itself partly as a result of (i), which, coupled with the soaring population figures, can only mean a rapid decline in the standard of living in the years to come; this factor was of course already inherent in the situation in 1965 but had not then emerged as the immediate and acute problem which it now is;

/(iii)

SECRET

(iii) the renewed prospect of British accession to the European Economic Community with the consequences that

(a) the future of the Commonwealth Sugar Agreement itself must be in some doubt,

(b) Mauritius would have a better chance of securing continued favourable treatment for her sugar as a dependent territory than as an independent member of the Commonwealth.

This consideration too is not altogether new since it was tabled at the Conference in support of P.M.S.D. arguments in favour of Association rather than Independence; but it has become of more immediate relevance;

(iv) support for the P.M.S.D. and its policy of opposition to independence appears to have increased considerably and to be coming from all communities in the population, not merely the General Population (this is an argument however which it would be virtually impossible to use with the Premier);

(v) the fact that in the West Indies an Associated State status involving continued formal dependence on H.M.G. but containing also a built-in option to independence has been evolved; such a model was not in being for any U.K. territory at the time of the Mauritius Conference and it could be argued that if it had been, it would have been seen to be the sensible goal to go for.

In addition it could be argued that:-

(vi) the original decision in favour of independence subject to an affirmative vote in the Legislature and against a referendum on the sole question of independence or association was a very finely balanced one (which indeed it was) and that the changes at (i) to (v) justify having a further look at the whole situation.

4. The sort of arguments that could be developed on the basis of the points at (i) to (v) above for reconsidering

/the

Annex 216

the decision in favour of independence are all fairly obvious ones. I will however have some facts and figures assembled in support of (i) to (iv).

5. Turning now to the Report of the Constitutional Conference (Cmnd.2797) it seems to me that it would only be in the most legalistic and inappropriate manner that we could make use of anything that occurred during the conference or is recorded in the Conference Report to argue that a change of policy is justified. In fact, H.M.G. is pretty thoroughly committed by the Conference Report; paragraph 20 of it is quite definite and admits of no alternative interpretation than that we will give Mauritius independence if the new Assembly votes for it. I really think therefore that if there were to be any question of changing the decision announced in paragraph 20 of Cmnd.2797, it would have to be justified on grounds other than criticisms of the status of the conference or of particular elements in its proceedings. This much said however, I have been through the Conference Report and the only points on which it seems to me any arguments as to the need for reconsideration of the decision in favour of independence could even remotely plausibly be based are the following:-

(i) Paragraph 5 of the Report. It could be argued that at the time of the Conference it was accepted that the representatives attending were fully representative of the people of Mauritius but that, since we have now discovered that the registration arrangements for the election at which the members of the Legislature who attended the Conference were elected were not in accordance with the local Representation of the People Ordinance, we have no means of knowing whether the representatives who attended the Conference were in fact truly representative. Had the law been followed and the elections held on the basis of a properly compiled register, the result might have been different and the balance of view put to us at the conference might likewise have been different.

(ii) Paragraph 11 of the Report. Popular consultation on the question of independence was clearly an

/essential

essential part of the Secretary of State's decision at the conference; in the light of arguments put to him at the Conference he decided that this should be done through a General Election. It could be argued that in view of the doubt about the register on which the representatives attending the conference were elected, it would now be more satisfactory to consult the wishes of the people concerning independence through a referendum concerned with this question alone rather than through a General Election.

(iii) Paragraph 13 of the Report. Here the arguments on economic grounds against independence are stated; it could be argued that the relevance of these has greatly increased since the conference- but this is really the same point as those at paragraph 3(i) to (iii) above.

(iv) Paragraph 17 of the Report. One of the main reasons for not deciding on a referendum was the fear stated here that it would prolong uncertainty and harden and deepen communal rivalries. It could be argued that as uncertainty has in any case been prolonged for some 18 months since the conference for a variety of reasons over which neither H.M.G. nor the Mauritius Government has had any control and as far from communal divisions and rivalries hardening and deepening, they have considerably lessened, the arguments thought valid in September 1965 against having a referendum no longer hold good.

(v) Paragraph 18 of the Report. Reference is here made to the "known strength of the support for independence". At the time of the conference it was reasonable to assume that a considerable majority of the people of Mauritius would be prepared to support independence (paragraph 15 of the Report refers). Political developments since then have called this view in doubt in H.M.G.'s mind and further consideration of the matter is therefore justified (this is really the same point as paragraph 3(iv) above).

/(vi)

Annex 216

SECRET

(vi) Paragraph 25 of the Report. It could be argued that one of the factors in H.M.G.'s mind in agreeing to independence at the conference was that, whether or not Mauritius became independent, she would still continue to benefit from the Commonwealth Sugar Agreement. This is now more doubtful in view of Britain's renewed application for membership of the European Economic Community, and it seems probable that Mauritius would have a better opportunity to benefit if she were dependent when Britain joined than if she were already independent by then. In view of the vital importance to Mauritius' economic viability of sugar, reconsideration of the decision in favour of independence is justified (this is really the same point as that at paragraph 3(iii)(b) above).

We could not use this argument, because (a) we have not yet decided to renew our application (b) we cannot yet say anything about the long-term future of the C.S.A. A.D.G.

6. The above arguments based on the Report of the Constitutional Conference seem to me thin in the extreme where they do not simply correspond to the more general considerations noted in paragraph 3 above. My own view is that if any reversal of the decision in favour of independence were to be made ahead of the elections, it would have to be based on the more general arguments of changed economic and political circumstances. However any such change of decision were put there would certainly be a tremendous rumpus in Mauritius, with in all probability adverse internal security consequences.

7. In my view, if H.M.G. do now wish to go into reverse on the decision to grant independence to Mauritius if the new Assembly asks for it, the best opportunity that is likely to occur is not before the forthcoming elections at all but immediately after them. If these elections result in an appreciable majority in support of parties which support independence and if the required resolution is passed, then I presume that H.M.G., whatever its own views as to what would be best for Mauritius in the future, would not in any case wish to be seen to be standing in the way of independence for which there was considerable popular backing. If the P.M.S.D. wins the election, then it seems very probable that there will be no question of independence (or indeed of any advance beyond internal self-government) for at any rate the life of the new Legislature. If the

/result

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result is a very close one giving only a marginal majority to the parties in favour of independence, then it might well seem reasonable to public opinion both here and in Mauritius (though scarcely to opinion in the United Nations) not to proceed at once to implement the undertaking given in paragraph 20 of the Conference Report but, instead, to call a further conference to consider the situation and to consider what action should be taken, on the grounds that a country split 50-50 for and against independence is not in a suitable condition, particularly when it is in the sort of economic plight that Mauritius is in, to cast itself off into independence without further ado. In the course of such a conference it might be possible to secure agreement to either some delay in the accession to independence (in particular until the results of Britain's application to join the Common Market were clear) or even to settle for Associated State status on the West Indian model (which was not of course in existence as a model at the time of the Mauritius Conference although a good deal of our thinking leading up to the West Indies scheme was explained to delegates at the Conference).

Pacific & Indian Ocean Department
14 February, 1967

SECRET

Annex 217

Note from E. M. Rose to Sir Burke Trend (20 Oct. 1967)

E.R.

CONFIDENTIAL

copy on 416/2

SIR BURKE TREND

You asked on the attached copy of the Commonwealth Secretary's minute of 16th October to the Prime Minister whether the question of Mauritius' date of independence needed collective discussion or could be allowed to take its course.

I think it is alright to let this proceed as the Commonwealth Secretary proposes. The decision to grant independence to Mauritius was taken, I think by OPD, in 1965 and conveyed at that time to the Mauritian leaders. But it was tied to a favourable resolution by the Mauritius legislature. This resolution was passed on 22nd August of this year. So the conditions of independence are fulfilled. I do not think it is necessary to seek another collective decision.

There are other reasons for not delaying the decision. The Premier of Mauritius is due here this week; and the Commonwealth Secretary would like to convey to him HMG's decisionon 23rd October, i.e. before the Commonwealth Secretary himself leaves for Africa. Moreover, the Mauritians are in a bad way financially and we went to get them off our hands as quickly as possible.

I think the same considerations apply in the case of Swaziland (Commonwealth Secretary's minute of 17th October to the Prime Minister, also attached). Again a contingent decision to grant independence has already been taken; and the Swaziland Government have now formally asked for it. Again the Commonwealth Secretary is anxious for an early decision since HM Commissioner is arriving in London this week.

Neither of these proposals is likely to be controversial. If there is any objection, either or both can if necessary go to OPD. But if there is none, there does not seem any objection in principle to dealing with them in the way proposed.

Once decisions have been approved the Commonwealth Office proposes to arrange for all members of the Cabinet to be informed.

P. E. Rose

(E.M. ROSE)

20th October 1967

Foreign Sec^y and the
Minutes by the Minister of Overseas Development and others are now also attached. DGS 20 x 67

Mr. Lawrence - Office
Registry

Rose. 23/X

Yours.

DS. 21/10

Annex 218

Letter from P. A. Carter to E. G. Le Tocq of the U.K. Foreign and Commonwealth Office East African Department, FCO 83/18 (5 Feb. 1971)

CONFIDENTIAL

(51)

P O BOX 586

5 February 1971

E G Le Tocq Esq
East African Department
Foreign & Commonwealth Office

1. Bill Peters of the Commonwealth Secretariat was here last weekend to discuss with the Mauritian authorities arrangements for a possible conference of Commonwealth Ministers of Health to be held in Mauritius towards the end of this year.

2. Peters told me that in the course of these talks he had occasion to have a chat with R Lallah, who is a Law Officer in the Mauritius Government. Lallah, whom I have not met, gave Peters to understand that his Government had it in mind to revoke the Agreement which had been reached in the pre-Independence era in regard to BIOT. I got the impression from Bill Peters that Lallah felt pretty strongly on the subject.

3. Peters did not enlarge on this conversation. Doubtless, when he arrives home from East Africa, he will mention this to you. I imagine that the Mauritius Government, if they do adopt this tactic, will use it as a ploy to extract the fullest advantage from the forthcoming negotiations. I think there is a general feeling here that they made a poor bargain, compared with the Seychelles Government, and of course a former Colonial Government can always evoke a sympathetic response from other countries in regard to agreements entered into prior to independence, particularly if they invoke the old legal doctrine of "rebus sic stantibus".

P A Carter

Copy to:

Miss E J Emery
Pacific & Indian Ocean Department
Foreign & Commonwealth Office

CONFIDENTIAL

Annex 219

Note from C. C. D. Haswell of the U.K. Foreign and Commonwealth Office East African Department to Mr Wallace and Mr Robson (30 June 1980)

Reference FCB0303/3 (22)

CONFIDENTIAL

Mr Wallace Minute 23/6
Mr Robson
C.C. Mr Hewitt

Mr Maxwell (23)
(Mr Wade-Gery)

DIEGO GARCIA: THE MAURITIAN CLAIM

1. On 26 and 27 June 1980 MMM and Labour Party Ministers and Backbenchers in Mauritius made an attempt to include the Chagos Archipelago in legislation declaring Tromelin (Claimed from France) as Mauritius Territory. The attempt was successfully resisted but only by a speaker's ruling after stout action by Ramgoolam and Sir Harold Walter. Afterwards Ramgoolam made a surprisingly robust statement about the issue (a copy of the text is attached.)

2. This incident marks the latest thrust in the steadily-growing momentum behind the movement to secure the return of the Chagos Archipelago to Mauritius. Ramgoolam is doing a sterling job in upholding the British interest in Chagos; but he is getting on, and his apparent support for us over this issue will further weaken his already somewhat shaky political credibility in Mauritius. In the run-up to next year's election, this can only be a bad thing for his party.

3. We are thus faced with two interlocked, undesirable developments in Mauritius: the continuing escalation of the campaign for the return of Chagos, and the growing likelihood that Ramgoolam's government will soon be replaced by one considerably less sympathetic towards British interests. Our objectives therefore are to try to put the Chagos issue in Mauritius to rest, and to try to bolster Ram's political standing.

4. We cannot silence the Chagos issue by evoking the agreement with Mauritian Ministers in 1965 that it would not be open to them to raise the issue of the return of the Archipelago: this would weaken Ramgoolam's standing by arousing criticism that he gave away too much at the 1965 negotiations, and would anyway not be binding on future Mauritian governments. It is for the same reason that in any future action we take, we cannot have recourse to the 1965 papers.

5. Nor can we quell the issue with offers of aid, even if we had aid to offer: this would amount to a tacit admission that we are in the wrong.

6. We should, however, wish to give the appearance that Ramgoolam had extracted concessions from us over the Chagos issue, whilst making it clear that sovereignty over Chagos remains firmly in British hands. If the concessions are genuinely useful to the Mauritians, Ramgoolam's prestige will be increased and we will go a long way to achieving our two objectives.

7. I would suggest the following as a possible course of action:

CODE 18-77

Part A

By way of 'clarifying the position', we should come to an agreement with Ramgoolam that:

(i) As long as the Chagos Archipelago is required for defence purposes, it will remain in British ownership;

(ii) once the Chagos Archipelago is no longer required for defence purposes, it will be ceded to Mauritius, leaving the former islanders free to return if they so wish;

(iii) The Archipelago will continue to be required for defence purposes as long as any littoral or hinterland state of the Indian Ocean continues to be threatened by Soviet aggression (or other definition to be agreed with Defence Department)

This approach would help to lay the blame for the 'non-return' of Chagos at least equally on Russian actions in the Indian Ocean area.

Part B

The concessions: We should suggest to Ramgoolam that:

(i) We should declare a 200-mile fishing limit around the Chagos islands;

(ii) Apart from the UK, only Mauritius will have fishing rights within the limit

(iii) Mauritian fishing vessels in the Chagos area will have recourse to help from Diego Garcia in times of distress. We would thus not only be making extremely good fish stocks available for the Mauritians virtually to monopolise, but assisting them to do so. We would also provide an excuse for keeping soviet 'fishing' vessels at least 200 miles from Diego Garcia.

8. These ideas obviously require greater consideration, and we would, probably, need to consult the Americans. But I should be grateful for your views on this approach to the problem.

Charles Haswell

C C D Haswell
East African Department

30 June 1980

Annex 220

United Kingdom, *Diego Garcia: Translation of Ramgoolam's remarks at a press conference (given in Creole) on 26 July 1980* (26 July 1980)

DIEGO GARCIA

Translation of Ramgoolam's remarks at press conference (given in creole) on 26 July 1980

After the representatives of the other parties who did not want independence had walked out of the 1965 constitutional conference, I as head of Government had to take a decision. I had to choose between independence and Diego Garcia. What would you have done? I opted for independence and freedom and I take full responsibility for that. Mauritius acquired status and dignity. At that time people didn't even know what Diego was or what it looked like. Today everybody tries to be wise after the event. I brought the country to independence without bloodshed, in peace, in order and discipline. And you are not satisfied? Must we cut our throats before you are satisfied? Would you rather live in another country like (obscure reference to Libya and Seychelles)? I realised at that time that the English were trying to outsmart me. I was aware of it but I was not sure that I could have resisted them. When this happened, I pretended I could not understand and I said I must keep certain rights such as fishing, minerals and landing, etc. The English all laughed. Some of them laughed in my face. I pretended I could not understand anything because I knew where I was going. (i e the British thought they were outwitting me, but I saw through their tricks and in fact got the better of them!). The English had said Diego Garcia would only be used for a communication station. Now there was a base there. I was still in the UK a short while after the negotiations when it was declared in the House of Commons that Diego Garcia was going to be given to the Americans. They never told us. But at that time they could detach Diego Garcia if they wished, as they had the Seychelles, without Mauritius's consent. It is no use blaming me. We gained something and we lost something. That's the truth of it. Everything done was done in good faith. Some talk of treason. What treason? Was it treason to win the war of independence? To achieve a free and sovereign country?

Only 1 question

Q. What is going to happen now after the OAU resolution?

A. What do you want me to do, send a fleet and go to war?

Annex 221

Letter from S. H. Innes of the U.K. Foreign and Commonwealth Office East African Department to J. J. Bevan of the U.K. Mission to the U.N. in New York (7 Oct. 1980)

JEB 020/3
(75)

CONFIDENTIAL

file

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01-

Miss J J Bevan
UKMIS
New York

Your reference

Our reference

Date 7 October 1980

Dear Miss Bevan,

ADDRESS BY PRIME MINISTER OF MAURITIUS

1. The Prime Minister of Mauritius, Sir Seewoosagur Ramgoolam, is scheduled to address the UNGA on the 9 October.

2. As there is a possibility that Ramgoolam may make some comments with which we would take issue, I would be very grateful if you could send me a copy of his speech as soon as conveniently possible after the event. In this way we would be in a better position to collar him as he transits London on his return to Mauritius.

Yours ever,
Stuart Innes

S H Innes
East African Department

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Annex 222

U.K. House of Lords, Debate, *Diego Garcia: Future*, Vol. 415, cc389-90 (3 Dec. 1980)

House of Lords

Wednesday, 3rd December, 1980

The House met at a quarter-past two of the clock: The LORD CHANCELLOR on the Woolsack.

Prayers—Read by the Lord Bishop of Guildford.

Introduction of the Lord Bishop of Lichfield and the Lord Bishop of Liverpool

Kenneth John Fraser, Lord Bishop of Lichfield—Was (in the usual manner) introduced between the Lord Bishop of Worcester and the Lord Bishop of Carlisle.

David Stuart, Lord Bishop of Liverpool—Was (in the usual manner) introduced between the Lord Bishop of Derby and the Lord Bishop of Newcastle.

Message from The Queen

2.34 p.m.

Lord Maclean: My Lords, I have the honour to present to your Lordships a Message from Her Majesty the Queen signed by her own hand. The Message is as follows:

" I have received with great satisfaction the loyal and dutiful expression of your thanks for the Speech with which I opened the present Session of Parliament ".

Mr Hewitt WH 4/12 4/12
Mr Ingham 4/12

DATE 3.12.80
COL. 389-390
VOL. 415

Diego Garcia: Future

2.35 p.m.

Lord Brockway: My Lords, I beg leave to ask the Question which stands in my name on the Order Paper.

The Question was as follows:

To ask Her Majesty's Government what conclusions have been reached in the discussion with Mauritius regarding the future of Diego Garcia.

Lord Trefgarne: My Lords, recent discussions with Mauritian Ministers covered political, economic, and cultural matters, including the subject of Diego Garcia. The Government of Mauritius know that Diego Garcia will be ceded to Mauritius when it is no longer needed for defence purposes. This was confirmed by my right honourable friend the Prime Minister on the 11th July in answer to a Question in another place.

Lord Brockway: My Lords, while appreciating that Answer, may I ask this? Is not Diego Garcia historically associated with Mauritius and was it not transferred before Mauritius obtained its independence so that the nation could not take a decisive view? Would it not be possible for Her Majesty's Government to take the initiative to secure the neutralisation of the Indian Ocean so that the island would no longer be necessary for defensive purposes?

Lord Trefgarne: My Lords, the second part of the noble Lord's supplementary question is, I would suggest, another question. Consideration of the proposal to make the Indian Ocean a zone of peace, for example, which is one of those proposals currently being canvassed, is something we shall be ready to undertake in the right forum—but in the context of 85,000 Russian troops encamped in Afghanistan, just a few hundred miles to the north. As to the sovereignty of Diego Garcia, the position is quite clear. The United Kingdom has full sovereignty over that island.

Lord Goronwy-Roberts: My Lords, while agreeing with my noble friend as to the desirability of zonal neutralisation in the Indian Ocean, may I put this specific question about Diego Garcia to the noble Lord? Have the Government of Mauritius responded favourably to the suggestion by the United Kingdom that when Diego Garcia is no longer needed for technical purposes it will be handed over to them?

Lord Trefgarne: My Lords, the Mauritian Government are certainly aware of that position and are content with it.

Lord Brockway: My Lords, the Minister said that the question of the neutralisation of the Indian Ocean is separate, but is it not the case that the reason for its retention separately from Mauritius is its use as an American base? The Minister says that the British would consider the neutralisation. If this Government really believe in world disarmament, as they say they do, can they not take the initiative in this great step?

Lord Trefgarne: My Lords, the fact is that the security situation in that part of the world requires the availability of Diego Garcia and its facilities to maintain our security and peace. Unilaterally to proceed along the lines that the noble Lord suggests would be most unwise.

EEC Sheepmeat Régime and Trade

2.42 p.m.

Baroness Elliot of Harwood: My Lords, I beg leave to ask the Question which stands in my name on the Order Paper.

The Question was as follows:

To ask Her Majesty's Government what has been the effect of the introduction of the European Community's sheepmeat régime on trade with other member states of the Community and with third countries.

The Minister of State, Ministry of Agriculture, Fisheries and Food (Earl Ferrers): My Lords, the United Kingdom's exports of sheep and sheepmeat have been substantially reduced since the introduction of the régime, mainly because of the clawback charge and we have made strong representations about this to the Commission. As a result, we have secured exemption from clawback for our exports to countries outside the Community until 31st March next year. Exports to Belgium and Germany have fallen since 20th

Annex 223

Telegram from Thomson to the U.K. Foreign and Commonwealth Office East African Department, No. 42 (19 Jan. 1981)

JEB 020
(2)

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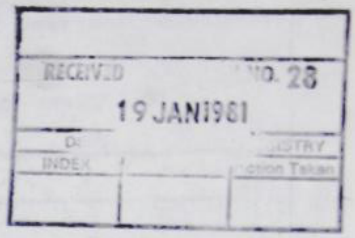


GRS 160
RESTRICTED
FM DELHI 190615Z JAN 81
TO PRIORITY FCO
TELEGRAM NUMBER 042 OF 19 JANUARY

FOLLOWING FOR EAD: DIEGO GARCIA

1. WE HAVE BEEN ASKED BY THE US EMBASSY HERE FOR (1) SOME BACKGROUND BRIEFING ON THE ARRANGEMENTS UNDER WHICH DIEGO GARCIA WAS DETACHED FROM MAURITIUS BEFORE INDEPENDENCE AND FOR (2) AN INDICATION OF HMG'S THINKING ON THE HANDLING OF THE DIEGO GARCIA ISSUE IN DISCUSSION WITH THIRD WORLD COUNTRIES PARTICULARLY IN THE RUN UP TO THE FORTHCOMING MEETING OF FOREIGN MINISTERS OF THE NON-ALIGNED COUNTRIES IN DELHI. 9-12 Feb.

2. WE WOULD BE GRATEFUL FOR URGENT AUTHORITY TO PASS TO THE EMBASSY IN CONFIDENCE A COPY OF RAFTERY'S TELELETTER OF 6 NOVEMBER 1980 ON WHICH WE HAVE ALREADY DRAWN ORALLY. (1) IT WOULD ALSO BE HELPFUL TO HAVE ANY SPECIFIC MATERIAL OR GUIDANCE WHICH WOULD HELP TO COMBAT THE ALLEGATION SOMETIMES MADE THAT BECAUSE MAURITIUS WAS STILL A COLONY WHEN DIEGO GARCIA WAS DETACHED THE AGREEMENT REACHED WITH MAURITIAN MINISTERS MUST HAVE BEEN MADE UNDER DURESS AND IS THEREFORE NOT VALID.

JEB 020/3
(91)

THOMSON

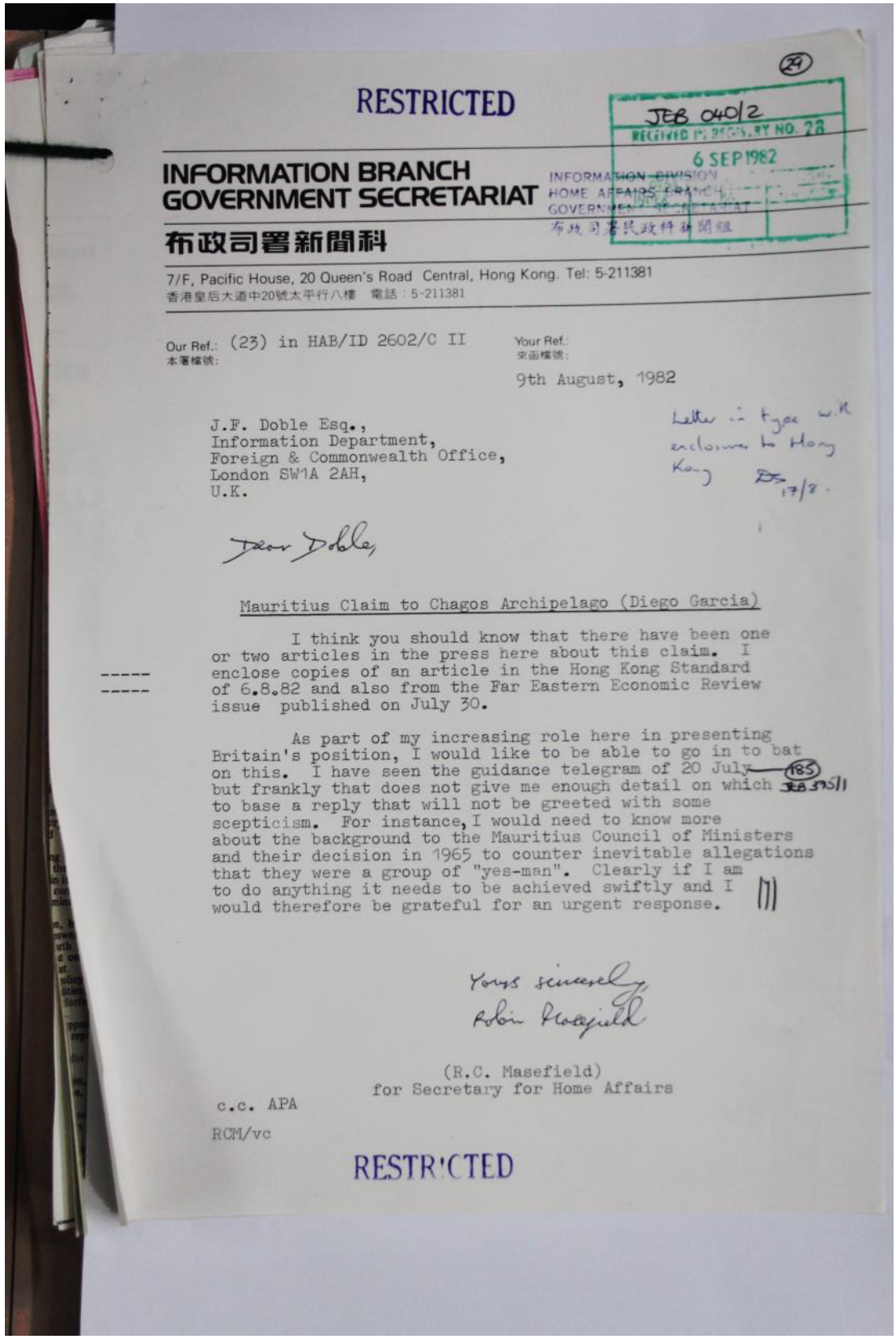
LIMITED
EAD
SAD
NAD
DEFENCE D
SIR L ALLINSON
MR DONALD
MR URE
MR P MOBERLY

THIS TELEGRAM WAS NOT ADVANCED

RESTRICTED

Annex 224

Letter from R. C. Masefield, for the U.K. Secretary of State for Home Affairs, to J. F. Doble of the Information Department, U.K. Foreign and Commonwealth Office (9 Aug. 1982)



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JEB 040/2
RECEIVED IN REGISTRY NO. 28
6 SEP 1982
INFORMATION DIVISION
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GOVERNMENT SECRETARIAT
布政司署民政科新聞組

INFORMATION BRANCH
GOVERNMENT SECRETARIAT
布政司署新聞科

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J.F. Doble Esq.,
Information Department,
Foreign & Commonwealth Office,
London SW1A 2AH,
U.K.

Dear Doble,

Mauritius Claim to Chagos Archipelago (Diego Garcia)

I think you should know that there have been one or two articles in the press here about this claim. I enclose copies of an article in the Hong Kong Standard of 6.8.82 and also from the Far Eastern Economic Review issue published on July 30.

As part of my increasing role here in presenting Britain's position, I would like to be able to go in to bat on this. I have seen the guidance telegram of 20 July (185 JEB 395/1) but frankly that does not give me enough detail on which to base a reply that will not be greeted with some scepticism. For instance, I would need to know more about the background to the Mauritius Council of Ministers and their decision in 1965 to counter inevitable allegations that they were a group of "yes-man". Clearly if I am to do anything it needs to be achieved swiftly and I would therefore be grateful for an urgent response.

Yours sincerely,
Robin Masefield

(R.C. Masefield)
for Secretary for Home Affairs

c.c. APA
RCM/vc

RESTRICTED

Annex 225

U.K. House of Lords, Debate, *Diego Garcia: Minority Rights Group Report*, Vol. 436, cc397-413 (11 Nov. 1982)

Diego Garcia: Minority Rights Group Report

HL Deb 11 November 1982 vol 436 cc397-413

6.2 p.m.

Lord Brockway rose to ask Her Majesty's Government what is their response to the report of the Minority Rights Group on events in Diego Garcia.

The noble Lord said: My Lords, I beg to ask the Unstarred Question standing in my name on the Order Paper. It is unusual to initiate a debate in this House on the report of an unofficial committee but the Minority Rights Group is very authoritative. Its sponsors include the noble Lord, Lord Goodman, and Mr. Jo Grimond of the Liberal Party. Its chairman is Professor Roland Oliver and its council includes Sir Robert Birley. Its director is the respected Ben Whitaker who gave up a parliamentary career because he was so dedicated to this subject. Its report won the attention of every circle in this country; the quality papers gave it the first leading article. It cannot be dismissed. I shall treat it with some of the fullness which it deserves, but I want to make it clear that it is with no pleasure that I refer to deplorable events. I do so only because I think we must take their warning. I shall conclude with certain proposals which I believe are relevant to the present time.

It was in 1965 that the British Government offered Mauritius its independence but it did so only on the condition that Mauritius surrendered the Chagos Archipelago. Diego Garcia is the largest atoll in that archipelago. It is 14 miles by four miles. Compensation of £3 million was offered to the Mauritian Government. This was the period of decolonisation but, unlike other colonies which were given their political freedom, the people of the entire territory of Mauritius were not included in that independence. The United Nations General Assembly met on the subject. It carried Resolution No. 2066XX which invited Britain: "to take no action which would dismember the territory of Mauritius and violate its territorial integrity".

There was considerable opposition in Mauritius to the acceptance of independence on those terms. The Mauritian Government reluctantly accepted.

This was followed by an extraordinary event. The British Government, without any consultation of the people, incorporated Diego Garcia into a new colony—the period of decolonisation and yet a new colony established—the British Indian Ocean Territory. It is known as BIOT and I shall be referring to it as such for purposes of brevity. The object of this strange manoeuvre became clear the following year. Britain signed a defence agreement with the United States of America leasing to them BIOT for 50 years with the option of a further 20 years. Again, there was no consultation with the people concerned. The United States wanted BIOT, and particularly Diego Garcia, because it had been selected by the Pentagon as an ideal place to monitor the Soviet Navy. At that stage it was only to be an area of communications.

May I just refer to the population of Diego Garcia? They were 1,800 in number; they were coloured people, 60 per cent. of African origin from the continent itself and from Madagascar and 40 per cent. Indian. There was only one employer on the island. He had a copra plantation. The other inhabitants were harvesters of coconut and fishermen. As I have said, they were not consulted in any way when they were, first, transferred from Mauritius and, secondly, incorporated in the new colony. They were just tossed about at the dictate of Whitehall.

The Pentagon made it clear that they did not want any persons on the island except the American servicemen. Britain was required to remove the residents, the islanders. African and Indian, yes; but British citizens. The first action of the British Government to accomplish this was to prevent the return to Diego Garcia of any visitors to Mauritius. Many went on holiday, for medical treatment and to buy various articles. They found that there were no ships available for them to return to Diego Garcia. They were left stranded on the quayside. The report indicates that

others in Diego Garcia itself were tricked to leave on ships to Mauritius never to be allowed to return. British citizens by the action of the British Government became refugees. There was no provision for them. Many of them starved.

The next stop of the British Government to empty the island of its residents was to stop employment. In 1967 BIOT bought out the sole employers of the copra plantation. It was to close down by 1973. The manager used these words: "It was not very pleasant telling them they had to go. It was a paradise there. We told them we had orders from BIOT. I am talking about five generations of the Ilois who were buried there."

It is also alleged in the report of the minority group—I confess that I find it a little difficult to believe this—that the next step was to cut off food supplies to the residents at Diego Garcia. It states that from 1968 onwards no food supplies were sent to the people. They had their fish which they caught. They had coconuts. They had vegetables which they grew; but no supplementary foodstuffs, according to the report, were permitted, in order to starve them out.

The first American servicemen arrived in Diego Garcia in 1971. The residents, the Ilois, were told that they did not have the right to stay. In September the last of the Ilois left. One of those deported said: "We were assembled and informed that we could no longer stay on the island because the Americans were coming for good. We did not want to go. We were born there. So were our fathers and forefathers who were buried in that land."

They were given two weeks to leave. BIOT transferred them in its own ships. The Foreign Office said then, and it has repeated quite recently in this House: "All went willingly and no coercion was used."

I ask you to judge, my Lords, from the facts which I have given. Strangely, at that time this situation was not known in this country: no publicity: no debate in Parliament. The truth was only recorded in 1975 in an article in the Washington Post by its investigator, David Ottawa. He told how 1,000 Ilois were forcibly removed and were living in abject poverty in Mauritius. A week later the Sunday Times had a three-page exposure. It revealed what had not been known before; that the United States had given Britain an 11.5 million dollar discount on Polaris submarines to establish BIOT, which enabled Diego Garcia to become under military occupation of America. The Sunday Times said: "The Ilois were the islanders that Britain sold."

This Ilois arrived in Mauritius with no plans to provide for them. There were no homes for them, no jobs and no money. They were left in dire poverty for five years without receiving any compensation. The Sisters of Mother Theresa, and other charities, gave them a little help. A nun said: "They do not have enough food, children are undernourished, they need medicines and clothing."

The Comité Fraternelle reported deaths through hunger and suicides, and that a large number of the women and young girls—some aged 13, 14 and 15—left their husbands and parents to become prostitutes in order to obtain a living. It was only when Ilois on the last boat from Diego Garcia staged a sit-in that the Government acted. Then some of them were accommodated. A little assistance was given to 74 families and pensions to 57 of the aged.

I turn to this question of compensation: in 1973 the British Government agreed to pay the utterly inadequate sum of £650,000 to the Mauritian Government for the relief and resettlement of the Ilois. The Foreign Office said—and repeated many times later—that this, "represented a full and final discharge of Her Majesty's Government's obligations".

In fact the Ilois did not receive their compensation until 1978. The Mauritian Government itself has a certain responsibility for delaying its distribution, and in any case the amount was utterly inadequate. Each adult received 7,590 rupees—about £650—and the children received between 356 and 410 rupees. That is not enough to rent, and certainly not enough to buy, a house or even to buy food and clothing. Any attempt by the more able to start businesses for themselves became completely impossible.

Agitation at last began in this country as well as in Mauritius. A Methodist named George Champion commenced it, and I pay my tribute to the Methodist Church for coming out in defence of the Ilois. Even the Mauritian Government

pressed our Government to increase compensation, and in 1979 Britain offered to add £1.25 million to its offer, but only on the condition that the Ilois abandoned all claim to return to their island home. It was sheer poverty which compelled them to accept, though there was so much controversy about it. I claim that acceptance compelled by hunger has no moral authority.

There were continued demonstrations and hunger strikes. These were so disturbing that the Mauritian Prime Minister flew for talks with Mrs. Thatcher in April 1981. It was then agreed that the two Governments and Ilois representatives should meet in June. The Ilois asked for compensation of £8 million. Britain only offered an additional £300,000 in technical aid, and again said that this was "a full and final agreement". No agreement was reached in those talks.

Protests continued, and they were so strong that in March Britain offered an additional £4 million and the Mauritian Government offered land to the Ilois to the value of £1 million. Once more the British offer was "full and final". The Ilois, despairing, accepted even though the agreement included a clause precluding them from returning to their island.

That is a summary of the report. Commenting on it, The Times on 10th September said: "It is unacceptably shameful that this was done in such a mean and dishonest way."

The British Government deny that the United States has now established a base in Diego Garcia. I do not know the military definition of a base, but last year Britain gave the United States permission to undertake a 1,000 million dollar expansion, accommodating B52 bombers, a mile-long jetty, provision for aircraft carriers and barracks for 4,000 marines. If that is not a military base. I do not know what it is.

There is a development now which is disturbing. The High Commissioner for Mauritius says that the establishment of a base violates an undertaking given by the Labour Government that the island would be used only as a communications centre. He did not even rule out an appeal to the World Court. This year an election brought a new government in Mauritius, demanding that there should be an end of the American base and a return of the archipelago to Mauritius. The issue, clearly, is not ended.

Briefly, I end with my own conclusions relevant today. First, there is evidence that the confrontation between the West and the Soviet Union, ostensibly in defence of democracy and freedom, rides roughshod over these values in order to obtain military advantage, as in Diego Garcia.

Secondly, these events continued to the eve of the Falklands crisis when military action, loss of life and immense expenditure was accepted to maintain the right of self-determination by 1,800 white residents—exactly the same number as the African and Indian British citizens deported from Diego Garcia. I ask: would they have been deported and would there have been this haggling over compensation if they had been white?

Thirdly, all the Governments surrounding the Indian Ocean, except Oman and now Somalia, are demanding that the ocean be made a zone of peace. That would mean an end of the American base in Diego Garcia as well as of the Russian presence. If the British Government sincerely desires disarmament in the world, cannot it support this demilitarisation?

Fourthly—and this is the last of my conclusions—would not this facilitate the return of Diego Garcia to Mauritius, as the new Government are demanding, and even the return of the islanders to their homeland? My Lords, I beg the Minister not to retort by saying that it was a Labour Government which began this crime against the islanders of Diego Garcia. Tory Governments since have aggravated it. Freedom and justice are not playthings in party partisanship. We have all been guilty and we should all seek to right the wrong.

6.30 p.m.

Lord Hatch of Lusby My Lords, I believe that the House is grateful to my noble friend Lord Brockway for raising this

issue tonight. I think that the House should also be grateful to the minority group for publishing the report on which this debate is based, and I pay tribute to them for so doing.

This is a most shameful incident in British history. It is shameful to those who were instrumental in the original acts and it would have been wise for the noble Lord, Lord George-Brown, and the noble Lord, Lord Chalfont, who were responsible for the original treaty, to have attended this debate, as it is a debate concerning the consequences of their acts when they were at the Foreign Office. It is no pleasure to have to condemn one's own party, but there are times when it is essential for the honour of that party that some of us within it should condemn the actions that are taken in its name, and this is one of those occasions.

I differ from my noble friend Lord Brockway in one respect only. I do not think it is the case that protests have been made only from outside this country, nor that it was not until the 1970s that protests were made about this action. In fact, I should like to pay tribute to the agitation conducted by Mr. Tarn Dalyell from another place, who has consistently from 1965 condemned this action and brought it to the attention both of the public and of Parliament.

I do not envy the noble Lord who is to reply to this debate. I do not envy him for this reason, that he must know that in many parts of the world, and particularly in the Third World, the words just uttered by my noble friend Lord Brockway have been echoed very widely; that there is a parallel between British action towards the inhabitants of Diego Garcia from 1965 onwards, and the actions of the British Government in 1982 towards the inhabitants of the Falkland Islands. One cannot expect people from the Third World, with different coloured skins from our own, to fail to draw the distinction between the actions of the British Government when the British citizens concerned have white or pink skins, and their actions when their skins are of a different colour.

As my noble friend has pointed out, the inhabitants of Diego Garcia were descended from Africans, from the people of Malagasy and from Indians. They were coloured people, or they were people of a different colour from the white skin. Yet can the noble Lord, who is to reply to this debate on behalf of the Government, tell us where the difference in principle is concerned—and I emphasise the word "principle"—between the incident of 1965 onwards and that of 1982?

Surely the principle involved is whether or not all people have the right to live where they choose under a form of government of their own choice, and to participate in the determination of the form of society within which they live. Was that not the principle on which the British Government claimed that they had to send the task force to expel the Argentinians who were denying the people of the Falkland Islands that right? If it is the case that the British Government sent the task force to the Falklands in order to expel those foreigners who are interfering with the lives of the inhabitants, then how can this or any other British Government justify the actions which have been taken towards the inhabitants of Diego Garcia?

My noble friend has pointed out that the basis of these actions was an agreement with the United States Government. That agreement was a treaty which was signed in December, 1965, by the noble Lord, Lord Chalfont, on behalf of the Foreign Secretary of the time, the noble Lord, Lord George-Brown. I understand that that treaty included one particular provision and I should like to ask the noble Lord directly about this. I understand that within that treaty there was the provision that, wherever possible, the building of the American base, communications centre—call it what you will—should be by the use of Mauritian and Seychellois workers. I should like to ask him how many Mauritian or Seychellois workers have been used in the building of that American base.

However little publicity there has been about this shameful act by successive British Governments from 1965 onwards, it would appear that, at least, certain Americans have greater moral scruples over the issue than has been shown—at least at all widely—in this country. I should like to give two quotations from the report which point home the issue that I have just raised. When the United States Congress was conducting its hearings on Diego Garcia, Senator John Culver from Ohio had this to say. He complained that no witness in previous hearings had mentioned that there had been inhabitants living on the island—some for generations. He went on to say: “simply put, these people were evicted from their home only when and because the United States wanted to build a military base. We add

nothing to our moral stature as a nation by trying to sidestep all responsibility for these people." And, I should like to add, nor do we.

Secondly, during questions which were put to the Director of the Office of International Security Operations, Senator Larry Winn, Junior, of Kansas had this to say: "I just have the feeling all the way through this hearing that the American negotiators and the people involved have said, 'This is all a British problem, and let the people sink or swim and just let the British worry about'. I don't know where any human concern shows up on your part or in your report or anything else. I can't understand why we arc so damned interested in this thing as a military base that we don't have some type of input, or ask questions, or check on the human beings that are living on this island before we kick them off at our request through the British"." If American Congressmen and Senators can feel so deeply about this outrage, I would suggest that our responsibility is one hundred times greater.

May I conclude by picking up one of the last points made by the noble Lord, Lord Brockway, which I was very pleased that he included in this debate: who are we to determine that the Americans should have a military base in the middle of the Indian Ocean? Have there been any consultations with the Government of India as well as with the Government of Mauritius? We know that there have been discussions with Mauritius, but what about India? Diego Garcia, in rough distance, is just as near India as it is Mauritius, and India has a very great stake in everything which goes on in the Indian Ocean. It is the Indians who have led the way in attempting to make the Indian Ocean an ocean of peace, a nuclear-free zone and a non-aligned sea.

This is a very important matter—I think the noble Lord will take this point—for the Commonwealth. The Commonwealth has discussed the future of the Indian Ocean. The Commonwealth has discussed the passionate desire of the Indians and of other Asians to prevent the Indian Ocean from becoming a scene of conflict between the great powers. But here Britain, a member of the Commonwealth, is taking positive action to bring one of the major powers, in a military form, into the centre of the Indian Ocean.

I know that he cannot give a final answer tonight, but I should like the noble Lord to consider and to take back to the Foreign and Commonwealth Office the proposal that because this is a Commonwealth matter there should be Commonwealth consultations about the future of the Ilois, who have been turned out of their homes and thrown out of their homeland, and also about whether Diego Garcia should be a military base for anyone. I reiterate that this is a matter which concerns the Government and the people of India and the rest of the Commonwealth citizens of Asia, as well as the Mauritians, even more than it concerns ourselves and that we should be prepared to withdraw from the position of openly opposing the declared policy of our fellow Commonwealth members in their ocean by bringing in one of the great powers against their wishes.

May I make the proposal to the noble Lord and ask him to give serious consideration to it, along with his noble and right honourable friends in the Foreign and Commonwealth Office. If this kind of action is going to be characteristic of British Government policy, then there is very little hope for British influence in the Commonwealth. I believe that members of the Commonwealth have a responsibility and a desire to discuss the whole issue of Diego Garcia and that that discussion should be held within the Commonwealth as well as at the United Nations. However, I particularly recommend to the noble Lord further Commonwealth consultations about the future of the island, the military significance of the island and the future of the refugees whom we have made refugees from their own homeland in Diego Garcia.

6.46 p.m.

Lord Hale My Lords, this debate has gone on for some time, but it is a very important one. I should like to say at once that I can do no more than agree with every word spoken by my noble friend and with nearly every word spoken by his seconder. Some of the little divagations into American mental attitudes and so on might have been more appropriate from the noble Lord from Peterborough, the noble Lord, Lord Harmer-Nicholls, who persistently rails at me as anti-American. I have a very good friend in this House who is a member of a society of friendship with America. I find very little to blame America for in this, if their military advisers think that the defence of the Indian

Ocean will be strengthened by the construction of an American-dominated defence station in the Indian Ocean. They were very hesitant about it and had it almost pushed on them by British Ministers—let us make no mistake about that; the evidence is overwhelming—and, as my noble friend justly said, they were the first to hold a public inquiry and raise some of the problems, such as the destruction of the rare, large tortoises on that particular island.

There is much that is incredible and sheerly indefensibly immoral and contemptuous of human rights coming from a Labour Government and Labour Ministers. I do not believe that anybody like Michael Foot would ever have tolerated this kind of serious and monstrous abusage of human freedom and human liberty.

Names are mentioned in the report, so I need say only this. I came into this by chance on October 14th 1975, when my noble friend and I had each put down a Question on Diego Garcia. My noble friend put a number of supplementaries to his Question, and I put a number of supplementaries to mine. I must say that these were very hostile questions and were received with much more courtesy than I expected. I was asked not to press the questions but to indicate them in detail and to wait for a Written Answer. This duly arrived and, curiously enough, I still have it today—it is an important document. It is signed by my old friend Goronwy Roberts, whom I deeply respected. I do not believe for a moment that he was ever involved to the fullest degree in this matter. I do know that he was distressed at the situation in which he found himself; a situation in which he was having to take the responsibility for his own Government and for some of the things they had done—but not, I believe, with his knowledge. After all, he was still a junior Minister at the time, although he held an important post. It was not very long after that that we lost him. That was a great loss to this House and to the Party.

If one examines this report, one finds that underlying it all is a cynicism which will appal Members on all sides of this House who read it. The figures are almost invariably false. The method of giving absolutely false figures was that if one asked for figures for the number of people in Diego Garcia one would be given the figures for the number of people who were in the Seychelles. Or if one asked for the figures for the Seychelles, one would be given the figures for Diego Garcia. There is scarcely an accurate figure throughout these communications. Meanwhile, people of high reputations, with their own religious beliefs and their own customs, and with their reputation, which does not involve criticising them on the basis of character, are tricked in the manner of a confidence trickster. They are told that it will all be all right and that they have only to wait. They are told to step on a boat and that their interests will be looked after, but some of them have very great difficulty in ever getting off that boat again. They are deported to areas of conflict and dispute.

They starve. It is an odd thing that people can starve, even in a fruit-growing country, if they are pushed together in a heap and left. Your Lordships may have seen the film which I believe was shown on ITV some time ago. It showed what was left of these 1,000 decent people. As far as money is concerned, they did not get any money for years. When any money was paid it was not paid for the victims—it never is. Let me recall from memory the period not very far off from this when we were dealing with the problems of the Gilbert Islands and the Banabans. Time after time there was this same sort of deceit and the same sort of vague talk about compensation. I have no doubt that the Americans urged for the payment of some more compensation because of the shameful treatment of these people. I believe that to be true. After all, it is hardly a country that can afford or wish to save a few coppers at the expense of a starving tribe. But it went on. I myself am ashamed. I do not know why I seem at the end of October 1975 to have dropped out of this business for quite a time. I only saw the report yesterday and I accept a great deal of blame for not trying to ascertain the truth at the earliest possible moment. This is not a matter, if there be a solution, which should be forgotten, even in these overcrowded islands, after so many Ilois have died (some of them having committed suicide) and after little girls have gone into prostitution.

It seems that there is an island which, happily, was discovered by some British sailors who wanted to go to Diego Garcia but who were refused and who journeyed to another island some 140 miles away, where, they testify, most of the advantages which the Diego Garcians enjoyed in their early days on Diego Garcia are also available. It is virtually an uninhabited island where these people might be accommodated if they were willing and if they were given adequate compensation.

If the Americans want to go on with this massive project—and I do not believe that they do—I do not think that this is the moment to go into the question of views which certainly verge on pacifism. I do not believe that this is the moment when we ought to be criticising the military government or otherwise of this island. The attempt to rescue the American hostages from Iran was to be staged by President Carter in full secrecy from Diego Garcia. It is a long way away, but that factor—the necessity of keeping that absolutely secret for a long time—was one of the difficulties about seeking other alternatives until the day had passed when the attempt failed. Let us have a full inquiry free from unnecessary rancour, seeking to pay the debt we owe to those unfortunate people who were the victims of trickery of a like that we do not often see in British international affairs.

With those observations I shall leave out very many of the matters that I wanted to mention. I approach the situation still without bitterness and rancour because I know that I failed myself, and often do.

7.1 p.m.

Lord Strabolgi My Lords, we are grateful to my noble friend Lord Brockway for tabling this Unstarred Question for debate this evening. I know that the House has been impressed by his moving speech. This has been very much a Labour debate and I cannot help regretting, with my noble friend Lord Hatch of Lusby, that no noble Lords from other parts of the House have taken part, except, of course, the noble Lord, Lord Skelmersdale, who is to reply for Her Majesty's Government.

As has been said, Diego Garcia was formerly a dependence of Mauritius. It was ceded to Britain, and detached from Mauritius, before independence was given to Mauritius. It is generally believed that the island has been leased by us to the United States for 50 years—indeed, I have seen this widely reported in the press. On the other hand, I understand that the Foreign Office maintains that Diego Garcia is not leased to the United States—rather that the island has been "made available" to the United States, for defence purposes, for an initial period of 50 years, with an option for a further 20 years.

May I ask the noble Lord who is to reply to define the legal position and to describe the difference, under international law, between "leasing" and "making available"? May I also ask the noble Lord whether it is a fact that the United States' contribution, or payment if you like, took the form of the waiving of about £5 million of surcharges owed by the United Kingdom on the purchase of the Polaris missile system, which was also alluded to by my noble friend Lord Brockway? May I further ask if it is true that, in addition, Britain is receiving rent for Diego Garcia from the United States of about £½ million a month?

I am not clear why the creation of naval and military facilities required the removal of the entire population. This removal appears to have been carried out, according to the report of the Minority Rights Group—if this is accurate—in a very shabby way. As has been said, first the island was detached from Mauritius. Then the employing plantation company was bought up and closed down so that the means of livelihood of the Ilois was lost. Food imports are even reported to have been cut off. Families were then persuaded to take a holiday in Mauritius, many with offers of a free trip, and they found when they got there that they were not allowed to return home. By "winkling out" in this way the population had been reduced from 1,800 to about 800 people by 1971. These 800 souls were then removed to two neighbouring islands and two years later they were sent to Mauritius.

It appears from this report that no provision for resettlement had been made, and little was done to alleviate the hardship on arrival in a strange island of those we had exiled. Each family was allowed to take only one crate of belongings and we have had other moving examples described tonight by my noble friends. The result was that these unfortunate people had to live in poverty and squalid conditions. I understand that nine committed suicide and others died through poverty.

May I ask the noble Lord why no provision was made to resettle those whom we had uprooted, in a more fitting way? If the reports are true—and I hope that they are not—then this country bears a heavy responsibility. True, compensation was offered in 1973—some £650,000 initially—I suppose the smallest sum the Treasury thought they could get away with. In order to qualify, the islanders, many of them simple people, were asked apparently to sign a

form renouncing irrevocably their right to return to Diego Garcia. Any adult not in possession of supporting documents to establish a claim was, it is reported, given the paltry sum of £650.

But the people were not as simple as that. Her Majesty's Government were obliged in the end to offer considerably more. May I ask the noble Lord if it is true that the agreed total sum is now £4 million—a long way from £650,000—plus a grant of land worth about £1 million from the government of Mauritius? It would have been more honest, I think, and more dignified, surely, if we had offered generous compensation at the outset. Why did we not do so? Was it meanness, incompetence, or indifference; or a mixture of all three?

I accept that the island is important for defence purposes, in view of its central position in the Indian Ocean—and here I differ from my noble friend Lord Brockway. But why was it necessary to remove the inhabitants? I do not know of other defence bases, or stations, which have required the removal from adjacent areas of the whole native population. In many stations as we know, the local inhabitants provide useful ancillary and support activities. Employment is provided, and the local people can often earn good money. Perhaps the noble Lord will say why Diego Garcia is the exception. Why did its setting up as a defence base have to cause so much reported suffering to the unfortunate people—the Ilois—many of whom had lived on Diego Garcia for five generations, with their own distinctive way of life, as several of my noble friends have said this evening?

The report by the Minority Rights Group is a disturbing document. I submit that the Government's views on it should be given to the House this evening. I therefore ask, in company with my noble friends, what is the Government's response to this report?

7.9 p.m.

Lord Skelmersdale My Lords, as I see it, my job here today is not to explain away the failures of past Governments or to lay the blame on any particular individual for the current position with regard to the Ilois people. Suffice it to say that I am not—to pluck a convenient phrase from broadcasting history—one of yesterday's men. This story was a fait accompli when this Government came to power. However, I am here, as the noble Lord, Lord Strabolgi, has just reminded me, to answer the timely question from the noble Lord, Lord Brockway—namely: "To ask Her Majesty's Government"—" this one, today's Government— "what is their response to the report of the Minority Rights Group on events in Diego Garcia"." It is timely because the noble Lord has given us an early opportunity to debate a report which was published only in August this year. It is also timely because, as I have sought to illustrate, I am able to explain the actions taken by this Government since 1979.

From listening to the noble Lord, Lord Brockway, this evening no one can doubt his sincerity and concern for minorities. We have all known his concern to be unquestionable over a great period of years, some of us for a rather shorter time than others. Nor can anyone doubt the sincerity of the Minority Rights Group or of John Madeley, author of the report to which the noble Lord has drawn attention. I should say at the outset that we have the greatest sympathy for the hardships undergone by many of the Ilois in the past decade. Nothing that I say in response to points raised by the noble Lords who have spoken in this debate can detract from that. At the same time. I think it is helpful to look at the problems of this community in a longer time-frame than that of this decade, which is what the debate has tended to do.

Ever since the first of the islands were discovered in the 16th century they have attracted interest for two reasons: the strategic convenience of Diego Garcia's lagoon in the middle of the Indian Ocean; and the products of the coconut palms which flourish on the islands. Indeed, the Chagos were for long known as the oil islands. The economy of the archipelago depended entirely on the marketability of copra and coconut oil and underwent many vicissitudes. I shall not weary the House with a detailed history of these commodities. Suffice it to say that the market has for many years been in long-term decline and the lack of competitiveness of such small and isolated production units was bringing the economic viability of the islands seriously into question by the time that fresh interest was being shown in their strategic possibilities. Even before the last war a settlement on one of the islands had to be closed down.

The other aspect, the defence aspect, also has a long history. In the latter part of the 18th century when French and

British fleets were struggling for mastery of the Indian Ocean. Diego Garcia was, because of its position in the route to India, a bone of contention until, together with Mauritius and other dependencies of Mauritius, it was ceded to Britain in 1814 under the Treaty of Paris. In the Second World War Diego Garcia again showed its military value, mainly as a staging post for flying-boats.

There was, therefore, nothing surprising or novel in the idea that the Chagos should again contribute to the defence of the West in the fresh circumstances of the second half of this century. Your Lordships are, of course, familiar with the agreement we made with the United States in 1966. The text is in Command Paper 3231 of 1967. I make no apology for the fact that this Government, like the Government of the day which signed that agreement, think it important to make available a facility in that part of the ocean to our principal ally. Indeed, developments in the north-west of the Indian Ocean and, above all, the threat posed by the Soviet invasion of Afghanistan reinforce the need for a support facility in the region.

The noble Lord, Lord Strabolgi, and, indeed, the noble Lord, Lord Brockway, asked me why we call it a "support facility" and not a "military base". Essentially, a base is a self-contained place with its own defences and forces installed. This particular one is rightly described as a "support facility" because that is just what it is. It has a runway, it has fuel stocks, and it has a communications capacity. It will have a deep water berth, but there is no permanent force deployed there, naval fleet based there, or any aircraft based there. This is, of course, a reason why it would be inappropriate for islanders not belonging to the facility to be there for any length of time.

The noble Lord, Lord Hatch, asked about the building of this facility and who was to be used in building it. He obviously has in mind Article 7(a) of the 1966 agreement. This provides that: “The United States Government and United States contractors shall make use of workers from Mauritius and the Seychelles to the maximum extent practicable, consistent with United States policy requirements and schedules".” In recent years there have been over 200 Mauritian workers employed at the base for building purposes.

It is very much in our mind to ask, what about further expansion plans for the base? The situation has not changed since my right honourable friend the Minister of State said in another place on 30th July 1981 that: “… previous United States Administration consulted us [Her Majesty's Government] about plans for a programme to expand the facilities on Diego Garcia. This programme involves numerous construction projects extending over several years. They include improving the services and utilities on the island, including refuelling arrangements, expansion of storage, warehousing, maintenance and wharf installations, and the upgrading of runway and other airfield support facilities to a standard which would allow use of the facility as required by a wide range of heavy aircraft including B52s. We [Her Majesty's Government] have agreed to these plans.” “The present United States Administration have confirmed that they intend to proceed with the development plan and are now seeking budgetary authority to set work in hand. Projects expected to start in 1981–82 include the construction of a new aircraft taxiway and parking apron to B52 specifications and the construction of extra accommodation for United States personnel. The Government welcomes these plans to improve the facilities on Diego Garcia which fills an important role in the protection of Western interests in the area.” I shall return to this point in a minute.

As has already been mentioned, this is there directly because of the creation of the British Indian Ocean Territory in 1965. I must emphasise that the Chagos Archipelago was detached from the administration of Mauritius with the full agreement of the Mauritius Council of Ministers to form part of that territory. The report makes the astounding suggestion that this was conditional upon our agreement to Mauritius independence. Search as I could, I could find no trace of any evidence whatever for the claim that the then Colonial Secretary, who visited Mauritius in 1965 to prepare for the constitutional talks to be held later that year, made any suggestion or condition. His visit was undertaken to ascertain the views of the then Mauritius Prime Minister, Sir Seewoosagur Ramgoolam, and other party leaders on the direction which the constitutional development of the islands should take. The United Kingdom Government did, however, agree to pay the Government of Mauritius £3 million in compensation for the detachment of the islands; and we have also undertaken to cede them to Mauritius when they are no longer required for defence purposes.

I should mention in parenthesis that when the BIOT was first formed, it also included certain islands detached in a

similar way from the then colony of Seychelles. When it was clear that those islands would not be needed for defence or other purposes they were returned to form part of the new Republic of Seychelles upon its independence in 1976.

It is the people involved, the Ilois, who have, rightly, been a major focus of concern of noble Lords who have taken part in this debate. I should perhaps remind your Lordships what the term—the noun—"Ilois" actually means. It is a term that has grown up over the years to describe that part of the Mauritian people who lived or have lived on the Chagos Archipelago. Nothing more and nothing less.

While the majority of those who worked on the copra plantations were returned to Mauritius or the Seychelles upon the expiry of their contracts, a proportion remained on these islands for the greater part of their lives. These were referred to as the Ilois. Noble Lords will recognise that the term is far from precise, but, whatever the degree of their connection with the Chagos, the fact is that the Ilois were brought to, and remained on, the islands purely on the basis of their contracts. Traditionally the plantation owners did not look upon the workers as settled residents in any one place but moved them according to commercial necessity. There seem to have been considerable fluctuations in the level of habitation in the islands. Neither the employees nor those who were permitted by the plantation owners to remain at the end of their contracts owned land or houses in any part of the archipelago. The point I am making is simply this: the inhabitants of these small atolls did not constitute a settled and self-sustaining community with its own institutions and civil administration.

The noble Lord, Lord Hatch, brought up the subject of the Falklands and tried to compare the two situations. Now, in contrast to what I have just said about the archipelago, in the Falkland Islands (an area, incidentally, incomparably vaster at some 4,700 square miles) a self-sustaining society had established itself, with its own civil administration, as early as the 1840s. From this base the Falkland islanders gradually built up the economy and their institutions to the levels with which we are all familiar. They, unlike the Ilois, were separated from their near neighbours by language, culture and tradition. It is purely to do with self-sustaining peoples, and nothing more and nothing less. I cannot be more dismissive of the suggestion that this is anything at all to do with racialism.

Lord Hatch of Lusby My Lords, will the noble Lord give way?

Lord Skelmersdale My Lords, if the noble Lord will allow me, I am trying to make a speech out of a large number of incoherent notes. I listened to the noble Lord in silence although at times I was tempted to argue with him. Perhaps I may continue with my speech and make it in my own way.

With the establishment of the British Indian Ocean Territory, the plantations were purchased by the Crown and all were eventually closed, beginning with those in Diego Garcia. The settlements in Peros Banhos and Salomon were kept going as long as was practicable and the workers from Diego Garcia were given the option, which a considerable number took, of working on Peros Banhos or Salomon for as long as possible. However, the total land area of these two groups of islands is something like six square miles. It seems unlikely that the plantations on them would have been economically viable in the long term, even with the substantial injection of new capital that would have been required. In any case, the islands were also included in the 1966 Exchange of Notes, and thus potentially available for defence purposes; and this further diminished their commercial attractiveness.

I come now to a poignant, perhaps the most poignant moment in this history. As in any final leave-taking, the departure of the Ilois from the island settlements must have been a sad and distressing occasion. But the report's description of these occasions as an act of mass kidnapping is grossly exaggerated and I suggest tendentious. There is no evidence of force having been used.

Lord Strabolgi Nobody says so.

Lord SkelmersdaleLord Denham My Lords, I beg to move that this House do now adjourn.

Lord Hatch of Lusby Before the Minister sits down—

Several noble Lords Order!

Lord Denham I have moved that the House do now adjourn, my Lords. We are in very grave difficulty with an Unstarred Question if it is allowed to turn into a debate after my noble friend has answered.

Annex 226

Note from W. N. Wenban-Smith, "Commissioner" of the "BIOT", to Mr Watts, Deputy Legal Adviser, U.K. Foreign and Commonwealth Office (15 Feb. 1983)

CONFIDENTIAL

Discussed with Mr Watts 15/2 and agreed that 3(ii) was a complete non-starter. The approach in 3(i) was incorporated in letter to P. Lewis, shortly agreed by Mr Watts.

17/2

Mr Watts, Deputy Legal Adviser

MAURITIAN CLAIM TO SOVEREIGNTY OVER THE CHAGOS ARCHIPELAGO

1. As you know, Mauritius has long laid claim to sovereignty over the Chagos Archipelago and we have strenuously resisted the claim, essentially, as I understand it, because Mauritius had no sovereignty over anything until the time of its independence and the Chagos had been detached from the area administered as part of Mauritius some three years earlier. Our sovereignty I cannot vouch for before 1814.

2. The Mauritian claim seems likely to be endorsed by the forthcoming summit conference of the Non-Aligned Movement, possibly on the basis of the draft text prepared by India (copy attached). The question is whether we can do anything effective to deflect this endorsement before it becomes part of NAM's and then the UN's received wisdom (like the Argentine claim to the Falklands).

3. It seems to me that there are two possible approaches:-

(i) We might seek to persuade the Mauritians that the point for them to concentrate on is the Prime Minister's undertaking, given in the House of Commons on [11] July 1980 that BIOT would * ''revert'' to Mauritius when no longer required for defence purposes and that we would be prepared to accept wording which emphasised this point, whereas repetition of the claim to sovereignty in the terms proposed would have a most severe effect on our bilateral relations.

(ii) Possibly there is some way of rephrasing the claim in such a way as to enable us to interpret it as, so to speak, the right to first refusal. Indeed, I wonder whether the text put forward could be interpreted in that way?

4. If it would be helpful, I should be glad to come and discuss the possibilities at any time.

W N Wenban-Smith
East African Department

15 February 1983

* as also the 1975 Agreement with the Seychelles

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Annex 227

Letter from J. N. Allan, British High Commissioner in Port Louis, to W. N. Wenban-Smith, "Commissioner" of the "BIOT" (10 Mar. 1983)

RESTRICTED

(29)

BRITISH HIGH COMMISSION
PORT LOUIS

063/1

10 March 1983

W N Wenban Smith Esq
EAST AFRICAN DEPARTMENT
F C O

JEB 0401/2
RECEIVED 14 MAR 1983
DESK OFFICER | REGISTRY
INDEX | PA | SECRETARIAT

Dear Nigel,

CHAGOS ARCHIPELAGO: MAURITIAN CLAIM OF SOVEREIGNTY

1. We did all we could here to get Jugnauth to alter his position before he went to the NAM meeting in New Delhi but when I saw him on 3 March he was pretty unyielding. I understand you also called the Mauritian High Commissioner in but have had no report of this meeting. The Prime Minister's line is not peculiar to him: Berenger, who has his differences with Jugnauth on other matters, confirmed to me that the latter was sticking to MMM doctrine. We await to see the exact formulation agreed in Delhi but what is clear is that Mauritius does assert that she has sovereignty over the Chagos Archipelago.

2. Clearly we must continue to insist on our own assertion that the Chagos Archipelago is British but have you thought further about the ICJ and Commonwealth aspects on which I would value guidance? In your useful letter of 10 November 1982 you pointed out that recourse to the ICJ would require our consent. The Mauritians believe we have said we would not give it. Is this right? Presumably our fear is not that our case would not stand up but that the politicisation of the Court and public opinion would prevent objective judgment. Your instructions to me for my approach to the Mauritians included a passage about the non desirability of fellow members of the Commonwealth raising differences at the NAM meeting. But surely we would say the same of the Mauritians raising it at the Commonwealth Heads of Government Meeting in New Delhi?

/3.

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RESTRICTED

3. At this end things may become a little clearer when the report of the Select Committee on the excision of the Chagos Archipelago is published although I think it will simply rehearse history. de Lestrac is now putting the final touches to it; it is unclear whether it will be debated in the Legislative Assembly. I hope the Department has to hand the records of discussions held in the margin of the Constitutional Conference and the Governor's reports in 1965 so that we can be ready to refute any wild allegations which may be made.

4. At a more fundamental level you will no doubt be considering how we should respond to Mauritius' position on sovereignty. There must be a real temptation to use the stick but our room for leverage is small. We could reduce aid and consider (although I doubt that this is practical either commercially (Tate and Lyle) or legally and diplomatically (Lome sugar protocol) reducing our purchase of sugar. But I cannot see this achieving anything except unifying Mauritian opinion against us and encouraging them to get closer to the Soviet Union (although the French would have their own views on this). I believe therefore that one is inevitably forced back to our present policy in which we firmly stick to our position on the Chagos (perhaps proclaiming it more often and if possible obtaining support from our allies for this line) while at the same time we should encourage the Mauritians to maintain friendly relations. Such a policy of damage limitation seems likely to succeed because the issue remains low key as far as the ordinary Mauritian is concerned but we will need to watch carefully that politicians do not try to exploit it.

5. I enclose a note on the position as seen from here.

Yours ever,

J

J N Allan

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Annex 228

Note from C. A. Whomersley, of the U.K. Foreign and Commonwealth Office Legal Advisers, to Mr. Hunt of the U.K. Foreign and Commonwealth Office East African Department (21 July 1983)

RESTRICTED

(20)

Reference
JEB 0401
RECEIVED
15 AUG 1983
DEPT
INDEX

Mr Hunt
EAD (K301)

MAURITIUS: SELECT COMMITTEE REPORT ON CHAGOS

1. This has come to me in Mr Watts' absence.

2. On the point in the second sentence of paragraph 2 of your minute, I think that the basic principle is that a protest to another Government can be made about the actions or words of that other Government. On the other hand, to protest to another Government about the words or actions of private individuals, even if they are members of the legislature, would not be reasonable, as the Government has no responsibility for the words or actions in issue. Nevertheless, there would, I think, be no reason why in the latter case a Note should not "place on record'' the views of the British Government on the matters in question.

3. Now, I am not sure how one applies these general principles to the case before us. My knowledge of the background is limited to the information in Mr Allan's letter and enclosure, but it seems to me that the Report might be thought to have a sufficiently official 'flavour' to it to justify our making a formal protest. Certainly, for the Mauritius Government to have allowed the exchanges at Appendices S and W of the Report to be published is an action which does justify a protest from HMG. If, however, you feel that in the circumstances to make a formal protest about the contents of the Report would not be justified in the light of my preceding paragraph, you might replace the words in green square brackets in the second paragraph of your draft by the following: ''wish to place on record its own views on''.

4. I have made a few amendments to your draft Note. In particular, I have omitted the word ''we'' which is inappropriate, I would have thought, in what is after all called a third person Note. I think that the specific references to the words which we find objectionable might be put in inverted commas. I have also added the fact that Resolutions of the UN General Assembly are not legally binding, a point which Mr Allan has already made. I take it that you are satisfied that the facts set out in sub-paragraphs (a) and (b) of the draft Note are indeed accurate. Incidentally, what is a ''Lesser'' dependency? This is not a term I have encountered before, but perhaps it is blessed by long usage in this context.

/5.

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CODE B 77

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Reference

5. In view of Mr Watts' earlier, close involvement in this matter, I think that you should also clear the draft with him (perhaps after re-typing as it is now rather messy). I should be grateful, therefore, if you would submit these papers to him on his return on 25 July.

C A Whomersley

CA Whomersley
Legal Advisers
WH227 233 3946

21 July 1983

RESTRICTED

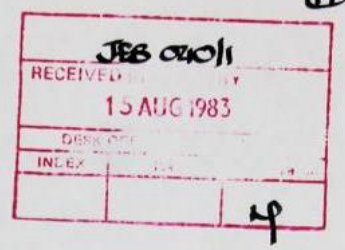
CODE IB 77

Annex 229

Note from D. I. Campbell, of the U.K. Foreign and Commonwealth Office East African Department, to A. Watts, Deputy Legal Adviser, U.K. Foreign and Commonwealth Office (26 July 1983)

RESTRICTED

Reference ..... (49)



Mr Watts
Deputy Legal Adviser

MAURITIUS: SELECT COMMITTEE REPORT ON CHAGOS (20)

1. Would you please refer to Mr Whomersley's minute of 21 July (below) in which he asks for the attached papers to be submitted to you on your return.

2. In answer to the specific points Mr Whomersley raises:

(i) Para 3. If there is any uncertainty as to whether HMG is entitled to make a formal protest to such a document, then I can see no objection to replacing 'wish to draw attention to' with 'wish to place on record its own views on';

(ii) Para 4. We have cleared the drafts with Research Dept, with particular reference to the facts contained in sub-paras (a) and (b).

(iii) Para 4. As far as I am aware, we have always used the term 'Lesser' dependency in this context, although I am not sure how important it is for us to do so.

D. Campbell

D I Campbell
East African Department
K 301 233 4685

26 July 1983

M. Campbell Draft reply to Mr Atkins' letter of 063/1 of 27 July to issue. PA 8/8

PA. See some further amendments. My main concern is to avoid the word "excision" — since in our view the Chagos were never strictly part of Mauritius, although administered by/from M. for convenience.

CODE 18-77
55 8/78

RESTRICTED

Annex 230

Letter from J. N. Allan, British High Commissioner in Port Louis, to W. N. Wenban-Smith, "Commissioner" of the "BIOT" (16 Dec. 1983)

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BRITISH HIGH COMMISSION
PORT LOUIS

063/1

16 December 1983

RECEIVED IN REGISTRY
9 JAN 1984

W N Wenban-Smith Esq
EAD
FCO
London

My dear Nigel,

THE CHAGOS ARCHIPELAGO: THE PRESENT POSITION - AND THE PAST

1. I am glad that we have been kept in touch with developments at the UN (UKMIS telno 1622 of 13 December) and from the point of view of this post very much support the line in FCO telno 901.

2. The Chagos/BIOT are not the principal point of interest at present - the country has quite enough to digest with the apotheosis of Ramgoolam and the claims by Ministers, particularly Sir Gaetan Duval, that as a result of their visits abroad, unemployment has somehow been brought to an end. But the Chagos never entirely disappears and at the annual diplomatic dinner the Governor General cornered me in the presence of the Prime Minister saying that he could not agree to the phrase in Sir John Thomson's letter which said that the islands were administered for convenience by the Government of Mauritius. Warming to the general theme, Mr Jugnauth sought to imply that we were illogical in our position on sovereignty by asking why it was that we were to return the Chagos to Mauritius if no longer needed for defensive purposes. Since this was not the occasion to enter into a detailed discussion, I quickly replied "because we love you": collapse of conversation amidst a lot of backslapping and hand-holding.

3. An echo of the past was provided this week when Sir Colo Maingard, a wartime RAF officer and the former Managing Director of Rogers, came to see me to discuss his evidence before the Select Committee on the Excision of the Chagos Archipelago. You will recall that we refuted the implication in para 29 of the Committee's report that the Meade Commission's decision not to visit the dependencies was in some way sinister. Maingard however holds to the view that the British Government did indeed have plans for the oil islands which dated back to just after the war. Although not prepared to spell out what Lennox-Boyd, Patrick Wall, Ian MacLeod and Sir Tufton Beamish personally told him, he still adheres to the view that the British had a strategic interest in keeping the line of islands running from the Seychelles through the Chagos Archipelago to the Cocos. (He, of course, regards such an objective as having been commendable.) Be this as it may, I believe we were quite right to refute the Mauritius Government's allegation. But in re-reading the Meade report (issued September 1960) I was interested to note that recommendation 70 reads: "Whatever decision is taken concerning the future of the oil islands, the oil extraction plant should be kept in good order" (my underlining). This, in a paradoxical way, brings us a full circle back to the thesis about the Chagos only being administered for the sake of convenience from here.

Yours ever,
James.

J N Allan

cc: Hon D A Gore-Booth, UKMIS New York

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Annex 231

Letter from W. N. Wenban-Smith, "Commissioner" of the "BIOT", to J. N. Allan, British High Commissioner in Port Louis (10 Feb. 1984)

(3)

CONFIDENTIAL

Foreign and Commonwealth Office
London SW1A 2AH

Ref: JEB 040

10 February 1984

J N Allan Esq CBE
PORT LOUIS

Dear James,

(105)
JEB 040/2
1983.

THE CHAGOS ARCHIPELAGO: THE PRESENT POSITION - AND THE PAST

1. Thank you for your letter of 16 December about the Chagos.

2. I am glad that you go along with the line that we should let sleeping dogs lie with regard to the Mauritian Note to the UN of 5 December. It would appear that there is no legal requirement to respond to such a moderate statement from the Mauritians, especially one in which no new arguments were advanced: both sides can now stand pat. But it is interesting to see how the sovereignty issue keeps on cropping up, even when it is no longer the main talking point in Mauritius: as for your exchange with Jugnauth at the annual diplomatic dinner, you were surely both right, however jesting your riposte.

3. Margaret Walawalkar has done some useful research into Sir Colo Maingard's ''echo from the past'' We did indeed have some strategic interest in keeping an all-British line of islands running through the Chagos Archipelago from Seychelles to the Cocos Islands, and in having a variety of routes to Australia and the Far East. But Margaret's examination of the Colonial Office files shows that there was less importance attached to this than Sir Colo Maingard believes. In fact there was a progressive decline in British interest in the strategic possibilities of the area paralleled by a progressive increase on the part of the United States. As to Recommendation 70 of the Meade Report, this should be read in conjunction with the section entitled ''Soap, Oil and the Oil Islands''. This makes it clear that the decision about the future of the islands was a financial decision by the Mauritius government as to whether or not to aid the ailing copra plantation companies of Agalega and the Chagos Archipelago. There most certainly was not anything sinister in the Meade Commission's decision not to

/visit

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visit the islands. They did not visit Rodrigues either and their own explanation of lack of time is by far the most convincing.

4. None of this however alters the argument that the Chagos Islands were administered from Mauritius for reasons of administrative convenience, especially when one bears in mind that proposals to transfer the Archipelago to Seychelles were being considered in the 1950's and early 1960's. I enclose a fascinating note on the topic which Margaret has prepared.

5. Incidentally, the Assistant Under-Secretary at the Colonial Office with responsibility for the Indian Ocean, Ambler Thomas, noted on his visit to Mauritius in March 1963:

> ''Oil Islands are much more distant and have less contacts with M[auritius]. Closer connexion with Seychelles likely to be recognised, particularly as Seychelles Company has 2/3 interest. (NB. I mentioned this to "Colo" Maingard, whose Company (Rogers) have 1/3 interest). He thought transfer to Seychelles quite sensible ... ''

Now, if we had been the French ... !

W N Wenban-Smith

cc:
Mrs Walawalker
Research Dept

CONFIDENTIAL

Annex 232

J. Addison & K. Hazareesingh, *A New History of Mauritius* (Part 2 of Extract) (1993)

CHAPTER 16

The economic and social history of Mauritius since the Second World War: economic problems and policies

The main features of the economy and society of Mauritius and the problems which have faced the governments of the island since the end of the Second World War have remained fairly constant. They were analysed in 1960 and 1961 by two commissions. The first of these was led by Professor Titmuss and Dr Abel-Smith from the London School of Economics, and reported in *Social Policies and Population Growth in Mauritius*. Professor Meade from Cambridge University made a broader survey of the *Economic and Social Structure of Mauritius*. The Meade Report has served as a guide to politicians and administrators ever since it was published.

The Meade Report: problems identified

Although Mauritius is normally classed as a developing country and part of the Third World, Professor Meade made the point in his report that, in some respects, it is not typical of the Third World. 'In many ways', his report stated, 'Mauritius is not underdeveloped. Some of its services are far advanced but too many eggs are in one basket.' In 1977 the average per capita income of Mauritians was £300, well above that of the world's poorest countries. Average incomes, of course, hide extremes of poverty and of affluence and Mauritius has its share of both. However, poverty in Mauritius is on a small scale compared with that found in the world's poorest countries.

The island's main problems were an economy dependent to a dangerous and unacceptable degree on a single crop, sugar; the dangers of an excessive rise in population; a high unemployment rate; and, since the mid-1970s, a serious balance of payments problem (i.e. an excess of imports over exports). The solutions, easy to prescribe but difficult to implement, were and remain: diversification of the economy; measures to control the growth of population, to encourage exports and to create new jobs. These are all linked to the need to educate the people of Mauritius to be aware of the problems and the corresponding solutions. They are also interlinked. Finally political stability is inextricably linked to the ability of politicians and governments to achieve some success in the control of these problems.

The Titmuss Report

The Titmuss Report forecast the disastrous consequences which would follow for Mauritius if the rate of population growth continued unchecked. Partly as a result of the remarkable success of the government's campaign against malaria since the Second World War, the death rate declined dramatically in the 1960s. The birth rate, on the other hand, remained high. A steady improvement in medical care had increased life expectancy. The population was increasing at the rate of 3 per cent per year. By the year 2000 this would have brought the population of Mauritius close to 3 million.

Population problems

In the particular case of Mauritius, Professor Titmuss and Dr Smith were on safe ground in identifying an unchecked population growth as a threat to the future prosperity and development of the island. The physical area of the island is so small that its capacity for supporting more people is limited. It is worth remembering, however, that in the world in general there is not necessarily any direct link between poverty and a high population density.

The idea that population growth in itself is always a bad thing, that it is bound to lead to a

fall in living standards, to food shortages, to higher unemployment and, in general, to greater poverty, is no longer accepted by experts. One has not got to look far to realise that under-population is at least as likely to lead to social and economic problems. Most African countries, for example, are under- rather than over-populated. If many people in Africa are poor and underfed it is not because there are too many of them. The fault lies in the economy and in its management. The problem of unemployment is solved by creation of more jobs through expansion of the economy, not by slowing down population growth and reducing population.

Solutions to the problem

Having warned against the possibility of economic and social disaster the Titmuss Report went on to make recommendations for avoiding it. Mauritius had much on its side. From the point of view of easy communications, its smallness was an advantage. Educationally it was ahead of most Third World countries. So long as population was kept within reasonable bounds it could become one of the prosperous, not one of the poor, areas of high population density. Quite simply, families were too large and the birth rate was too high. Family planning, later marriages and the ideal of a three-child family were the main ways to restrict population growth.

Family planning

In an island with a multi-racial, multi-religious population, family planning could be a delicate policy for the government to pursue. The large Roman Catholic element in the population rejects, through the teaching of its church, the use of contraceptives. The Muslim community, a minority group, is reluctant to restrict its growth rate. The first offical government support was given to the Mauritius Family Planning Association (FPA) in 1968, ten years after its foundation. Since independence the Association's efforts have been assisted by those of the Action Familiale, a Catholic organisation giving advice on birth control methods acceptable to the Roman Catholic Church. More than half of the clinics run by the FPA were brought under the Ministry of Health in November 1972. A separate division of the Ministry is concerned with maternal and child health and family planning. The programme became part of the First National Development Plan.

The whole campaign to control population growth has had remarkable success. The rate of growth was down to about 1.7 per cent in 1975, a decline rarely achieved even in the developing world. It seemed that it might fall to something approaching 1 per cent during the 1980s. Unfortunately the campaign seemed to lose its momentum in the late 1970s and, although the disastrous rise in population which Titmuss warned the country against has been avoided, population growth remains a potential danger to the future prosperity of Mauritius.

Emigration

The only other possible way of checking population growth is through a policy of encouraging emigration. The Mauritian government has used this method also. In the 1960s, the emigrants were mainly Creoles, motivated often by a desire to escape the danger of Hindu domination. They went mainly to Australia (just over 40 per cent), Britain (just under 40 per cent) and, to a lesser extent, to France and South Africa (about 4.5 per cent in each case). In the 1970s an increasing number of Indo-Mauritians joined the emigrants. Almost all went to Britain where they worked mainly in hospitals. There were many Mauritians working as male nurses in British mental health hospitals. Emigration, however, can have no more than a marginal effect on population. In the whole of the 1960s, fewer than 17,000 people left the country.

Unemployment

Some of those who emigrated left to find suitable employment and emigration, therefore, made a contribution to the solution of another problem, that of unemployment. Again, however, the contribution was a small one and the problem an increasingly serious one. An attempt to understand the high level of unemployment shows how many of the country's problems are interlinked. The dominant place of sugar in the economy, a problem in itself,

does not help. At first sight this may seem a strange claim to make. After all the sugar industry is still the largest employer of labour in Mauritius. It provides jobs for 60,000 workers, about one-third of the work force. However, employment in the industry is seasonal. Many of the jobs are only available during the harvesting season from August to December. Many of those employed at this time may become unemployed during the rest of the year. Another reason for claiming that the sugar industry indirectly increases unemployment lies in the growing reluctance of educated young men to work in the cane fields. The government's success in expanding educational opportunities has also helped to create this situation. Some young men who have succeeded in gaining a Cambridge School Certificate or some other educational qualification would rather remain unemployed than undertake manual labour in the sugar industry. Another feature of education in Mauritius further complicates the issue. Too high a proportion of young Mauritians have had an 'academic' education; too few have had a technical or practical training.

Economic planning

Economic planning in Mauritius goes back to the year 1957, when the government's Economic Planning Committee drew up a *Plan for Mauritius*, a five-year programme of government projects. This had to be abandoned in 1960 when the destruction caused by the cyclones 'Alix' and 'Carol' faced the government with much more urgent problems in its 1960 to 1965 Reconstruction and Development Programme. The reports of Titmuss and Meade also helped to point the way to economic and social priorities and an Economic Planning Unit was set up. After independence the Unit became part of the Ministry of Economic Planning and Development which drew up the First National Plan, a four-year plan, from 1971 to 1975.

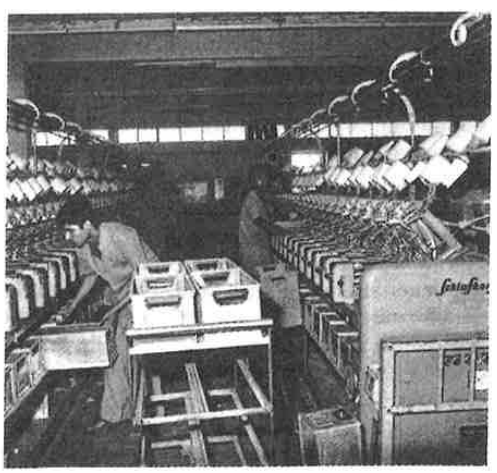
The First National Plan 1971-1975

In drawing up this programme the planners recognised the three major problems: the mono-crop economy (sugar), the rate of population growth and unemployment. Its main objective was to create employment. It aimed at creating 52,000 new jobs in the first four years. It slightly exceeded its target in this respect as well as in the economic growth rate achieved; 10 per cent instead of 7 per cent.

The Mauritius Economic Review, published by the Ministry of Economic Planning and Development in 1976, summed up the achievements of the 1971 to 1975 plan with justifiable satisfaction:

> The 1971-1975 Plan therefore sets out as its main objectives the creation of productive employment, steady and viable economic growth and more equitable distribution of income.
>
> The 1971-1975 Plan period was undisputably one of solid economic achievements and all round progress. The targets laid down in the Plan in respect of employment and income were surpassed. Investment in the basic social and economic infrastructure of the country took place at an accelerating rate. Impressive results were also achieved in the diversification of the economy away from the monocropping of sugar. Positive results were also obtained in the efforts made to reduce the rate of population growth.

A textile factory in the Export Processing Zone scheme



Export Processing Zone

The success of the job creation programme was achieved largely through industrial development, much of it under the Export Processing Zone project and some as a result of the government's own action programme carried out by the newly created Development Works Corporation under the name of 'Travail pour tous'.

The first Export Processing Zone, set up in the Port Louis area, was, as its name indicates, an area where industrial enterprises were set up for the purpose of producing goods for export. Export Processing Zones were first created in the Far East, and now exist in other parts of south-east and south Asia. Export Processing Zones offer advantages and opportunities both to foreign investors, including multi-national corporations, to domestic investors and to the people of the countries in which they are based. To the investors they offer above all a plentiful supply of cheap labour, mostly provided by girls and young women. For the host countries they create opportunities for employment through the establishment of manufacturing industries. In Mauritius they are an attempt to contribute to the solution of the island's economic and social problems by creating new jobs, diversifying the economy and stimulating exports. Various incentives and concessions were available to encourage foreign investors as well as Mauritians to invest capital in these enterprises. Facilities for cheap transport, power and water were provided; certain tax exemptions were offered as well as duty-free import of machinery, raw materials and other necessary items. By 1975 the Export Processing Zone scheme had provided nearly 10,000 new jobs and by the following year eighty firms were operating under the scheme, many financed and controlled from abroad. French, Hong Kong, Indian and German firms were prominent. The project was continued in the Second Development Programme, 1975 to 1980, and jobs provided totalled nearly 20,000.

By far the most successful sector of manufacturing industry within the scheme has been textiles. Nearly fifty firms are involved in this area but Mauritius has serious competition to face in the field, notably from Hong Kong with a much larger tradition in the industry and over 1000 firms producing vast quantities of goods. The Mauritian government needs to strike a delicate balance between allowing the firms to produce their products at a low cost, and satisfying the aspirations of the Mauritian labour force. The 'Travail pour tous' programme provided jobs for 5000 to 6000 people in public works including the building of roads, schools and classrooms, public buildings and forestry schemes. Between 1974 and 1975 the Development Works Corporation which administered the 'Travail pour tous' programme was also made responsible for a Rural Development Programme, aimed at raising living standards in some of the island's poorest villages.

Tourism

The expansion of tourism was another major success of the 1971 to 1975 programme. Between 1970 and 1974 numbers of tourists almost trebled (from 25,000 to 73,000), earnings from the industry more than quadrupled (Rs 27 million to Rs 112 million) and workers directly employed trebled (1500 to 4500).

The Second National Plan 1976-1980

The *Economic Review* of the period 1971 to 1975 ended on an optimistic note both on the progress achieved and on future prospects:

> To sum up, the significant achievements of the economy during the plan period 1971-1975 were reflected in GNP growth, the expansion of the manufacturing section including the export processing zone and the dent made into the unemployment problem. These clearly bear out the success of the development policy followed by the country and indicate that the base for more rapid development in the future has been firmly established.

Unfortunately the prediction in the last sentence was not fulfilled. The Second National Plan, 1976 to 1980, did not have the success of the first. The target, for example, of 76,000 new jobs was not achieved: the continued growth of industry in the Export Processing Zone did not take place. Many factors contributed to this failure to maintain

the economic momentum of the early 1970s. The high level of government spending in the 'Travail pour tous' programme placed a heavy strain on the economy.

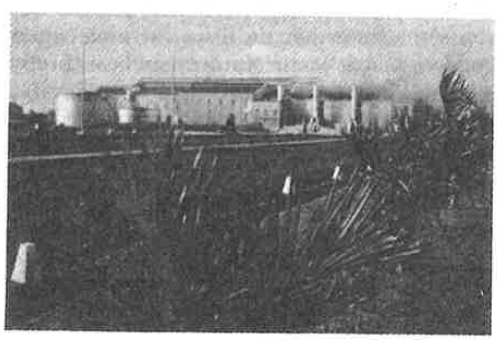
The sugar industry runs into trouble

The sugar industry, after enjoying a boom which reached a peak in 1974, suffered from falling prices. Without the agreement with the EEC under the Lomé Convention (see page 100), the effect of this trend would have been more serious. As a result of this, and the rise in oil prices after 1973, the balance of trade tilted heavily against Mauritius. Imports, stimulated partly by rising wages, almost doubled between 1974 and 1978. The value of exports fell because of the slump in the sugar industry. From a slight surplus in 1974, the country's trade fell into a deficit of over Rs 500 million in 1976, and over Rs 1000 million in 1978. The sugar industry's troubles were made worse by a substantial rise in wages and prices and by the strike of dock workers in Port Louis in August 1978. Perhaps some good for the industry has resulted from these developments. High wages have at last forced the industry, with government approval, to turn to greater mechanisation and to make maximum use of all parts of the crop in producing a wide range of by-products. Cane waste, for example, is used as fuel for sugar factories, for the making of board for use in the furniture industry and for the production of alcohol to be used as an alternative to petrol.

Diversification in agriculture

The sugar industry also played a leading part in the struggle to diversify the agricultural sector of the economy. Revenue made by the industry was used to promote the growth of other crops. Of these, tea is the most important and is the country's next most important agricultural export after sugar. Tea bushes with their deep roots are able to withstand the destructive power of cyclones better than most crops. A Tea Control Board established in 1959 controls the cultivation and sale of the crop and also its quantity and quality. Other export crops grown in significant quantities include tobacco and also fibre.

A modern sugar refinery in Mauritius



A wide range of vegetables is cultivated, many of them inter-cropped between the rows of sugar cane, in an effort to increase the proportion of food produced on the island. The need to import large quantities of food, particularly rice, is one of the main reasons for the unfavourable balance of trade. About 30 per cent of the cost of imports is for food and half of this is for rice and wheat, both of which are subsidised. A National Food Production Committee was set up in 1974. Its task was to make recommendations for the 'most practical and efficient means of rapidly increasing local food production'. Considerable progress has been made towards the achievement of self-sufficiency in vegetables. The staple crops of rice and wheat are never likely to be grown in quantities that will significantly reduce the import bill, but experiments in the growing of rice are being continued, with the help of Chinese advisers.

Efforts were also made to produce maize, meat and dairy produce. The main success in this field was with poultry and by the end of the 1970s production reached 65,000 frozen chickens a week, sufficient for the island's needs. In Mauritius chicken is eaten by all the different communities. The fishing industry has made disappointing progress. Too many foreign fishermen with up-to-date ships and equipment have recently begun to exploit the waters of the Indian Ocean. Fishing fleets from Japan, Taiwan and South Korea are based in Mauritius.

Attempts to diversify the Mauritian economy have thus achieved some success. Nevertheless there is no escaping the fact that the prosperity of Mauritius remains overwhelmingly dependent on its sugar crop. The simple truth is that few crops are able to withstand the cyclones as

well as sugar and few seem to flourish as well in the peculiar and difficult agricultural conditions of the island's rock-strewn landscape. Sugar still covers 90 per cent of the cultivated land; employs nearly 60,000 people, one-third of the total employed population; and, along with its main by-products like molasses, accounts for almost 70 per cent of the value of the country's exports. As shown above, however, the extent of sugar's dominance has declined in recent years. Amongst the reasons for this have been the slump in sugar prices and the rise in labour costs since the boom year of 1974. Mechanisation has increased but there is a limit to the part machines can play in harvesting the crop in the difficult rocky cane fields. There is also a reluctance to carry mechanisation too far in a country where the creation of more jobs is still a priority of government policy. One result of these developments was that the production target set for sugar of 800,000 tonnes by 1980 in the Second National Plan had to be abandoned. Early in 1980 the price of sugar in the world market began to rise again because, for the first time in six years, world production fell short of consumption. One good result of the difficult years between 1974 and 1980 was the remarkable skill and ingenuity which enabled every part of the crop to be turned to some use and profit.

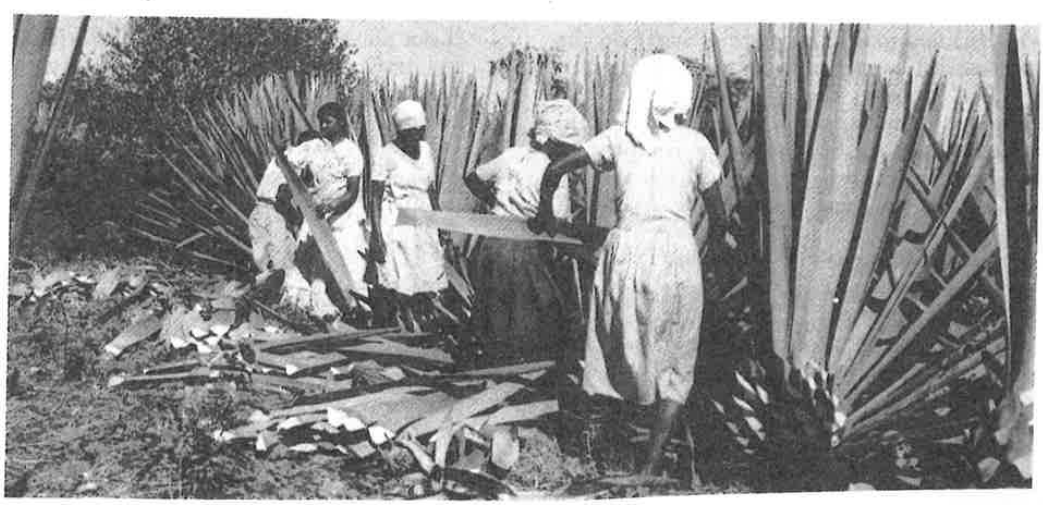
Special agreements for the sugar industry

Finally it should be made clear that Mauritius and other sugar-producing areas have been protected from the worst effects of low prices on the open market by the guaranteed market for sugar at guaranteed prices in the EEC. The lesson of the last six years is to underline the wisdom of the Prime Minister and his colleagues who negotiated the terms of the Lomé Convention with the EEC countries. The story behind the Lomé Convention and its special sugar protocol must be understood.

The Commonwealth Sugar Agreement 1951

In 1951 Britain made a Commonwealth Sugar Agreement with the sugar-producing members of the Commonwealth. Under this agreement Mauritius sold around 60 per cent of her sugar crop to Britain. This arrangement was the pivot of the Mauritian economy and her main source of revenue from exports. On 1 January 1973, Britain became a member of the European Economic Community (EEC) or European Common Market. As a member of the EEC she had to abandon, within five years, all her existing trade agreements with other countries. These included the Commonwealth Sugar Agreement which was due to expire at the end of 1974. Britain made it known that she intended to continue to give her Commonwealth partners access to Britain for their sugar

Cutting jute



and this commitment was written into her treaty of accession to the EEC.

The Lomé Convention 1975

During 1974 Britain's negotiations ran into difficulties with her EEC partners but eventually, in a special sugar protocol which became part of the Lomé Convention signed in 1975, satisfactory terms were agreed.

The Lomé Convention was a new agreement signed between the extended European Community[1] and forty-six developing countries from Africa, the Caribbean and the Pacific, the ACP countries. They included all of Britain's Commonwealth partners previously in the Commonwealth Sugar Agreement. The Lomé Convention replaced the earlier Yaoundé Convention. This had admitted the old African colonies of France and Belgium as associate members of the EEC, with certain trading privileges. Mauritius, because of her old ties with France, had become a member of the Yaoundé Convention in May 1973. She was the first Commonwealth country to become an associate of the EEC before Lomé. Mauritius thus had a special role in the negotiations which led to the conclusion of the sugar protocol. The thirteen ACP sugar-producing countries were guaranteed a market for 1.4 million tons of sugar a year at prices linked to the prices paid within the EEC to producers of beet sugar. Of this quota, the share of Mauritius was 500,000 tons, the largest of any single country by a big margin. Fiji was next with 163,000 tons. The price of sugar on the open market happened to be much higher than the EEC price at the time and Britain was permitted to pay a special price (£260 per ton) for her share of ACP sugar, a compromise between the EEC price of £157 per ton and the world price of just over £300. Mauritius believed that she had obtained a good deal and falling world sugar prices over the following five years proved her to be right. The Lomé Convention also gave free access to the EEC for all manufactured products of the member states. This was of value to Mauritius as the factories of her Export Processing Zone began to produce goods for export. The Lomé Convention was important above all, however, because it provided satisfactory new terms for the marketing of Mauritian sugar after the expiry of the Commonwealth Sugar Agreement in 1974.

Suggestions for revision

a) It is important to understand the main economic and social problems that faced Mauritius both before and after independence.

b) You should also know what steps were taken by the government of Mauritius to try to solve these problems and how successful their policies have been.

Suggestions for further work

1 Make a list of the reasons why, in spite of all the efforts made to diversify the economy, sugar has continued to dominate it.

2 Find out about other economies which, like that of Mauritius, are largely dependent on one crop or one commodity. Why are most, if not all, of these in the 'Third World' or less developed world? They are also usually countries which, until recently, were colonial territories.

3 What is meant by a 'balance of payments' problem? Why has Mauritius had such a problem since about 1975?

1 *Initially (1958) the EEC had six member states: France, West Germany, Italy, Belgium, Holland and Luxembourg. Three new members, Britain, Denmark and Eire, were admitted in 1973, extending the membership to nine.*

Annex 233

Jocelyn Chan Low, "The Making of the Chagos Affair: Myths and Reality" in EVICTION FROM THE CHAGOS ISLANDS (S. Evers & M. Kooy eds., 2011)

THE MAKING OF THE CHAGOS AFFAIR: MYTHS AND REALITY

Jocelyn Chan Low

The making of the Chagos issue is still a major controversy in both contemporary Mauritian historiography and political discourse.

Was there a 'deal' in 1965 between the British authorities and the Mauritius Labour Party and allies on independence against the excision of Chagos? Or was the Mauritian Premier, Sir Seewoosagur Ramgoolam blackmailed into accepting partitioning and an incomplete decolonisation of Mauritian territory?

This chapter explores in depth the relationship between the decolonisation of Mauritius and setting up of the BIOT through the detachment of the Chagos archipelago from Mauritius (and the Seychelles) during the Cold War. Making use of declassified materials now available at the Public Records Office in the UK, it focuses on the motivations and strategies of various protagonists—the US and British authorities as well as political elites of Mauritius.

Controversy over the Excision of Chagos

On 12 March 1968 Mauritius acceded to independence within the Commonwealth under a constitution that had been deliberately manipulated to avoid embarrassment to the British government of having to declare the *Ilois* (islanders), citizens of the BIOT since 1965, *apatrides* (i.e lacking a formally recognized nationality).[1] For the Mauritian political class, grappling with ethnic tensions that flared up in deadly inter-ethnic rioting, living in a country deep in the throes of an acute crisis of underdevelopment, the Diego Garcia affair and fate of the *Ilois* was matter of detail.

However, the excision of Chagos was and still is a matter of controversy in both Mauritian political discourse and historiography; the main

[1] For the purpose of citizenship the Mauritius constitution exceptionally ignores the Order in Council of November 1965.

reason being that the Constitutional Conference in 1965, which would decide the ultimate constitutional status of Mauritius, coincided with the final decision to detach the islands. To what extent were the two issues inextricably woven or kept apart, as Anthony Greenwood, the British Secretary of State for Colonies, would have the House of Commons believe at the time?

Sir John Rennie, the British governor, reported on 11 November 1965 that there was a widespread perception in Mauritius that a deal had been struck on the excision of Chagos against independence (CO 1036/1253: Rennie to Secretary of State, 15 November 1965). This was precisely the stand of the Parti Mauricien Social Démocrate (PMSD) at the time. The party resigned from the coalition government in November 1965, ostensibly to protest against the decision on Chagos. Jules Koenig and Gaëtan Duval, the leaders of the PMSD, maintained they were not against the use of Diego Garcia for the defence of the West, but rather that the terms of the cession were too disadvantageous to Mauritius. Gaëtan Duval, in his public speeches at the time, as well as in his autobiography, and before the Select Committee on the excision of Chagos maintained that there was a close connection between premier Ramgoolam's decision to 'sell Diego' and the outcome of the Constitutional Conference in favour of general elections and not a referendum to decide on independence (Select Committee 2003, 14). Given the strong opposition to independence in Mauritius, it was a foregone conclusion that in a country facing socio-economic distress the majority of the Mauritian population would have opted for association with Great Britain and the British passport it entailed if a referendum was held to decide on that single issue. Hence according to Duval:

> Les Anglais sans se prononcer catégoriquement, penchaient ou faisaient semblant de pencher pour la thèse du PMSD et on pouvait espérer, à un certain moment que cette proposition était acceptée. C'est alors que Diego vint sur le tapis (Duval 1976, 91).[2]

According to Duval on 23 September 1965, while the Mauritius Constitutional Conference was discussing the proposition for a referendum, the Chairman suspended the proceedings and invited the Mauritian delegates to meet him and offer their views on the future of the Chagos

[2] Translation: The British seemed to be in favour of the proposals of the PMSD though they did not state it openly and at one point it was expected that these proposals would be accepted. It was then that Diego came into the picture.

archipelago. The PMSD refused to attend, feeling they had no mandate to consider any excision of part of the Mauritian territory. The meeting was attended by delegates from other parties (the Mauritius Labour Party, the Independent Forward Block and the Muslim Action Committee) and official nominees. As Duval elaborates:

> Ramgoolam posa une question préalable aux Anglais: soit ils refusaient le référendum, ou Ramgoolam refusait de négocier la vente de Diego Garcia. Les Anglais acceptèrent le 'truce' et firent soudainement volte face au cours des discussions constitutionelles, disant qu'il n'était pas d'usage dans le Commonwealth (ce qui était faux) (Ibid., 92).[3]

The controversy over excision took a new turn with the emergence of a Marxist-inspired revolutionary party, the Mouvement Militant Mauricien (MMM), in 1969. The new left saw itself pitted against the forces of imperialism and neo-colonialism, and advocated for a real decolonisation of the country (Oodiah 1989, 13). According to the leftist perspective, independence had been programmed since 1947 and Ramgoolam, *'l'homme des anglais,'* was being groomed to safeguard British interests. The Chagos affair was seen both as means to unmask the neo-colonial political leadership and question the nationalist credentials of the 'father of the nation.'

The excision of Chagos has always been a source of embarrassment for the leadership of a Mauritius Labour Party that could claim to be the main architect of independence but always closely aligned with Great Britain. The leaders of the party would thus either maintain that they were unaware of the true designs of Great Britain or that they had no alternative given the divisions among the Mauritian delegation. It was Chagos or independence but Sir Seewoosagur Ramgoolam refused the terms 'blackmail' or 'deal' (Select Committee 2003, 10).

Significantly, if Sir Veerasamy Ringadoo, an influential labour party leader at the time, apologized publicly in December 1998 to the Chagossian community for the sufferings they had endured as a result of a decision for which they were not consulted, he insisted that the leadership of the Mauritius Labour Party had no choice. Another party stalwart, Sir Satcam Boolell, later wrote that the non-settlement of the

[3] Translation: Ramgoolam put the issue to the British: either they refused the referendum or he would negociate on the sale of Diego Garcia. The British agreed to the 'truce' and suddenly reversed their position during the Constitutional talks, arguing that the referendum was not used in the Commonwealth (which was false).

Chagos issue "could have prompted the British government to send us packing and return to the negotiating table not until we had reached a measure of agreement among ourselves on independence" (Boolell 1996, 27). This would have created instability and delayed independence while "the British would not have waited to proceed with their plan of excision" (Ibid.).

In 1982, the Mouvement Militant Mauricien/Parti Socialiste Mauricien (PMSD) government set up a select committee chaired by the Minister of Foreign Affairs, Jean Claude de l'Estrac, to investigate the circumstances of excision. It concluded that the majority of delegates supporting independence had been blackmailed into ceding Chagos against independence, which adds further to the illegality of the action. The select committee also underlined the non-availability in Mauritius of relevant documents (Select Committee 2003, 20). Since then many important records have been declassified at the Public Records Office which shed new light on the Chagos affair and its link with processes leading to Mauritius' independence.

Independence in the Making

Declassified records since mid-2000 show that the independence of Mauritius was very slow in the making from the perspective of colonial authorities (Chan Low 2002b). Throughout the 1950s, for the Colonial Office, Mauritius was part of a group of smaller territories that could never aspire to independence (Morgan 1979–1980, 34). Besides, in the case of Mauritius, authorities noted a total absence of any nationalist movement calling for independence (CO 1036/331: Scott to Macpherson, 6 February 1958). In the wake of the Suez crisis in 1957, when defence reviews led to a shift from conventional to nuclear defence, an audit of the empire was made and confidential reports drafted as to the future constitutional development of each colony. This is often seen as prelude to the wind of change and acceleration of British decolonisation. Significantly, in the case of Mauritius, it was felt that though withdrawal would save Britain some £675,000, the colonial link had to be maintained, not only because Mauritius and dependencies provided facilities of communication in the Indian Ocean and were also of interest in connection with technical, naval and air installations, but mainly because "withdrawal would lead to violent upheaval" (CO 1036/331: Future constitutional development of colonies, CO print, May 1957). For the

democratisation of political structures in the territory had led to a rapid ethnicisation of politics in a multi-ethnic society, and at the time, the island was in the throes of a deep, structural economic crisis. The monocrop economy could no longer absorb the rapid demographic growth caused mainly by the eradication of malaria. The population of the island rose from 419,185 in 1944 to 681,619 in 1962 and 850,968 in 1972 (Chan Low 2002a).

The Franco-Mauritian oligarchy that had held political and economic hegemony over the island for more than a century felt threatened by the political mobilization of the Indian and Creole masses, a process sparked by the rising Indo-Mauritian and Creole intelligentsia behind the Mauritius Labour Party and Independent Forward Block. Their political instrument, the PMSD would henceforth exacerbate the fears of Hindu hegemony (the Hindu population making up about 50 percent of the population) winning over the Creole and Muslim minorities against further democratisation of politics and decolonisation (Chan Low 2007, 49–64).

Reports reveal that the Colonial Office was notably anxious that the inter-ethnic situation on the island might further degenerate, and the example of Cyprus was often cited (CO 1036/516: Report by M. Profumo on his visit to Mauritius, 17–23 June 1957, n.d.).

Any inter-ethnic rioting, during which the local police force would be totally inadequate (Ibid.), would not only jeopardise the value of Mauritius on the air route to Australia, but also potentially lead to massive disinvestment, thereby reducing the island rapidly to a tropical slum. The British troops might have to intervene to restore law and order in the context of diplomatic complications, with France and India siding with rival protagonists of French or Indian origins[4] (CO 1036/331: Scott to Macpherson, 8 February 1958). This explains the decision to support moderates of the Mauritius Labour Party around Ramgoolam (CO 1036/623: Deverell to Macleod, 8 January 1960) and the rather slow constitutional advance. The wind of change would blow very timidly on the island.

However, it was Ramgoolam himself who from 1959 onwards, under the influence of Chedi Jagan, Prime Minister of Guyana and aware of the weakening pro-empire faction within the British conservative party, started the campaign Mauritian independence—an independence which

[4] The Franco Mauritian always claimed their French descent.

the British had for long considered unthinkable, not only because of the deep ethnic divisions on the island but also due to the small size and lack of resources available on a 'small, isolated rock in the Indian Ocean' at a time of the Cold War.

However, following the visit of colonial official, A.R. Thomas to Mauritius, prior to the general elections in 1963, the Colonial Office began to review its position. In a memo on the Mauritius Constitution dated April 1963, A.R. Thomas argued that the arguments in favour of granting independence to Mauritius were irrefutable. However, even if a rapid withdrawal would have been advantageous to Britain by reason of the severe economic crisis and rapid population growth, the threat of inter-ethnic rioting meant that British authorities stretch independence as long as possible in order to allow Mauritius to become accustomed to Mauritian governance themselves, under a more advanced constitution (PRO CO 1036/1082: Note on Mauritius Constitution, A.R. Thomas, April 1963).

As from 1963, British policy pertaining to the independence of Mauritius would revolve around 3 axes:

(i) Mauritius would become sooner or later independent
(ii) Given the smallness of the territory Mauritius would inevitably be associated with an Eastern African Block
(iii) The ethnic minorities would finally reconcile themselves to the idea of independence of Mauritius
(PRO C01034: Cabinet, Mauritius Constitutional Development, April 1965).

However, subsequent events would prove that British policy was based on the wrong premises; this was not only because schemes for developing an Eastern African block ran into too many obstacles, but also mainly because of the growing inter-ethnic tensions within Mauritius itself. The elections of 1963 and the arrival of Gaëtan Duval, a self proclaimed King Creole on the scene, in a PMSD resolutely anti-independence, combined with the emergence of the All Mauritius Hindu Congress, a radical Hindu nationalist group, severely conflicted with the British policy of leading Mauritius to independence in a climate of social appeasement. Hence the unwillingness of British authorities to accelerate the constitutional process, despite the pressure of Ramgoolam, who was being egged on by some African heads of state, made Ramgoolam perceive the very prospect of independence with complete dejection in early 1964.

However, the coming to office of the British Labour Party in Great Britain, after their victory at the general elections of October 1964, led to the reopening of the dossier of Mauritius' constitutional development. At first, the new Secretary of State for Colonies, Anthony Greenwood seemed well disposed towards Ramgoolam and consequently a new Constitutional Conference was scheduled for September 1965. However, declassified documents of the Public Records Office reveal that the anti-independence demonstration held in the wake of Greenwood's visit to Mauritius in March 1965, as well as the inter-ethnic violence between Hindus and Creoles that flared up in the South and North of the country (cf. Chan Low 2007), necessitating the despatch of British troops from Aden to maintain public order on the island, had a profound impact on the Secretary of State and the Colonial Office. The sources reveal that the Secretary of State became convinced that independence could not be granted to Mauritius in the immediate future. Indeed, on 15 April1965, during a meeting at the Colonial Office, "the Secretary of State expressed the view that he did not think that it would be practicable for Mauritius to move to independence in the near future" (PRO CO 1036/1084: Notes of Meeting on 15 April 1965, Colonial Office). In a memo to the British Cabinet, it was underlined that "confusion and lasting damage could be caused if we were now to persist with the previous policy of edging Mauritius to independence at an early date" (PRO CO 1036/1084: Cabinet. Mauritius Constitutional Development, Note by the Secretary of State for Colonies, April 1965). If Mauritius became independent under a regime with a strong Hindu preponderance, an attempt at a *coup d'état* by some Creole elements, perhaps close to Gaëtan Duval, could be expected. British troops would then have to intervene to protect the regime, nullifying the notion of independence itself. As to the Constitutional Conference scheduled for September 1965, Anthony Greenwood stated that "my own opinion is that independence is not desirable for Mauritius in the near future. If at the conference I was able to make this clear without producing immediate deadlock, and an impossible situation in Mauritius, I should wish to do so" (Ibid.).

Following inter-ethnic rioting between Hindus and Creoles, the Secretary of State expressed preference for a compromise in order to formulate an "association with Great Britain as the long term objective of the constitutional evolution of Mauritius" (PRO CO1036/1084: Defence and Overseas Committee: Mauritius Constitutional Development. Note by the Secretary of State for Colonies, May 1965). However, the authorities were well aware of the danger of prolonging of

uncertainty over Mauritius' final constitutional status (PRO CO 1036/1084: British Information Service to Colonial Office, 10 April 1965). They hoped that an agreement would be reached among the main parties, all of which wanted to keep in, one way or the other, close ties with Great Britain (PRO CO 1036/1370: Note on Mauritius. Enclosure. Terrell to Kersley 8 June 1965). Yet on 24 September 1965, at the closing of the Constitutional Conference, the Secretary of State declared officially that "it was right that Mauritius should be independent and take her place among the foreign states of the world" (PRO CO 1036/1/67. MCC. Record of Meeting held at 10.30 am on 24 September 1969). After necessary electoral reforms, general elections would be held, and if the new assembly voted by simple majority for independence, Mauritius would become a sovereign state after six months of internal autonomy. It was expected that all these procedures could be completed by the end of 1966!

How to explain this drastic shift in the evaluation of Mauritius' preparedness for independence? According to Anthony Greenwood, the British decision for independence was the logical result of a discussion held at Lancaster House in September 1965, where authorities explained that "[w]e conceded because the overwhelming majority of the delegates at the Constitutional Conference came down in favour of it and because the decision seemed to me in any case to be the right one" (PRO CO 1036/1253: Greenwood to Rennie, 15 December 1965). Yet as Trafford Smith underlined on 14 February 1968, "the conference outcome was not unanimous but a decision by Anthony Greenwood in favour of the majority parties" (PRO CO 32/268: Ministries on file: Trafford Smith to Terms, 14 February 1967). Indeed on 11 November 1965, the British governor, Sir John Rennie reported that there was a strong conviction in Mauritius that a deal had been struck between the British government and Mauritius Labour Party wherein Mauritius would be granted independence in exchange for the excision of Chagos from the main island. The deal is said to have been arranged when the Mauritian Premier Ramgoolam met the UK Prime Minister Harold Wilson (PRO CO1036/1253: Rennie to Secretary of State, 11 November 1965).

The Genesis of the Affair

An analysis of the declassified material confirms that the BIOT was set up as an initiative of the United States (US), for the American armed

forces lacked a port of support or a military base between the Mediterranean and the Pacific. The idea of using some of these 'oil islands,' which were at the time part of the British Empire, goes back at least to 1962 (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968).

Emerging hostilities between India and China clearly demonstrated the necessity of having such facilities in the Indian Ocean available to the US, and the imminent withdrawal of the British from Aden reinforced this conviction. The matter was raised in October 1962 by US Secretary, R. Macnamara, in the course of a conversation with the British Minister of Defence. But it was only in 1963 that the American proposals began to take definitive shape. Right at the outset, the US insisted not only that these islands be placed under the direct control of Great Britain (and hence their excision from Mauritius and the Seychelles) but also that all inhabitants had to be removed from the islands to guard against political pressure and ensure the security of maximum utilisation.

The British authorities welcomed the American proposal as the 'Chagos Affair' occurred during a time at which Britain was shifting its defence policy from conventional to nuclear after the debacle of Suez. As noted by M. Carver, ex-Chief of Staff of the British forces, in July 1956 the Defence and Overseas Policy Committee decided to review the British defence strategy (Carver 1992, 43–44). The shift to nuclear defence, more costly but in line with NATO's policy, put budgetary equilibrium at the heart of the preoccupations of the British cabinet. Hence a wind of change would blow over the British Empire, bringing in its wake: 'decolonisation' (Porter and Stockwell 1989, 36).

But why create a new colony in the Indian Ocean at a time when the British seemed bent on getting rid of the remaining dust of an empire? In general, for Britain, this was a means to reduce the costs of British participation in the defence of Western interests. A joint memo of the Foreign Office (FO), Colonial Office (CO) and Ministry of Defence (MOD) dated 23 April 1964 underlined that "the cost of defence arrangement in the Far East was out of proportions to the British State investment and trade in the area. Our efforts were deployed less in defence of British interests than in support of the United States, the Commonwealth and the free world. By persuading the United States to associate themselves with Britain, by using existing strategic facilities or developing new ones in place where there were no anti-colonialist bias or better still no inhabitant, our burden might be reduced. United States initiative in the Indian Ocean should be welcome" (PRO FCO 32/484/1: Chronology

of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968).

Moreover, Britain was engaged in a defence review of its positions East of Suez, and at the Defence and Overseas Policy Committee of 12 April 1965, the Ministry of Defence emphasized that the new military facilities being envisaged were essential, as the facilities at Gan in Maldives or Aden would not always remain at the disposal of the British. If the defence review recommended the withdrawal from positions East of Suez, an American presence would facilitate matters (PRO CAB 148/18 DOP C65/68, 12 April 1965). Finally, the British hoped and expected that the Anglo-American cooperation would be extended to the construction of a military airfield on the island of Aldabra at the cost of £18 million (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968.)

The Royal Air Force/Ministry of Defence Engineering had already carried out a joint survey of Aldabra in 1964 (Ibid.) The idea of using Aldabra as a staging base had been proposed during the time when political instability in the Middle East and East Africa threatened 'overflying rights' while the independence of the Maldives, scheduled for 1965, made the facilities at Gan useless.

On 27 February 1964, official talks began in London between representatives of the State Department and British government. An agreement was finally reached wherein a joint survey of some of the islands would be carried out in order to evaluate their potential for providing defence needs, and to determine the feasibility of relocating inhabitants and related necessary administrative arrangements. In addition, the cost of constructing and maintaining the facilities for joint utilisation by the US and Great Britain would have to be borne by the US. Finally, Britain would provide land and security of tenure by detaching islands and placing them under direct British administration. The UK would also be responsible for payments to Mauritius and the Seychelles, and to labourers and displaced inhabitants (Ibid.).

Ramgoolam was informed of the matter on 29 June 1964 by the British governor. According to Heathcote Smith, "Mauritius governor on instruction consults? Premier and finds him favourably disposed to provision of facilities but with reservation as to detachment" (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968). Ramgoolam expressed preference for long term lease and rights to benefit from any minerals which might be found, having no objection to the survey (Ibid.). On 13 July 1964,

Sir John Rennie did inform the Mauritian Council of Ministers of the survey, though made no reference to the detachment of the islands.

The report of the survey conducted from mid July to mid August 1964 by a joint US/UK team in the Chagos archipelago, Agalega, Desroches, Coëtivy, and Farquhar island, was signed by Robert Newton. It included, inter alia:

- That there were no insurmountable obstacles to the 'removal, resettlement and redeployment of the civil population of any island required for military purpose' (PRO CO 1036/1332: Report by R. Newton, 23 September, 1964).
- That these islands were much more oriented socially towards the Seychelles than Mauritius.

Indeed the lease of these islands had been brought back by the 'Chagos—Agalega Company,' to which Paul Moulinie was a principal shareholder. The latter was also a member of the Executive Council of the Seychelles. Many Mauritians living at the time in Diego Garcia complained about what they considered as the growing "Seychelloisation" of the island. According to Robert Newton, the greatest part of the labour force at Diego Garcia was indeed made up of Seychellois. It is noteworthy that Robert Newton paid very little attention to the Chagossians, the population born in the islands, whom he estimated to comprise around one hundred individuals (Ibid.). However, he emphasised the need for strict administrative controls over these islands which had been "mismanaged" in the past and recommended that administrative control be transferred to a commissioner falling under the jurisdiction of the governor of the Seychelles. After the submission of the report, the US would exert constant pressure on the British authorities for the detachment of these islands. At the time, the US authorities stressed the urgent need for setting up communication facilities as well as 'austere naval facilities' at Diego Garcia (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968).

For the British Ministry of Defence and the Foreign Office, detaching these islands from Mauritius and the Seychelles would not pose any legal problem whatsoever. Excision could be carried out through an amendment to Section 90 of the 1964 Mauritius Constitution made reference to these islands by name and afterwards by a modification of the Mauritian Constitutional Order of 1957 (PRO CO 1036/133: Trafford Smith to Anderson, 13 July 1965). Subsequently, a new territory would

be created by an Order in Council—a piece of legislation formally made in the name of the Queen by the Privy Council—along the model of the British Antarctica Territory of 1962 (Ibid.).

Declassified documents further reveal that, throughout the negotiations, the British insisted on their inalienable right to detach these islands from Mauritius and the Seychelles as a preliminary to their merger with the BIOT, without having to pay any compensation whatsoever to Mauritius and the Seychelles. Many arguments were put forward to justify their stance. Firstly, the great distance between Mauritius and the Chagos archipelago; secondly, weak administrative links, low participation of these islands in the Mauritian economy; and finally, the absence of 'ethnic links' and, above all, a redefinition of the notion of 'dependency' itself.

In an important document dated 20 December 1968, Branley of the Colonial Office stated that those who claimed the excision of Chagos from Mauritius to be an act of dismemberment of a colonial territory showed complete disregard for the history and colonial practice of Great Britain and France. Had France not detached Juan de Nova and Tromelin as a prelude to granting independence to Madagascar? For Branley, these small territories, which were placed under the tutelage of a larger colony having the means of an efficient administration, did not really become part and parcel of the latter. Indeed many of these territories changed administrative tutelage over time for convenience sake. Citing examples, Branley mentioned the cases of Sierra Leone, the Gold Coast, Bechuanaland, the Maldives, and some islands of the Carribean. In the case of the Indian Ocean, he cited Aldabra and Providence, which were detached in 1908, and Coëtivy and Farquhar, detached in 1921 from Mauritius and subsequently reattached to the Seychelles (PRO FCO 34/482: Branley to Jerrom, 20 December 1968). The absence of substantive links, according to Branley, was evidenced by the fact that administrative control was limited to an occasional visit by a magistrate from 1845 and by the fact that the laws of the colony could not be applied to these small territories in the absence of any special proclamation to that effect (Ibid.).

Hence, when Harold Wilson insisted on 23 September 1965 that Great Britain was ready to go forward with a unilateral excision of Chagos without the approval of the Mauritian government, he was far from bluffing. Indeed, the matter was raised at a meeting of the Defence and Overseas Policy Committee on 30 August 1965 (PRO CAB 148/18 DOP 37th Meeting, 30 August 1965), and again on 16 September 1965 without

any formal decision being reached; the British ministers present had been reassured by the Secretary of State that Anthony Greenwood, the colonial official, would solve the matter amicably with the Mauritian delegation before 23 September 1965. It is true that at the time of decolonisation both the UN and the Commonwealth had passed resolutions strongly condemning any attempt at dismemberment of a colonial territory before its accession to independence. Furthermore, colonial practices were scrutinised at the UN's Committee of 24, hence the more flexible attitude of the Colonial Office and its Secretary of State, Anthony Greenwood. The latter maintained throughout that it was out of question to proceed with the creation of the BIOT without the agreement of the Mauritius and Seychellois governments (CO 1036/1333: Notes of Meeting at Treasury, 19 September 1965). Indeed in the case of Mauritius, the documents reveal that the Colonial Office feared that detaching Chagos would make an already precarious socio-political situation more unsettled, hence the extreme precautions to not "rock the boat" through the 'Chagos Affair.' For example, the idea of a joint survey in 1963 was postponed because of general elections scheduled in Mauritius for that year (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968.)

For the Colonial Office, American pressure for the detachment of the Chagos archipelago came at the wrong time. The coming to office of the 1964 British Labour Party in Great Britain had the consequence of reopening the dossier on re-developing the constitution of Mauritius, and at the same time; simultaneously, American proposals regarding the BIOT were being finalised.

'Blackmail, Deal and Independence'

Paradoxically, records at the Public Records Office reveal that, at first, the Colonial Office wished to keep the issues of constitutional development and the detachment of Chagos completely separate (PRO CAB/48/18, 12 April 1965). For the Colonial Office, the priority was to reach a compromise on the final status of Mauritius among the various protagonists. But raising the issue of detachment of Chagos could lead to the failure of the Constitutional Conference, each protagonist using it as a lever for bargaining. Worse, the Colonial Office feared that it might lead to the break up of the coalition government, whose formation in early 1964 had been so laborious as to necessitate the direct intervention

of the Secretary of State for Colonies (Ibid.). This explains why, right from the outset, the Colonial Office was strongly against any amalgam between the Constitutional Conference scheduled for September 1965 and the debate on the excision of the Chagos archipelago (PRO CAB/48/18, 12 April 1965). This was despite the fact that the Ministry of Defence and Foreign Office wanted to raise the matter at the Constitutional Conference itself in order to benefit from the divisions within the Mauritian delegation (PRO CO 1036/1084: Trafford Smith to Poynton, 3 May 1965).

Meanwhile, on 12 April 1965 the British Cabinet approved the American proposals but came out in favour of an American contribution to the cost of detaching the islands – which included the cost of resettlement for inhabitants and buying back the lease from the proprietors (Ibid.). On 24 June 1965, after several talks, the US government finally decided to contribute up to half of the cost of detaching the islands. However, in order to bypass Congress, it was agreed that this contribution would be effected secretly, through a trade off on the order of a £14 million contribution from the British contribution to the research and development programme of the Polaris Missiles (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968).

Subsequently the British authorities tried to obtain the agreement of the Mauritian and Seychellois governments. Already at a meeting of the Defence and Overseas Policy Committee held on 2 June 1965, it was felt that tactically it would be more appropriate to negotiate with the Mauritian government well before the opening of the Constitutional Conference i.e. before the adverse party had consolidated its position (PRO CAB/48/18 DOP 28th Meeting, 2 June 1965).

While the Seychelles government responded favourably, on 3 July the Mauritius Council of Ministers positioned itself against the detachment of Chagos though in favour of a long term lease. The Ministers insisted on guarantees concerning fishing, oil and mineral rights, meteorological, navigation and air facilities, as well as a higher quota for Mauritian sugar on the US market. The compensation of £3 million was regarded as grossly inadequate. In addition, the Mauritian Ministers called for a defence treaty with Great Britain that would cover both internal and external security (PRO FCO 32/484/1: Chronology of Events, op. cit.). Ramgoolam had been badly shaken by the January 1964 *coup d'état* in Zanzibar and by the mutinies in Tanzania, Uganda and Kenya (PRO FCO 32/317: Rennie to Galworthy, 5 January 1968). He feared an

attempted *coup d'état* by elements close to the Parti Mauricien Social Démocrate (PMSD) as independence drew near. This explains why he was desperately looking for a defence treaty that would allow British troops to intervene in Mauritius even without consulting the Mauritian government (PRO CO1036/1150: Trafford Smith to Rennie, 17 August 1965). His allies at the Muslim Committee of Action (led by R. Mohamed) and the Independent Forward Block of S. Bissoondoyal were likewise in favour of maintaining British military obligations in internal matters in Mauritius.

For the Colonial Office, a defence treaty covering internal security would be a major guarantee for the ethnic minorities and as such could greatly help advance talks at the Constitutional Conference. But the Ministry of Defence and Foreign Office were resolutely hostile to any new responsibilities that would not only constitute an unacceptable innovation in British foreign policy but might also involve British soldiers in inter-ethnic conflicts in Mauritius. However, the Colonial Office would spare no efforts to have such a treaty accepted by their colleagues at the Ministry of Defence and Foreign Office as a trade off for the excision of Chagos. At a meeting of the Defence and Overseas Policy Committee held on 30 August 1965, Harold Wilson finally agreed that Great Britain was sympathetic to such a defence treaty with Mauritius (PRO CAB 148/18 DOP, 37th Meeting, 30 August 1965). A joint Memorandum was drawn between the Ministry Of Defence and Foreign Office on 26 August 1965 holding that such a treaty could be considered if it was the price to pay for the detachment of Chagos (PRO CAB 148/22 COPD (65): Memo by Secretaries of State for Defence and Foreign Affairs, 26 August 1965).

At the same meeting, the Secretary of State for the Foreign Office, Michael Stewart, stated that though it would be preferable that detachment be carried out with the full agreement of the Mauritian government, if this proved impossible, the alternative would be to proceed unilaterally through an Order in Council. According to him, such a procedure was perfectly legal as these islands had been attached to Mauritius purely for administrative convenience and there were no historical link between the islands, situated some 1800 kilometres (1118 miles) away from each other. However, Anthony Greenwood expressed his opposition to such proceedings which, according to him, could only lead to the failure of the Constitutional Conference.

The Conference opened on 7 September 1965 at Lancaster House. The agenda comprised safeguards to the rights of ethnic minorities

(an appropriate electoral system, constitutional guarantees, the Muslim Personal Law, the future of the confessional schools) and addressed:

- The final status of Mauritius (Independence or Free Association)
- The type of popular consultation to decide the matter (the Parti Mauricien Social Démocrate called for a referendum while the Mauritius Labour Party and the Independent Forward Block were in favour of general elections.)

Officially, the Colonial Office would act as a broker but at the same time work for a compromise without excluding any alternative. For his part, Anthony Greenwood did not want to jeopardise the success of the conference by forcing the issue Chagos. However, on 16 September 1965, his colleagues at the Defence and Overseas Policy Committee reminded him firmly of the urgent need to reach a satisfactory solution to the Chagos issue, both in the interest of British Defence and in order to maintain good relations with the US. The agreement on Chagos was to be reached at the latest before the end of the Constitutional Conference, which was expected to take place on the 21st September (PRO CAB 48/18 DOP, 39th Meeting, 16 September 1965). The Defence and Overseas Policy Committee decided to wait until then before making any decision on the unilateral detachment of Chagos through an Order in Council. Time was pressing, as official Anglo-American discussions were scheduled for the 23–24 September. Yet neither the issue of detachment nor the Constitutional Conference were moving forward smoothly. At Lancaster House, as no consensus could be reached on electoral reforms, it was finally decided to leave matters to an independent commission whose report would be ratified by the various parties after discussions. But the Parti Mauricien Social Démocrate resolutely maintained both its opposition to independence and its demand for a referendum to decide on a formula of free association with Great Britain. Finally, the PMSD decided to walk out of the conference on 23 September 1965 in protest of the British refusal to consider its proposal of a referendum. As to the dossier of detachment, the 15 September meeting between the Mauritian ministers and the representative at the American embassy had clearly demonstrated the insurmountable obstacles to any commercial concessions or facilities related to immigration from the US (PRO CO 1036/1255: Note of a meeting held at the Embassy of the USA, London 11.30 am on 15 September 1965).

However, at a meeting held at the Colonial Office on 20 September 1965, Ramgoolam and the Mauritian ministers reaffirmed their proposal for commercial concessions from the US; alternatively, they maintained the proposal of a 99 year lease at a rate of £7 million yearly for the first 20 years and £2 million subsequently. As CCP Heathcote noted, "at that meeting Ramgoolam said firmly that Mauritian government was not interested in excision and would stand out for 99 years lease" (PRO FCO 32/484/1: Chronology of events leading to establishment of BIOT, C.C.P. Heathcote Smith, 13 December 1968).

Yet three days later, on the 23 September at a meeting held at 2.30 pm, S. Ramgoolam and the Mauritian ministers (with the exception of the PMSD, absent) agreed to the offer of £3 million as compensation for the detachment of Chagos (PRO 1036/1253: Record of a Meeting held in Lancaster House at 2.30 pm on Thursday 23 September 1965). It is true that among the conditions which were attached (following arduous negotiations by Ramgoolam and Mohamed with the Colonial Office over the notes of meeting) there remained the possibility of the retrocession of Chagos to Mauritius in the event that Britain and the US no longer had need of the islands (though the initiative would only come from Britain). There were also assurances for "oil, fishing and mineral rights, as well as air and navigation rights" (Ibid.). Moreover, Britain pledged itself to help in the discussion with the Americans over commercial concessions and agreed to favourably consider a defence treaty covering internal security in the event Mauritius opted for independence (Ibid.).

According to Sir John Rennie, if Ramgoolam finally surrendered Diego Garcia it was because he had become convinced (or the British had manoeuvred brilliantly to make him convinced) that if he proved conciliatory on this issue the British government would finally decide in favour of Mauritius' independence at the close of the Constitutional Conference (PRO FCO 32/317: Rennie to Galworthy, 5 January 1968).

The plenary sessions that had been held without interruption from 7 to 21 September stopped convening. The agenda had been covered for the essentials, yet the British kept the suspense as to the issue of the conference until 24 September. On the morning of 23 September, S. Ramgoolam met Harold Wilson at Downing Street. The British Prime Minister, after deploring that the Mauritians were raising the stakes too high, stated that "there was a number of possibilities: the Premier (Ramgoolam) and his colleagues could return to Mauritius either with

independence or without it. On the Defence part, Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues. The best of all might be independence and detachment by agreement, although he could not of course commit the colonial secretary at the point" (PRO CO 1036/253: Record of Conversation between Prime Minister and the Premier of Mauritius Sir Seewoosagur Ramgoolam at 10, Downing Street at 10.00 on Thursday 23 September 1965). Ramgoolam understood perfectly what was at stake: "Sir Seewoosagur Ramgoolam said that he was convinced that the question of Diego Garcia was a matter of detail. There was no difficulty in principle" (Ibid).

At 11.15, Sir John Rennie sent a 'top secret' telegram to Tom Vickers, the Officer in charge in Mauritius, announcing that in all probability the conference would come out in favour of independence after the next general elections if the population so wished. The Colonial Office expected a reply as to probable reactions in Mauritius to such an outcome and the repercussions on internal security (PRO CO 1036/1084: Rennie for OAG, 23 September 1965).

During a meeting held at 2.30 pm the same day, the Mauritian ministers, in absence of representatives of the Parti Mauricien Social Démocrate, gave their agreement to detach Chagos from Mauritius, later reiterating their decision at the meeting of the Defence and Overseas Policy Committees held at 4.00 pm. Anthony Greenwood communicated the good news to his colleagues of the cabinet and announced that he proposed to end the Constitutional Conference the next day; he chose to do so in a statement indicating that it was the wish of Great Britain that Mauritius become independent within the Commonwealth but that a defence treaty would be signed with the new state covering internal defence. The British Cabinet expressed its total satisfaction with the accomplishments of the Secretary of State (PRO CAB/48/6 DOP (65), 40th Meeting, Thursday 23 September 1965), and on the next day, at 10.30 am, Anthony Greenwood announced the British decision to the Mauritian delegation (in absence of PMSD delegates). A direct referendum on independence was ruled out though Mauritians were invited to decide upon independence at the next general elections. After the Mauritian Council of Ministers (presided by a British Governor) had formally agreed to the detachment of Chagos on 5 November 1965, the BIOT was created by an Order in Council on 8 November 1965.

A few days later, on 11 November 1965, Sir John Rennie reported to the Colonial Office the strong conviction in Mauritius about a deal for independence in exchange for Diego Garcia (PRO CO1036/1253:

Rennie to Secretary of State, 11 November 1965). This was confirmed later by the Colonial Office itself. In early 1967, the Foreign Office started new negotiations over British entry in the European Common Market. This would have been disastrous for the marketing of Mauritian Sugar (as the Commonwealth Sugar Agreement would have to be abandoned as one of the conditions of entry) and the Minister of State for Colonies enquired at the Colonial Office whether Britain could take back the promise of independence. In a 'Minute on File,' T. Z. Terry stressed that this was impossible: "I am told that it was a cabinet decision that this undertaking should be given and that in addition, Her Majesty's decision to come out publicly in favour of independence for Mauritius was part of the deal between our present Prime Minister and the Premier of Mauritius regarding the detachment of certain Mauritian dependencies for BIOT" (PRO CO 1036/268: Minute on file: Terry to Fairclough, 14 February 1967).

Conclusion

A study of the records pertaining to the making of the Chagos affair reveals the close links between the British decision to publicly declare itself in favour of the independence of multi-ethnic Mauritius—bedevilled by inter-ethnic tensions aggravated by an acute crisis of underdevelopment—and the excision of the Chagos archipelago. The British authorities skilfully and deceitfully manoeuvred to blackmail Sir Seewoosagur Ramgoolam—heading a divided Mauritian delegation and with allies lukewarm in their support for independence—into accepting the illegal dismemberment of Mauritian territory prior to independence. These documents also reveal that the Chagossians were never consulted. Indeed, at the time, they did not even have the right to vote, as the outer islands (including Rodrigues) were left out by the delimitation of electoral boundaries from the 1959 and 1963 general elections. The outer islands having been so neglected and removed from mainstream politics, it is not surprising that their fate was considered a matter of detail by both the British authorities and the Mauritian political elites of the time. Independence, the special relationship between UK and US (within the context of the Cold War), and the defence of Western interests were deemed high stakes that could override the basic human rights of a minority group: the Chagossians. In the game that was being played, who would care for a small, neglected and politically deprived population?

Annex 234

John Tasioulas, "Custom, jus cogens, and human rights", forthcoming in Custom's Future: International Law in a Changing World (20 Mar. 2015)

(3/20/15)

Custom, *jus cogens*, and human rights

JOHN TASIOULAS*

[Book chapter for CUSTOM'S FUTURE: INTERNATIONAL LAW IN A CHANGING WORLD (Curtis A. Bradley ed., forthcoming Cambridge University Press)]

Immanuel Kant notoriously declared that it was a "scandal of philosophy" that it had not yet furnished us with a convincing proof of the existence of an external world. International lawyers have their equivalent occupational scandal: the failure to achieve clarity or consensus on the nature of customary international law. Custom, after all, is arguably the most fundamental source of international law, at least insofar as treaty law is itself embedded within a customary framework. This framework includes various principles bearing on the interpretation of treaties and arguably also the grundnorm of treaty law, *pacta sunt servanda*. Indeed, the international lawyer's scandal goes deeper. All of us, philosophers or not, standardly proceed on the basis that a world external to our senses exists. By contrast, assertions about customary international law are largely confined to international lawyers, although their being taken seriously occasionally has real practical consequences for others.

It is not enough to respond to this state of affairs with a knee-jerk pragmatism: the shop-worn thesis that customary international law works well enough "in practice" and so requires no explication "in theory." After all, this simply presupposes that we already know what customary international law is, and merely shifts attention to whether it "works." In any case, it is doubtful that anything can satisfactorily "work" in a discursive and legitimacy-claiming practice if its very nature remains stubbornly opaque or conceptually problematic. Equally, we should not be put off by the skeptical dogma that all of our moral-political ideas are infected with contradictions at their very core, so that the search for an explanation that makes good sense of them is doomed from the outset. Even the alluring consolations of intellectual resignation need to be earned by argument rather than mere fiat.

In this chapter, by drawing on, clarifying, and extending previous work, I try to sketch the argument that the pragmatists and skeptics take to be either unnecessary or impossible. I offer a moral judgment-based account (MJA) of customary international law, one that challenges the orthodox idea that there is a deep connection between custom and consent, and I mobilize the ensuing account in relation to human rights norms in particular.

The necessity for moral judgment

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There is a perfectly intelligible sense in which all law, including customary international law, derives from what might loosely be called "practice". It is the product of what states and other agents actually do or refrain from doing, where this importantly includes the performance of speech-acts that give expression to their objectives and beliefs. To this extent, *opinio juris*, as a factor in the genesis of customary international law, should not be contrasted with "practice," as if it denominated some occult phenomenon unfolding behind the scenes of ordinary human activity. This is not just for the quite general metaphysical reason that, as Wittgenstein put it, "an 'inner process' stands in need of outward criteria." It follows more directly from the public and intentional— the *positive* or *posited*—character of legislative activity. Law is paradigmatically created through publicly accessible acts that are undertaken precisely *as* law-creating. Hence, all law is practice-based in this wide sense.

Nonetheless, in seeking to make good sense of the orthodox understanding of customary international law reflected in Article 38(1) of the Statute of the International Court of Justice—according to which two elements, general state practice and *opinio juris*, bear on its formation—we can regard both ingredients as forms of practice, or two aspects under which practice may be interpreted. In determining whether a norm exists as a matter of international custom, we begin by giving its putative content (for example, about the length of the territorial sea, the requirements of diplomatic protection, the immunity of sovereign states from certain forms of intervention, and so on). This content will specify some pattern of (state) conduct[1] to which a normative modality (obligatory, impermissible, permissible, etc.) is assigned under certain conditions. In order to determine whether this so far merely notional legal norm, call it *X*, exists as a matter of customary international law, we must address the following two questions:[2]

> (1) State practice: Is there evidence that states generally conform their conduct to *X*, engaging in behavior consistent with the normative content of *X*? For example, if *X* is an obligation-imposing norm, is it the case that states generally do, or refrain from doing, what *X* enjoins them to do, or refrain from doing?
>
> (2) *Opinio juris*: Is there evidence that states adopt one or other of the following attitudes to *X*:
>
> [OJ1] the creation of an international legal rule according to which the specified pattern of behavior has the normative significance attached to it by *X* is morally justified, and such a legal rule should be created by means of a process that involves general state practice consistent with *X* and a moral endorsement by states of *X*'s establishment as a legal rule, or
>
> [OJ2] *X* is already a norm of customary international law, i.e. it exists as a matter of general state practice and *opinio juris* (i.e. OJ1),

[1] I use "conduct" here in a broad sense to encompass both acts and omissions.

[2] For the sake of convenience, I consider only the activities of states as bearing on the practice and *opinio juris* relevant to custom. I later revisit the issue as to *opinio juris*.

> and the status of *X* as a legal norm (or compliance with it as such) is morally justified.

In short, *opinio juris* involves the judgment that a norm is already part of customary international law and that (compliance with) it is morally justified (OJ2); or that, as a moral matter, it should be established as law through the process of general state practice and *opinio juris* (OJ1); or else some mixture of these two attitudes.

Let me elaborate on the elements of this understanding of general state practice and *opinio juris*. The first thing to notice is that it involves a narrower interpretation of "state practice" than that which is sometimes deployed. On the view outlined above, state practice consists in the behavior of states insofar as it is in conformity with the putative norm. A positive showing of state practice depends on evidence of general state conformity with what the supposed norm stipulates as obligatory, impermissible, permissible, etc. Positive state practice, therefore, is redeemable in the hard currency of actual conformity to the norm. Forms of state behavior that evidence some kind of belief regarding the existence or otherwise of the norm, but which do not relate to conformity with it, do not fall within the category of state practice. Instead, they will bear on the separate matter of *opinio juris*.

One advantage of this way of distinguishing the two elements of custom is that it marks the distinctive significance of whether states actually generally conform to a supposed norm as opposed to other things they may do in relation to that norm, such as expressing their approval of it. This is broadly the significance of putting your money where your mouth is: of actually *conforming* ("state practice") to the (putative) legal norm that you *avow* ("*opinio juris*") to be morally justified. It therefore avoids the unorthodox claim that state practice can amount to nothing more than evidence of *opinio juris*.[3] Another advantage is that it prevents undue "double counting," whereby systematically one and the same course of conduct, for example, diplomatic correspondence, votes on resolutions by international organizations, etc. is treated as both state practice and *opinio juris*.[4] Nonetheless, this framing of the distinction allows that state practice, interpreted against a suitable background, can be evidence of *opinio juris*.[5] But it avoids the wholesale conflation of the two ingredients entailed by an expansive interpretation of state practice.

Turn now to the disjunctive interpretation of *opinio* juris. It is not fanciful to say that this interpretation is already literally foreshadowed by its full Latin tag:

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[3] This is the view advanced in BRIAN D. LEPARD, CUSTOMARY INTERNATIONAL LAW: A NEW THEORY WITH PRACTICAL APPLICATIONS ch. 8 (2010).

[4] The failure to avoid double-counting mars the analysis in Michael Wood, Special Rapporteur, International Law Commission, SECOND REPORT ON IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW 9-11 (May 2014), *at* http://legal.un.org/ilc/sessions/66/a_cn4_672(advance).pdf. On the one hand, the report affirms the necessity for both elements, general practice and *opinio juris* (or, "acceptance as law") in order for a customary international legal norm to emerge (Draft conclusion 3). On the other hand, it gives an account of general practice that seems to subsume, as a component part, *opinio juris*, at least insofar as the manifestations of the former seem to encompass most, if not all, of those of the latter (compare Draft conclusion 7(2) with Draft conclusion 11(2)). The double-counting entailed by the second aspect of the Report largely undercuts its insistence on the necessity for the presence of *both* state practice and *opinio juris* in the case of each norm of customary international law.

[5] *See, e.g.*, Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), I.C.J. Rep. 246, 299, para. 111 (ICJ Oct. 12, 1984) (Judgment).

opinio juris sive necessitatis (an opinion of law or necessity). Firstly, what is at issue is an *opinion* or judgment about what is or ought to be the case, rather than the mere expression of a desire or a preference. Second, the content of that judgment relates *either* to what the law is and whether, as a moral matter, it may be complied with *or else* what it ought to be (and, on either alternative, a moral "necessity"). Let me expand on both of these points.

What is central to both variants of *opinio juris*, OJ1 and OJ2, is an imputed attitude at the core of which is a *judgment* that a norm is, or would be if established, *morally justified* as a norm of customary international law. The judgment is one about moral justification because only this species of justification is adequate to the task of upholding the claim to legitimacy inherent in law, i.e., its claim to impose obligations of obedience on its purported subjects.[6] Only a justification grounded in moral standards, as opposed to mere considerations of self-interest, for example, can vindicate the claim of the law to be morally binding on its subjects. This understanding of *opinio juris*, as reflecting a moral judgment, should be contrasted with two other understandings, the one unduly broad, the other unduly narrow.

The overly broad view characterizes *opinio juris* in terms of state preferences.[7] Preferences are a subject's positive attitudes towards some particular outcome, which typically reflect what the subject takes to be reasons. These reasons may differ greatly in kind, from reasons of pleasure or self-interest, at one extreme, to moral reasons at the other. But a preference, thus broadly understood, does not necessarily purport to identify a consideration that is even in principle capable of justifying the claim to legitimacy (moral bindingness) inherent in law. Notice, in addition, that we can often intelligibly speak of a discrepancy between what a state would prefer the law to be and what it judges that it should be as a moral matter. Its self-interested preference (e.g., as a powerful, or land-locked, or culturally homogeneous state) may point in one direction, but its assessment of the moral merits regarding the content of international law may point in the opposite direction. But it is only the latter that counts as *opinio juris*. All this is compatible with two observations. First, that the moral judgments made by states will often be skewed by considerations of self-interest or mere preference. This is simply a pitfall to which all moral judgment is prey. Second, that even when not so skewed, the relevant moral judgment may be one to the effect that permitting states to pursue their preferences or self-interest in various ways is justifiable. In other words, state preferences do have a potentially substantial role to play in the formation of customary international law, but only as regulated by background moral judgments regarding their suitability to do so. It is these background judgments, not the preferences, that are the core of *opinio juris*.

If the preference-based interpretation of *opinio juris* fails in virtue of being overly broad, another much more familiar interpretation is unduly narrow. The latter usually takes *opinio juris* to be an attitude accompanying state practice, one according to which the state acts out of a "sense of obligation" when engaging in the relevant pattern of conduct. So, for example, in the first ICJ case to invoke the notion of *opinio juris*, it is incorrectly described as a matter of states feeling "legally compelled to … [perform the relevant act] by reason of a rule of customary international law obliging

[6] Joseph Raz, *Hart on Moral Rights and Legal Duties*, 4 OXFORD J. LEG. STUD. 123 (1984).

[7] There are intimations of this view in Curtis A. Bradley, *Customary International Law Adjudication as Common Law Adjudication* (in this volume).

them to do so."[8] And most recently, in the *Second Report on Identification of Customary International Law*, the International Law Commission's Special Rapporteur glossed *opinio juris* as a matter of general practice being "accepted as law". This, in turn, was understood to mean that "the practice in question must be accompanied by a sense of legal obligation."[9] This is an apt characterization of *opinio juris* for the specific case in which a state is complying with an already existing international norm that it takes to impose an obligation on itself. But it fails to embrace two other cases. First, if the obligation is understood as an already existing legal obligation, this analysis does not properly capture *opinio juris* that gives rise to a new norm (i.e., the type covered by OJ1). Second, even in the case of an existing customary norm, it does not cover situations where the norm is thought by the state to confer a *right* or a *liberty* upon it to engage in the specified pattern of conduct.[10] The characterization of *opinio juris* I have given, by contrast, accommodates all of these normative modalities. What it requires is that the relevant norm, whether it is taken by the state to impose a duty or confer a right or a liberty on it, is judged by the state to be morally justified in doing so. It therefore does not clamp *opinio juris* to one specific normative modality, that of obligation, even though many norms of customary international law will of course be obligation-imposing.

Now, an advantage of this disjunctive specification of *opinio juris* – as OJ1 or OJ2 - is that it defuses the so-called "paradox of custom," according to which the creation of new customary international law is inescapably premised on *error* or *deception* on the part of states. [11] Specifically, it is premised on the mistaken belief, or pretended mistaken belief, that a norm that is not already part of customary international law actually possesses this status. Although some question the practical significance of this paradox, I have argued elsewhere that it tarnishes the legitimacy of customary international law. This is because there is a transparency constraint on any form of law-making to the effect that its successful operation must not necessarily depend on mistaken beliefs (or pretended such beliefs) on the part of the agents that create the law as to what it is they are doing. Political legitimacy demands that exercises of political power, including acts of law-making, must be publicly assessable in terms of standards that appropriately bear on political decision-making. A corollary of their being assessable in this way is a transparency requirement,

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[8] North Sea Continental Shelf (Judgment), 1969 I.C.J. Rep. 3, 44-45, para. 78 (ICJ Feb. 20, 1969). The centrality of a sense of obligation is echoed in many other ICJ judgments. *See, e.g.*, Colombian-Peruvian asylum case, 1950 I.C.J. Reports, 266, at 286 (ICJ Nov. 20, 1950) (judgement), "a feeling of legal obligation".

[9] Draft Conclusion 10 (1), 51.

[10] The ICJ seemed to hold that a unilateral declaration of independence could be such a liberty: "it is entirely possible for a particular act—such as a unilateral declaration of independence—not to be in violation of international law without necessarily constituting the exercise of a right conferred by it." Accordance with International Law of the Unilateral Declaration of Independent in respect of Kosovo, 2010 I.C.J. Rep., 425-6, para. 56 (ICJ, 2010).

[11] For a fuller elaboration of this argument, see J. Tasioulas, *Opinio Juris and the Genesis of Custom: A Solution to the "Paradox,"* 26 AUST'L Y.B. INT'L L. 199 (2007). In interpreting *opinio juris* as "practice accepted as law," the ILC's Special Rapporteur Second Report rather optimistically, and without argument, suggests that "[u]se of this term from the [ICJ's] Statute goes a large way towards overcoming the *opinio juris* paradox" (50-51). This makes it sound as if the paradox stems from the Latin expression and will be eradicated by the use of plain English. On the contrary, the "practice accepted as law" formulation accentuates that very paradox, making it clear that a practice has to be accepted as already legal in order to *become* legal.

according to which exercises of political power must be sincerely and accurately presented and defended by their agents as the acts that they are.

On the disjunctive analysis of *opinio juris* we do not need to assume that the generation of a new customary norm requires the existence of widespread error or deception as to the existing state of the law. This is because the relevant kind of *opinio juris* may be of the type OJ1. Once the customary norm has come into existence, however, its continued existence across time can be sustained by *opinio juris* of the second sort, OJ2. But there is no "paradox" involved in a legal norm's *continued* existence depending in part on the fact of its being taken to already exist.

Another, more widely-credited threat to the legitimacy of customary international law is the accusation that it is hopelessly indeterminate; in particular, that there is no determinate account of the role and relations of state practice and *opinio juris* in the generation of customary international law. Of course, any such skeptical conclusion has to be earned by argument, in the same way as an anti-skeptical account must pay its way, and cannot be presumed true by default. I have offered a general interpretative framework for responding to this skeptical challenge in previous work. This work takes as its focus the conception of customary international law that emerged in ICJ decisions such as the *Nicaragua* and *Nuclear Weapons* cases (a conception that by now has achieved the status of orthodoxy in judicial practice, even if not in the formulation of traditionalist authors with positivist inclinations).[12] I shall not rehearse this interpretative framework here, save to point out one implication that does not follow from it and three that do. The implication that the MJA does *not* have is that of ensuring that all valid customary laws are also just or ethically sound. Instead, their formation relies on *opinio juris* which embodies moral judgments that may or may not be correct. Nor does the moral judgment required in the interpretative process of adducing customary norms guarantee that any valid norm will be free of ethical flaws. By contrast, the following three implications genuinely do flow from the MJA:

(1) Although state practice and *opinio juris* are, as a conceptual matter, independent variables in the formation and persistence of customary international law, the paradigm case is that in which general state practice and widespread *opinio juris* are both present. Indeed, especially in the case of OJ2, the existence of *opinio juris* is what in part explains the state practice. Practice, after all, is the natural product of *opinio juris,* the practical manifestation of the value judgment that the latter embodies.

(2) In appropriate cases, state practice and *opinio juris* can be traded off against each other within the interpretative framework for assessing the formation of customary norms. In particular, customary norms can come into being despite the absence of much supporting general state practice, or at the extreme, even in the teeth of considerable countervailing practice.[13] This is because a dearth of state practice can

[12] John Tasioulas, *In Defence of Relative Normativity: Communitarian Values and the Nicaragua Case*, 16 OXFORD J. LEG. STUD. 85 (1996); John Tasioulas, *Customary International Law and the Quest for Global Justice*, *in* THE NATURE OF CUSTOMARY LAW: LEGAL, PHILOSOPHICAL AND HISTORICAL PERSPECTIVES (Amanda Perreau-Saussine & James B. Murphy eds., 2007).

[13] The Report of the ILC's Special Rapporteur is ambiguous on this issue. Some formulations suggest that both elements, state practice and *opinio juris*, must be present in the case of each and every norm of customary international law. Other formulations suggest only the weaker thesis that state

be compensated for by high levels of *opinio juris,* especially if there is a strong moral case for the norm in question. That case must typically be constructed around those values that are especially salient for the legitimacy of international law, such as peaceful co-existence, human rights, environmental protection, etc. Notice, however, that this evaluative dimension to the formation of customary international law requires judgments about objective values; it cannot be reduced to a set of further facts concerning what states or other actors *believe* to be important values (this point is developed further in the next section).

(3) Whereas evidence of *opinio juris* can establish a customary norm in the absence of supporting general state practice, the reverse position very seldom if ever obtains. To the extent that it does so, it will probably involve cases in which *opinio juris* is primarily inferred from general state practice. It follows that *opinio juris* is always necessary for the formation of customary international law, even if sometimes its existence is inferred primarily from a pattern of general state practice.

These features of the MJA, especially feature (2), bring in their train a number of benefits. Chief among them are the following:

(a) it allows new, potentially universally-binding law to come into existence (or to do so more rapidly than would otherwise be the case) in areas in which it is needed, but where there is much contrary state practice, e.g., human rights norms and the laws of war, or in cases where state practice has not yet had an opportunity to develop, e.g., the law of outer space;

(b) it enables the law to be changed through large-scale shifts in *opinio juris*, thereby avoiding the legitimacy-undermining idea that the only way to reform existing customary international law is through a vast programme orchestrating its persistent violation;[14]

(c) by construing *opinio juris* as an ingredient independent of state practice, it potentially enables the *opinio juris* of non-state actors, such as organs of the United Nations, international organizations and tribunals, non-governmental organizations, expert academic opinion, etc. to be taken into account where this is appropriate in terms of enhancing the legitimacy of international law. Indeed, by a further extension, it allows us to take into account the appropriate practice of non-state actors, especially in relation to putative norms that regulate the activities of such actors, such as the various organs of the United Nations.

Is opinio juris an expression of consent?

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practice and *opinio juris* are relevant to the existence of any given customary international norm, without making the presence of the former necessary in each case. The effect of this ambiguity is ameliorated by the fact that, as previously noted, on the Report's account state practice and *opinio juris* massively overlap.

[14] Cf. the idea of reform-through-illegality proposed independently ALLEN E. BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW ch. 11 (2004) and Robert Goodin, *Toward an International Rule of Law: Distinguishing International Law-Breakers from Would-Be Law-Makers*, 9 J. ETHICS 225 (2005).

Does *opinio juris* operate as a means of expressing consent to be bound by a putative norm, a consent perhaps conditional on a sufficient number of other states similarly consenting, and which is at least a necessary condition for the bindingness of any norm vis-à-vis a given state? Nothing in the MJA implies the correctness of such a voluntarist interpretation of *opinio juris*. Still, we might ask whether voluntarism fits the existing practice of customary international law and, if not, whether there are compelling reasons to revise the latter along voluntarist lines.

A modicum of reflection shows that the voluntarist interpretation fails to fit the communitarian character of the institution of customary international law, as ordinarily conceived.[15] If there is adequate state practice and *opinio juris* among the community of states (and other relevant actors), the resultant customary norm may bind a state that did not consent to it. Hence, a binding customary norm arises from a convergence of collective practice and a consensus of community opinion, not from the aggregation one-by-one of discrete episodes of consent. Now, it might be replied that the so-called persistent objector rule testifies to the voluntarist basis, in the last resort, of the existing customary regime.[16] But that rule, even supposing it exists, which is far from self-evident, is heavily qualified in two ways. First, it does not apply to customary norms whose emergence predated the coming into existence of a given state. Such a state will therefore be bound by the norm even though it had no opportunity to object persistently during its formation. Second, the persistent objector rule does not in any case apply to the body of *jus cogens* norms, which is a category of customary norms that are opposable against all states independently of their individual volition (see the discussion of *jus cogens* norms in the next section).[17]

The voluntarist picture is also incompatible with another, perhaps less obvious, feature of existing doctrine. This is the significance that is attached to the *opinio juris* of actors that are not themselves within the scope of the norm in question. This may be because the content of the norm does not extend to them, as in the case of the *opinio juris* of an international organ, such as the Security Council, regarding a matter that binds states. More speculatively perhaps, there is also the scenario in which a state's *opinio juris* is taken into account regarding a norm that on its face regulates the former's conduct, but where the state in question claims to be exempt from the norm's operation whilst supporting its imposition on other states. This is one manifestation of the phenomenon of exceptionalism. For example, a multilateral

[15] My remarks here are confined to customary international law. Voluntarism is obviously a much better fit for the institution of treaty law. For a helpful discussion of the non-voluntarist character of customary international law, see Andrew T. Guzman, *Against Consent*, 52 VIRGINIA J. INT'L. L. 747, 775-777 (2012).

[16] Fisheries 1951 I.C.J. Rep. 1167 at 131 (ICJ, 1951).

[17] The failure to distinguish consent from consensus is ubiquitous, even among critics of voluntarism. See, for example, Ronald Dworkin's claim that the main sources of international law, including customary international law and *jus cogens* norms, are conceived in existing doctrine as consent-based, see Ronald Dworkin, *A New Philosophy of International Law*, 41 PHIL. & PUB. AFF. 5 (2013). But on Dworkin's account talk of consent in describing existing doctrines alternates with the quite different talk of "recognition": "If enough states to constitute 'the international community of States' have recognized fundamental rules as preemptory [sic] and nonnegotiable, then these rules are preemptory [sic] and nonnegotiable for the whole international community," p.6. The failure to disentangle consent from a consensus of recognition has downstream implications for Dworkin's argument, since it means that he defends his "more basic principle" (p.9) for identifying international law only against the contrast afforded by a voluntarist model that has a poor foothold in existing practice.

treaty may be adduced as evidence of *opinio juris* despite the fact that some states' acceptance of the treaty is qualified by hefty reservations.

Of course, a sufficiently hard-headed voluntarist will be undeterred by the infelicities of doctrinal fit identified above. He may well respond that the regime of customary law should be purged of its non-voluntarist elements. And the reason for this drastic revisionism is the goal of better aligning *legality*—what we recognize as valid norms of customary international law—and *legitimacy*—the moral bindingness of such law on its putative subjects. In other words, the voluntarist insists that it is at least a necessary condition of a legal norm's bindingness with respect to a given state that that state has consented to it. Therefore, consent should be a condition on the validity of a legal norm, since it is inherent in law to claim legitimacy. Yet although it is widely credited, the consent-based account is deeply problematic in the context of both municipal and international law.

To focus on the international case, why should the bindingness of international norms that serve valuable goals not otherwise achievable hinge on whether they have been accepted by states whose rulers do not themselves govern with the consent of their own subjects? Or who, more to the point, flout the basic rights of their subjects? And even in the case where the government of a state rules by consent and respects basic rights, why should it be able to opt out of an international regime that promises to achieve great benefits for all, preventing it from achieving those benefits or significantly raising the cost of its doing so? There is no need to expand on the anti-voluntarist case here. Voluntarism has been subject to heavy general criticism that applies to both the municipal and international spheres.[18] Still, we should recognize that the voluntarist is motivated by a laudable concern: to align processes of law-formation more closely with the conditions of legitimacy. His error consists in misidentifying those conditions.

But this leaves the the MJA facing a challenge: what is the understanding of legitimacy that undergirds its account of custom? In other writings, I have extended Joseph Raz's service conception of legitimate authority to the case of international law. According to this conception, a body of law will be binding on its putative subjects to the extent that they are more likely to comply with the independent reasons that apply to them by treating it as binding than by not doing so. On this view, it is objective values, and the reasons they generate, and not subjective volition, that is the ultimate touchstone of legitimacy.[19] Most importantly, objective values are not to be confused with the value beliefs actually held by states; instead, they are the values that states *should* recognize and conform to, whether they actually do so or not. Unfortunately, some who superficially appear to adopt an approach akin to the MJA falter at this crucial hurdle, making the operative values ultimately a matter of value judgments that command widespread assent in international society at any given

[18]For a rejection of consent-based accounts of international law's legitimacy, see Allen E. Buchanan, *The Legitimacy of International Law*, in THE PHILOSOPHY OF INTERNATIONAL LAW (Samantha Besson & John Tasioulas eds., 2010). For a rejection of consent as a general theory of legitimate authority, see Joseph Raz, THE MORALITY OF FREEDOM Part I (OUP, 1986),.

[19] John Tasioulas, *The Legitimacy of International Law*, in THE PHILOSOPHY OF INTERNATIONAL LAW (Samantha Besson & John Tasioulas eds., 2010) and John Tasioulas, *Human Rights, Legitimacy, and International Law*, 58 AM. J. JURIS. 1-25 (2013),.

time.[20] But nothing is a genuine value just in virtue of its being believed to be so, although there may be *independent* normative reasons for according a certain significance to whether an ethical belief is widespread or not, for example, it may in some cases bear on the appropriate objects of toleration within an international legal regime, or on the morally salient issue of the latter's efficacy in securing conformity among its putative subjects.

At an abstract level, the affinity of the MJA with the service conception of legitimacy should be evident.[21] Both make objective values, the sources of corresponding objective reasons, central in their respective inquiries into law-formation and legitimacy. However, something further can be said about why *opinio juris* can have the role I have assigned it (especially feature (2), in previous section) under a service conception. Rather than having the import for legitimacy suggested by the consent theory, the existence of widespread *opinio juris* is capable of enhancing the legitimacy of a norm in at least three ways under the service conception.

First, the consensus of view it embodies among many and diverse states, as well as other relevant global actors, can constitute a distillation of collective *wisdom*, one that outstrips the knowledge that a state acting by itself could reliably bring to bear in decision-making. A state may therefore be more likely to conform with reason by aligning itself with custom than by resorting to its own judgment on the matter. Second, it may indicate that the norm in question is more likely to be *efficacious* in securing compliance among relevant actors, and hence to achieve its goals, than one not backed by communal consensus. This is an especially salient feature when the legitimacy of the norm in question turns on its capacity to provide a solution to co-ordination problems. In such cases, of course, the presence of supporting state practice will be especially helpful in confirming the efficacy of the relevant norm.

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[20] See, for example, the approaches to customary international law of Roberts and Lepard, which make the moral attractiveness of a customary norm ultimately a function of the extent to which it is endorsed by states rather than a matter of objective truth. Thus, Roberts appeals to "commonly held subjective views about actions that are right or wrong, which a representative majority of states has recognized in treaties and declarations", Anthea E. Roberts, *Traditional and Modern Approaches to Customary International Law*, 95 AM. J. INT'L L. 757, 760 (2001). Similarly, Lepard invokes "fundamental ethical principles" that are "the product of the views of states" (LEPARD, *supra* note 3, at 374-5). But a simple insistence on Hume's Law—the idea that no 'ought' can be derived exclusively from statements about what is the case, including, what opinions are generally adhered to—is enough to expose the fatal flaw in such views. It is also worth noting that such consensus-based views often involve highly optimistic assumptions about the content of the principles regarding which there is a global consensus, leaving the impression that they are surreptitiously driven by undefended ethical commitments that are not consensus-based. None of this is intended to deny the existence of objective moral reasons for giving some kinds of significance to whether or not a moral proposition is widely accepted by states, but such acceptance is not ultimately determinative of whether or not a given proposition is correct.

[21] It may be objected that the service conception of authority justified a "hard" positivist account of law incompatible with the MJA, insofar as the latter makes moral judgments necessary to the discover of customary international law. *See, e.g.*, J. Raz, 'Authority, Law, and Morality' *in* ETHICS AND THE PUBLIC DOMAIN (1995). Answering this large objection would take us too far afield, so I simply note two points. First, a subscriber to hard positivism could nonetheless accept the MJA as an account not of customary international law, but rather of how courts should decide cases involving customary international law, on the assumption that they have a responsibility to develop such law in appropriate ways. Second, even if we stick fast to MJA as an account of the grounds of customary international law, I would join those who question whether the service conception of authority, properly understood, necessitates the embrace of Raz's brand of hard positivism.

This is part of the distinctive significance of *compliance* (state practice) with a putative norm, as opposed to mere *endorsement* of it (*opinio juris)* that was previously noted (section 1, above).[22] Finally, taking into account the views of multiple states, as well as other global actors, ministers to the value of political *participation* by independent, self-determining states, groups and individuals in the communal processes of international governance. Among the reasons that states have are reasons to advance widespread participation in international law-making processes by affected political communities and individuals. In short, although the voluntarist is right to link insistence on *opinio juris* to considerations of legitimacy, they tell an overly simplistic story about how that link is forged.

Human rights as custom and jus cogens

Let us turn now to the implications of the MJA for international human rights law. How do we determine which, if any, human rights norms have acquired the status of customary international law? Potentially, this will be a sub-set of all the norms of human rights law insofar as there may exist some human rights norms, for example, based on treaties, that do not have customary status. Having isolated the customary international law of human rights, we proceed to identify those customary human rights norms that belong to the elite category of *jus cogens*. On this view, the *jus cogens* norms of human rights are a subset of the customary international law of human rights. More generally, it is a presupposition of this view that *jus cogens* norms are a special category of customary norms.[23] Their distinctive character, within the general class of customary norms, consists mainly in their possession of the following features: (a) they legally bind all states (and other relevant international agents) without exception; (b) their binding character for any given state is independent of whether that state has accepted, or failed to object to, the norm in question. In particular, the "persistent objector rule" for evading a law's opposability is inapplicable to *jus cogens* norms. So, for example, South Africa's supposed persistent objections to norms prohibiting racial discrimination and apartheid were legally nugatory; (c) non-compliance with a norm of this class cannot be legally justified, except perhaps insofar as this is permitted by another norm that also possesses *jus cogens* standing. As a specific implication of (c), any treaty agreement to depart from a *jus cogens* norm is null and void—certainly the offending provision itself and arguably the entire treaty of which it is a part. Of course, it does not follow from the

[22] The first consideration may justify according greater weight in the process of customary norm formation, other things being equal, to the practice and *opinio juris* of states whose history reveals a more steadfast commitment to relevant values of global justice. The second consideration justifies according greater weight to the practice and *opinio* of more powerful and influential states, or to those states especially affected by the putative norm. Both considerations make the existence of *opinio* and practice among states that are *representative* of salient global differences—cultural, religious, economic, military, etc.—an matter of significance.

[23] A presupposition that seems to be widely accepted, including by the ICJ, e.g., in the *Nicaragua Case* 1986 I.C.J. Rep. 14, 100, ¶ 190 (ICJ, 1986), which held that the prohibition of the use of force is 'not only a principle of customary international law but also a fundamental or cardinal principle of such law' and in *Obligation to Extradite or Prosecute* case 2012 I.C.J. Rep 457, ¶ 99 (ICJ, 2012), which held that the prohibition of torture is part of customary law and has become a peremptory norm (*jus cogens)*, and is "grounded in a widespread international practice and on the *opinio juris* of States." However, some have argued that *jus cogens* norms can be grounded in general principles of law. *See, e.g.*, Bruno Simma and Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 Aust'l Y.B. Int'l L. 82, 102-6 (1988-9). I shall set aside this possibility in what follows.

fact that *jus cogens* norms are non-derogable in this way that they are not subject to limitations on how states and others may seek to enforce them or respond to their violation, for example, rules establishing jurisdiction with respect to their violation.[24] In particular, it is worth observing that although *jus cogens* norms impose obligations on all states (obligations *omnium*) it does not logically follow that all states have a right to the enforcement of these obligations (obligations *erga omnes*).[25] In short, *jus cogens* norms are an elite class of norms that seek to protect what the international community regards as particularly important values. This perceived importance is marked by the formal characteristics of being judged properly to be, or come to be, legal norms that are (a) universal, (b) peremptory, and (c) non-derogable.

If the *jus cogens* human rights norms are a sub-set of the customary human rights norms, how are they to be identified? The answer to this question involves at least two dimensions. On the first dimension, the *jus cogens* character of a norm will be indicated by the distinctive content of the *opinio juris* associated with it. In particular, that *opinio juris* will contain a moral judgment, explicit or implicit, to the effect that the norm in question either already properly has or may properly be accorded the three features (a)-(c) enumerated in the preceding paragraph. So far this is predominantly a matter of fit with social facts: a successful argument for the existence of a customary norm must adequately exemplify a *dimension of fit* with such facts. But the interpretive process of identifying *jus cogens* norms, like the process of identifying customary norms generally, operates against a background grasp of the sorts of norms that are appropriately accorded the relevant legal status. This demands some view, on the part of the interpreter, as to which norms may justifiably be ascribed features (a)-(c) given background evaluative considerations bearing on international order, and given also the prospect of realizing them through the medium of law at a given juncture of history. The *dimension of justification* will implicate judgments as to whether the norm in question is an eligible object of international concern, such that it ought to find expression in international legal norms, and whether it has the kind of importance sufficient to justify attributing to it features (a)-(c). But even then a further judgment will need to be made, one more pragmatic in character, about the overall effect of recognizing such a legal norm at the international legal system's present stage of evolution.

It is evident that both of the dimensions of fit and justification described above may have the effect of generating changing interpretative outcomes over time. This accounts for the dynamic quality of *jus cogens* doctrine, with new norms coming into being with the passage of time, while existing norms change shape or even lapse from this exalted status. Hence, there is no implication here of the heavy-duty "natural law" thesis that *jus cogens* doctrine picks out a set of immutable norms that form part of the international legal system from its very inception, its unvarying constitutional structure, as it were. Irrespective of whether or not any such norms exist, they are not synonymous with the idea of *jus cogens*. For all the elevated ethical status it connotes,

[24]See, for example, *2006 Armed Activities Case (D.R.C. v Rwanda),* ¶ 64, 125. In *Jurisdictional Immunities of the State* (Ger. V. It.), Judgment, No.143 at 83-5, 96 it was decided that there is no exception to state immunity for violations of norms of *jus cogens*.

[25] It has been argued that observations in the *Barcelona Traction* decision, I.C.J. 32, ¶ 34, suggest that all *jus cogens* norms are also *erga omnes*, see Erika de Wet, Jus Cogens *and Obligations* Erga Omnes, in THE OXFORD HANDBOOK OF INTERNATIONAL HUMAN RIGHTS LAW, 554-5 (2013). This view seems neither plausible nor desirable, see LEPARD, *supra* note 3, at 343.

the latter is a form of *positive* law, and hence cannot be grounded exclusively in moral reasoning.

Consider, however, a challenge to the thesis that *jus cogens* norms are a sub-set of customary norms. Antonio Cassese has championed the view that *jus cogens* norms constitute the constitutional groundwork of the international legal order, and that certain basic human rights norms figure prominently in this category. However, he denies that the *jus cogens* character of a norm presupposes its status as a customary norm. This is because the former sort of norm may exist despite lacking the backing in *opinio juris* and state practice required for the latter. Instead, *jus cogens* norms are *sui generis* with respect to customary international law, rather than a species of it, and can be adduced provided that a representative majority of states evince 'acceptance' of them as such norms:

> [W]hat is required [for *jus cogens* status] is the *acceptance* by the *majority* of states provided that such majority includes states which are representative of the various political and geographic areas of the world. We can conclude that, unlike the customary process, the two elements of *usus* and *opinion juris* are not required. It may suffice for the majority of members of the world community in some way to evince their "acceptance" of a customary rule as having the rank of a peremptory norm. Such "acceptance" does not necessarily involve actual conduct, or a positive assertion; it may involve an express or tacit manifestation of will, which can take the form of a statement or declaration, or acquiescence in statements by other international legal subjects or in recommendations or declarations by intergovernmental organizations or in decisions by judicial bodies. No consistent practice of states and other international legal subjects (*usus*) is necessary.[26]

Cassese's position has the curious upshot that, *ceteris paribus*, the bar for qualification as a customary norm (state practice and *opinio juris*) is set considerably higher than that for *jus cogens* status. And this is so notwithstanding the fact that the normative consequences of *jus cogens* status are far more significant than those of customary status. Now, the strain in this position emerges when Cassese himself plausibly rejects as "illogical" one writer's view[27] that it may be possible to establish the customary nature of a rule *after* finding that it is a *jus cogens* norm. But just this possibility seems to be countenanced by Cassese's own view in making it possible for a norm to be *jus cogens* without first establishing it as a customary norm. If, over time, the "acceptance" of that norm by a representative majority of states comes to be supplemented by general state practice, it is difficult to see why it should not eventually be affirmed as customary in nature. The air of "illogicality," I suggest, stems from the assumption—common to Cassese and the position he is criticising—that *jus cogens* norms are not a sub-set of customary norms. This is the real reason why it seems decidedly odd to say that a *jus cogens* norm can become customary law at some point subsequent to its initial emergence.

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[26] Antonio Cassese, *For an Enhanced Role of* Jus Cogens, in REALIZING UTOPIA: THE FUTURE OF INTERNATIONAL LAW, 165 (Antonio Cassese ed., 2012). For an apparently similar view, see Bruno Simma, *From Bilateralism to Community Interest*, 250 RECUEIL DES COURS 217, 292 (199).

[27] Cassesse, *supra* note 26, at 164 n.17.

A more logical view, I think, is to maintain the customary character of *jus cogens* norms while adopting a more flexible understanding of the process of customary norm formation than the one assumed by Cassese. On the MJA, it is indeed possible for a customary norm to emerge precisely through something like the process of "acceptance" he describes, without the support of widespread and consistent state practice. There is no need, in that case, to countenance a troubling bifurcation of customary international law and *jus cogens* doctrine.

Assuming the MJA is correct, general state practice is relevant, but not always necessary, in the formation of a *jus cogens* norm. Now, some have argued that there are three distinctive problems in establishing state practice in favor of a human rights norm, especially one that is supposed to be *jus cogens* in character: (1) Many human rights norms are essentially prohibitions, requiring that states refrain from certain forms of conduct. But there seems to be a special difficulty in adducing evidence of supportive "negative state practice." (2) Human rights norms essentially concern a state's treatment of its own subjects, rather than some inherently inter-state matter, yet custom is all about norms hammered out by states through a give-and-taken adjustment of competing interests in the process of inter-state contact. (3) It has been argued that state practice supporting a *jus cogens* norm, such as the norm prohibiting genocide, requires evidence of "failed attempts to contract out of" the application of the *jus cogens* norm. This would paradigmatically consist in some authoritative body treating as void a treaty that permitted or recognised the possibility of doing what the *jus cogens* norm prohibits. Of course, such evidence is extremely thin on the ground.[28]

All three of these supposed difficulties, however, are either overdrawn or false. Problem (1) exaggerates the extent to which human rights impose negative duties as opposed to positive duties to undertake a course of action. Moreover, the imposition of negative duties is hardly unique to human rights law, but also extends to many other customary norms, including the cornerstone norms prohibiting the use of force and intervention against sovereign states. Finally, the objection exaggerates the difficulty of adducing evidence of compliance with a prohibition. One can plausibly infer relevant state practice, for example, in situations in which a state had a strong interest in engaging in the prohibited conduct but refrained to do so, and cited the relevant norm by way of justification. One can also adduce cases in which states engage in positive action, such as compensation, economic sanctions or humanitarian intervention, that they claim is justified on the basis that some other state violated the negative duty imposed by the customary norm. In other words, the "state practice" relevant to the existence of a norm is not only compliance with the primary duty it imposes, but also acting in accordance with the normative implications of non-compliance with those primary duties, such as duties to compensate or rights of intervention.

Problem (2) also misfires. It takes a commonplace but contingent feature of much general state practice (its emergence via process of inter-state activity) and

[28] 'To support a customary rule not merely forbidding genocide, but also providing that the obligation not to commit it is a matter of *jus* cogens, the practice invoked would have to consist of, or include, one or more failed attempts to contract out of its application, by treaty or informal agreement – 'failed' in the sense that it was accepted, or authoritatively declared, that the norm over-rode the agreement'. HUGH THIRLWAY, THE SOURCES OF INTERNATIONAL LAW 156 (2014). Thirlway also appears to give credence to versions of the first two objections.

without obvious warrant converts it into a necessary characteristic. In any case, human rights law does not exclusively concern a state's treatment of its own citizens, for example, in cases of the extradition of foreign nationals to states whose criminal justice systems flout basic human rights norms. And even when it does so, an inter-state dimension bearing on state practice is not invariably absent. Consider, for example, the appeal to gross human rights violations to justify economic sanctions or engagement in forms of intervention that are otherwise incompatible with state sovereignty.

Problem (3), if genuine, would render state practice in favor of a *jus cogens* norm of human rights extremely scarce.[29] It would be most unambiguously confined to the situation in which states made a treaty with the explicit purpose of departing from human rights norms, and some authoritative body invalidated the treaty on the grounds that the norms in question are *jus cogens*.[30] However, this is manifestly an overly narrow construction of what such practice might involve. As noted above, the distinctiveness of *jus cogens* norms does not simply consist in the fact that they are non-derogable by means of a treaty, but rather in the three broader characteristics, (a)-(c), specified above. Now, the further point is that the finding of state practice need not be made independently of registering the presence of *opinio juris*. Hence, state practice supporting a norm can be adduced in cases where states justify their action or inaction, whether in compliance with the norm or in response to its violation by others, on the basis of the judgment embodied in an *opinio juris* that attributes to the norm characteristics (a)-(c).

In short, general state practice is not a *necessary* condition in order to establish a *jus cogens* norm, and, insofar as it is *relevant*, the prospects of adducing it are nothing like as bleak as has been claimed by sponsors of the three difficulties we have just surveyed.

Which human rights are jus cogens?

In response to the question of which customary human rights norms belong to the category of *jus cogens*, one answer is that necessarily all of them do, since it is of the essence of human rights that to affirm their existence is to believe that they are universally binding quite independently of consent.[31] Or, put another way, in the case

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[29] But not completely non-existent, e.g. in Aloeboetoe v Surinam, 15 Inter-Am. Ct. HR (ser C.) (1993), the Inter-American Court objected to the invocation of a treaty that included a clause on the return of runaway slaves.

[30] As Andrea Biondi has aptly put it: "It is an irony of sorts that we know the most about the effects of a violation of *jus cogens* in the area in which they are least likely to be relevant: the law of treaties. It is indeed highly unlikely that two or more states would make a treaty to commit an act of genocide or to subject certain individuals to torture", in *Human Rights and the Magic of* Jus Cogens, 19 *E. J. Int'l L.*, 491, 495-6 (2008). However, the extent of this unlikelihood should not be exaggerated. As Gerry Neuman (personal communication) has pointed out to me, the conflict between extradition treaties and the non-refoulement obligation (assuming the latter is *jus cogens*) is a very real one, as shown by the activities of the Human Rights Committee relating to the refoulement of "extremists" under the Minsk Convention and the Shanghai Cooperation Agreement.

[31] There is more than a whiff of this view in Judge Tanaka's dissent in South West Africa Cases: "If we can introduce in the international law field a category of law, namely *jus cogens* … a kind of imperative law which constitutes the contrast to the *jus dispositivum*, capable of being changed by way of agreement between States, surely the law concerning the protection of human rights may be considered to belong to the *jus cogens*," 1966 I.C.J. Rep. 250, 298 (1966). *See also* Kadi v. Council of

of human rights norms, the requisite *opinio juris* for customary status is indistinguishable from that for *jus cogens* status. But this argument purchases its sweeping conclusion too cheaply, since it fails to distinguish between moral human rights norms and legal human rights norms. Commitment to moral human rights norms does indeed involve the judgment that they are morally binding on all states regardless of whether they have accepted or failed to object to them. By contrast, there is nothing incoherent in a state believing that a particular human rights norm is or should be part of customary international law without it also judging, or being committed to the judgment, that it is or should be a norm of *jus cogens*. Moreover, it seems undesirable, from the point of view of human rights morality itself, to adopt the position that customary human rights law more or less automatically has *jus cogens* status. By collapsing these two categories, the predictable effect is to inhibit unduly the growth of the customary international law of human rights. This is because states will be less prepared to affirm human rights as customary if the upshot is that they will thereby also achieve *jus cogens* status. This would deprive us of the real advantages of enshrining certain human rights in customary international law, even if they lack *jus cogens* status.

Arguments such as the one we have just rejected, which seek to establish on conceptual or similar grounds a short-cut to the conclusion that customary human rights norms inherently possess *jus cogens* status, seem overly ambitious. Instead, an independent argument is needed to assess the *jus cogens* status of any given human right in customary international law. The cumulative effect of such piecemeal inquiry would be to arrive at one of the following conclusions:

(a) All customary human rights norms are *jus cogens*

(b) Only some, but not all, customary human rights norms are *jus cogens*

(c) No customary human rights norms are *jus cogens*

In the scholarship on this topic, (b) is the leading contender, but there is also some support for (a) and perhaps to a lesser extent for (c), although the latter often tends to be a specific implication of a wholesale skepticism about the category of *jus cogens* as such. However, it is worth identifying a further possibility which strikes me as highly plausible, but which has tended to go unremarked:

(d) Regarding some customary human rights norms that are *jus cogens*, it is only some aspects of their normative content, and not the whole of it, that possess this status.

In other words, the *jus cogens* status of any given customary human right, like the *jus cogens* status of the general class of customary human rights, is not an all-or-nothing matter. Just as some human rights can be *jus cogens* and not others, so too some aspects of a given human right's normative content can have *jus cogens* status, while other aspects of its content are merely customary. I return to (d) after making some remarks about (b). HERE

European Union, Judgment of the Court of First Instance of the European Communities (Second Chamber, Extended Composition), Case T-315/01 ¶ 226-31 (Sep. 21, 2005).

A useful starting-point in the quest for human rights that are *jus cogens* is the list of human rights that the *Restatement (Third) of the Foreign Relations Law* of the United States indicates are violations of *customary law*: "(a) genocide, (b) slavery or slave trade, (c) murder or causing the disappearance of individuals, (d) torture or other cruel, inhuman, or degrading treatment or punishment, (e) prolonged arbitrary detention, (f) systematic racial discrimination, or (g) a consistent pattern of gross violations of internationally recognized human rights."[32] Of course, the rights prohibiting these wrongs can be properly upheld as *jus cogens* only if there is sufficient evidence of *opinio juris* of the requisite variety, together with any supporting state practice. As the *Restatement* acknowledges, it is an open question whether or not other human rights norms have achieved customary status in addition to those (a)–(f), at least, listed above.[33]

There is another way in which the *Restatement* is helpful to us, and that is its observation, made in the Reporters' Notes, that "Nonderogability in emergency and *jus cogens* are different principles, responding to different concerns, and they are not necessarily congruent."[34] Non-derogability in an emergency is certainly not sufficient for *jus cogens* status. After all, as noted previously, *jus cogens* norms are distinguished by the three aspects of universality, peremptoriness, and non-derogability. Even a standard customary or treaty norm can be non-derogable in this sense. Nor does non-derogability in an emergency seem to be necessary; instead, the non-derogability characteristic of *jus cogens* is to be understood in a broader way—as the idea that there is no justification for non-compliance except perhaps by reference to other *jus cogens* norms—which does not obviously entail the more specific idea of non-derogability in an emergency. This more stringent form of non-derogability may be characteristic of some *jus cogens* human rights norms, such as the right not to be tortured, but not all of them. Imposing it sets a needlessly high bar for *jus cogens* status.

Return now to proposition (d). This alerts us to the possibility that some, but not all, aspects of a given human right in customary international law may have acquired *jus cogens* status. No decisive reason exists for making the *jus cogens* standing of individual human rights on an all-or-nothing basis. There may be requisite support for the *jus cogens* character of some elements of a given norm, but not for others. So, for example a right to religious freedom may form part of the corpus of *jus cogens* norms. However, it is not necessary for someone defending this position to argue that all of the normative requirements we properly associate with that right in customary law possess *jus cogens* status. So, for example, persecution on religious grounds may be a violation of *jus cogens*, whereas restrictions on individuals' freedom to proselytize or to change their religion, although prohibited by customary international law, lack the requisite basis in *opinio juris* and state practice to be classified as *jus cogens*. Similarly, within the general right to freedom of expression,

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[32] RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (1987).

[33] *See id.* § 702, cmt. a. Specific reference is made to the right not to be subject to systematic religious discrimination, the right to own and not be arbitrarily deprived of property, and the right against gender discrimination, as norms that have already achieved, or are on the verge of achieving, customary status. *Id.*, cmts, j-l.

[34] *Id.*, rptrs. note 11. *See also* LEPARD, *supra* note 3, at 338-9.

it may be possible to isolate some core content that possesses *jus cogens* status, such as a right to criticize government officials without fear of punishment, even if other customary law elements lack this status.

At this point, it might be objected that states should not be permitted to pick and choose *jus cogens* status *within* a customary norm of human rights. Is it not disingenuous, the objection goes, for a state to accept as *jus cogens* some part of a human right, but not another? On this view, international law should not connive at assaults on the integrity of human rights norms through the fragmentation of their legal status. But this is a difficult line to maintain once we have admitted that states can be selective with respect to *jus cogens* status within the general class of customary human rights norms. Presumably, they are permitted to do so in order properly to reflect their judgments that some of these norms are better suited for the legal status of *jus cogens* than others. But once we have made that concession, it is difficult to comprehend why similar judgments of relative fittingness for *jus cogens* status should not be permitted *within* a given customary norm of human rights. After all, it is not as if there are no good reasons, relating to such matters as relative moral importance or the likelihood of attracting a widespread consensus, for drawing such distinctions within the content of a given human right. Indeed, it most likely enhances the ability of vital demands of global justice to ascend to *jus cogens* status if we permit this kind of splitting off of human rights norms than if we rigidly insist on an all-or-nothing approach.

Conclusion

In this chapter I have sketched the contours of a moral judgment-based account of customary international law (MJA), one that I believe makes best sense of what custom as a source of international law has become in recent decades. It is a moral judgment-based account along at least two dimensions. First, *opinio juris* is construed as centrally involving some form of moral judgment. On the disjunctive view elaborated above, it is either a moral judgment that a given norm is appropriately law or else that it may be appropriately established as law. Second, moral judgment is called for when an interpreter of law seeks to determine whether state practice and *opinio juris* suffice to establish the existence of a putative customary norm. I have argued that, in this interpretative process, it is possible for a customary norm to be established predominantly on the basis of widespread *opinio juris*, despite the absence of supporting state practice. Often it is an overly inclusive conception of "state practice", one that overlaps substantially with *opinio juris*, that obscures this possibility in the analyses offered by more conservative commentators.

Beyond defending the MJA, I have also argued that human rights norms of *jus cogens* status are a sub-class of customary norms of human rights. *Jus cogens* norms are those customary norms whose grounding *opinio juris* and state practice establishes them as universal, peremptory and non-derogable norms. I rejected both the thesis that human rights customary norms are automatically *jus cogens* and the contrasting thesis that there are near-insuperable barriers to a human rights norm achieving either customary or *jus cogens* standing. Instead, I argued that a sub-set of customary human rights norms are *jus cogens* in status and, moreover, that sometimes only a sub-set of the obligations associated with such a right is *jus cogens*. I have not, however, offered more than a general framework and some conjectures regarding the normative

question of which human rights norms *ought to be* elevated to *jus cogens* status in international law. This is a topic that must be left for another time, and one which I am inclined to believe is best addressed in a piecemeal fashion.

Annex 235

N. Wenban-Smith & M. Carter, *Chagos: A History - Exploration, Exploitation, Expulsion* (2016)

CHAGOS: A HISTORY

Exploration Exploitation Expulsion

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Preface

WE were drawn into exploring the history of the Chagos Archipelago from two very different starting points. One of us (MC) had encountered references to these islands and their inhabitants in the course of archival study of Mauritian history in the 18th and 19th centuries. Slave voyages, naval engagements, scandalous episodes involving brutality and murders were encountered repeatedly in records studied for other purposes. For the other (NW-S), whose several visits to Diego Garcia in the early 1980s as Commissioner of the British Indian Ocean Territory allowed him to fly low over the whole archipelago and to visit half a dozen of its islands by sea, there was left a residue of curiosity about the real character of the plantation life which the military installations on one island had replaced. What had gone on in those once-elegant villas, tumbled-down chapels, creeper-infested cottages, collapsed industrial structures with crazy rails leading to broken piers, still bearing the rusting frames of small wagons? In 2006, chance brought us to neighbouring desks in the Mauritius National Archive in Port Louis. We have been exchanging historical finds relating to these isolated atolls ever since.

Our separate researches have taken us over the past ten years not only to Mauritius and to the enormous resources of British libraries, museums and, especially, the National Archive at Kew, but also to Lisbon and Paris, Amsterdam and Rotterdam, Florence and Modena, Bedford MA and Rhode Island, not to speak of Mumbai and New Delhi. We have also corresponded with individuals having academic expertise or personal knowledge all over the world. We are however only too aware of gaps in our knowledge of, for example Russian, German and Spanish archives, and also conscious that our knowledge of United States official archives is largely second-hand. Broadly speaking, Parts 1 and 2 (Exploration and Exploitation) are the product of our joint efforts, while Part 3 (Expulsion) is the work of NWS alone.

The closure of the Chagos coconut plantations in the early 1970s and the consequences of the forced removal of the islands' civilian population have from the start been topics of great controversy, which continues to this day. This involuntary/imposed exile has spawned a host of media stories focussing on a 'Paradise Lost', without, however, providing a very clear understanding of what life was really like on those isolated coral atolls. Our purpose is to explore the little-known history of the discovery of the islands, their eventual settlement and the gradual development of a distinct community, all serving the single function of supplying coconuts and their derivative products to Mauritius. One of our chief objectives was to rescue from complete anonymity some at least of the individuals who made up this community of, at first,

slaves and slave owners, who later emerged as the labourers, foremen and managers of Mauritian owned private companies. In this we have been less successful than we hoped: those most readily identifiable are those whose offences, alleged and real, brought them to the attention of magistrates. Their cases are valuable as indicators of social conditions, but too great an emphasis on misdeeds would give a wholly false impression of day-to-day life. We have attempted to redress the relative silence of the workers through our extensive use of testimony provided by Fernand Mandarin who has authored Chapter 20 and whose evocative memories of life on Peros Banhos and Diego Garcia have contributed to several sections of the book. Our researches have also revealed an interesting nexus of stakeholders in the exploitation of the Chagos, whose coinciding and competing interests determined their economic fate. Many, perhaps most, of those involved raised their families on Chagos and had a long and intimate relationship with the islands. Of these, the recollections of Paul Caboche and his sister Marcelle Lagesse have enriched our account in various ways.

We are not, of course, the first to look into the history of Mauritius' dependencies. Sir Robert Scott's *Limuria* (1961) remains a useful account of the discovery and exploration of these islands and the origins of the societies that emerged in them. Scott's focus differed, however, from ours. Concerned about the economic and social future of those Mascarene islands which depended on coconut products for their wellbeing – known collectively as the Oil Islands – he sought to record their distinct character and to look for ways of conserving it in the face of the rapid changes occurring in Mauritius and the world beyond. We write after those changes have engulfed the Chagos Archipelago. Moreover, by concentrating on this more limited area, which has now acquired a very specific identity, we can look in greater detail at each stage of its development. What we have found is the gradual emergence of a system of exploitation, initially conditioned by the islands' remoteness but later making cynical use of this distance from authority to retain unenlightened, under-capitalised, unproductive, unloved and, finally, unsustainable industries. What has also emerged is the extent to which the strategic pre-occupations of a succession of powerful states impinged on the Chagos in times of war and peace alike. Thirdly, of course, economic and political developments in Mauritius determined much of what happened in these distant Dependencies, but our chosen focus on the latter may have led us to reference inadequately some passing comments made on the former. Finally, we have been astonished at the extraordinary range of individuals, some well-known to history, whose lives were touched by these seemingly insignificant specks in the vastness of the Indian Ocean.

From Homer's *Odyssey* onwards, poets and dramatists have found that small islands in remote seas allow the mind to escape from mundane realities while providing focus for a concentrated mythic story. Shakespeare frequently employed this device, even making mention of the *Tigre*, the vessel later used for the second English voyage to the Chagos. In 1668, Henry Neville's *Isle of Pines* was placed in the same longitude as the Chagos but a dozen degrees further to the south, with a picaresque plot involving Dutch as well as English seafarers. More recently, *Smoke Island*, by Antony Trew (Collins, 1964) uses Eagle Island as a backdrop for the survivors of an air crash to explore South African racial issues. Cristina Pereira, a Portuguese historical novelist, has based her latest work (*Um Espião nas Descobertas,* volume III, 2011) on the real fate of a Portuguese ship, the *Conceição* on Peros Banhos in 1555. Coming closer to our own story, Mauritian novelist Marcelle Lagesse, who spent several years on Chagos as a young woman, wrote a charming story of the love of a daughter of the manager of Salomon Island for a visiting French sea captain in *Des Pas Sur Le Sable* (reprinted 2009, Editions du Printemps, Mauritius). Her *Notes d'un Carnet* (Editions Paul Mackay, 1967) gives a fictional account of the daily life of the Salomon islanders which must correspond closely to the reality she experi-

enced from 1938–42. Finally, the life of the islanders exiled from the Chagos has also been presented in fictional form, for example, in Peter Benson's *A Lesser Dependency* (Macmillan, 1989) in French by Shenaz Patel's *Le Silence des Chagos*, (Editions l'Olivier, 2005) and *Out of the Cyclone* by Guy-Sylvio Bigaignon (ELP Publications, Mauritius, 2011). This is by no means an exhaustive list and the literature inspired by the exile of the Chagos islanders continues to grow.

The term 'Chagossian' is of much more recent date than 1973; in this book, therefore, we refer to the island inhabitants as 'Ilois', or 'workers' and 'labourers' according to the relevant French and English language records consulted. Those who have come to identify themselves as members of the Chagossian community, principally individuals employed as workers – and some as managers – in the islands (and their descendants) have enriched this work with their memories and photographs. We know of one individual who can trace his ancestry back to 1840, and one of our objectives has been to recall as many names as we can from the archival records. We hope that this unfinished work will be continued by others and that eventually many more Chagossians will be able to identify links going back beyond the recall of oral memory. Of course, we have been unable to include here all the names derived from passenger lists and civil status records that we have unearthed. A website with additional materials is being compiled; please visit www.chagos.info for further details. We hope to add further to this over time, as new research and records appear and are shared.

As far as this work is concerned, we hope it will help provide a base for future studies, by bringing to light the reality of conditions in these islands, before speedy transport and instant communication could help mitigate the effects of great distance and miniscule size. We hope that the story which unfolds in the following pages will provide all interested in the history of these atolls and particularly the Chagossians and their descendants with an understanding of the social and economic history of the archipelago over the last two centuries.

NW-S MC

3

Anglo-French Competition and Co-operation

THE first encounters with Chagos described in the preceding chapter had been fortuitous and accidental; the results were marked down in log-books, principally designed to provide a source of information and a warning to fellow mariners. At this juncture, few passing sailors had the time or inclination to conduct detailed voyages of exploration around the archipelago and the presence of the various atolls and banks were seen rather in the guise of obstacles to be circumvented than as islands to be investigated. Moreover, as we have seen, both the Portuguese and Dutch regarded the Chagos as irrelevant to their interests and had settled on sailing routes to avoid the archipelago. That became less and less true for the French and the British. The French, having occupied Mauritius and Bourbon (Reunion), began to use these islands to project their influence in the Indian Ocean and to defend their Indian possessions.[1] The British left it largely to the East India Company to defend its own interests, not only in India but on the route to India. The perennial rivalry between the two nations was thus set to intensify in this arena; on the other hand, they had a shared interest in establishing safer and quicker passage for their mariners and merchants. A further complication was that, as they learned more about the mid-oceanic islands, the French took an increasing interest in their resources, whereas the British concerns were primarily strategic.

Thesis: the French

Within only a few decades of French settlement on the Isle of France (present day Mauritius) its natural resources began to be depleted. The *Intendant* (local representative of the French East Indies Company) was a certain Pierre Poivre, a man justly credited with promoting the scientific exploration of the North-East Archipelago, as the French then described the area which included the

Chagos.[2] Better known to us today for his botanical interests – the 'Peter Piper' who 'picked a peck of pickled pepper' in the English nursery rhyme – Poivre (pictured left) was, as the ditty suggests, a keen collector and disseminator of spices; he also had his eye on turtles and tortoises. Already by 1770 the *Intendant* had informed his superiors in France that 'Tortoises are starting to become rare on the island of Rodrigues. It would be as well to abandon it for a while to allow the population to recover. When we get more familiar with the archipelago that lies further to the north, we may hope to find islands as abundant in tortoises as Rodrigues used to be'.[3] Poivre remarked that earlier brief sightings of Diego Garcia had indicated an abundance of tortoises or turtles, and proposed that his best officers should be despatched to explore the archipelago in the *belle saison*. The north-east archipelago was therefore now of importance both as an area of dangerous shoals and banks which needed to be properly mapped and as the potential source of meat valued for its supposed power to combat leprosy.

In fact, help was already on its way. Jacques-Raymond, Vicomte de Grenier, born in Martinique in 1736, had embarked on a naval career at the age of 20 and had already been involved in several campaigns – his most recent against the Barbary corsairs – when he was selected for duty in the Indian Ocean.[4] In 1767 he was named commander of the corvette *L'Heure du Berger*, for service at the Isles of France and Bourbon. Judging this to offer only limited career prospects he requested the French naval minister's permission to 'undertake observations and even to make discoveries in these seas' and to embark with him two specialists: the Abbé Rochon '*pour faire les Observations astronomiques*', and a hydrographic draughtsman ('*dessinateur hydrographe*'). The Duc de Praslin acceded to all these demands in a letter dated 13 October 1767. After much discussion with fellow naval officers, Grenier became convinced that 'no-one had yet tried to investigate these waters, on account of their anticipated dangers' and he therefore set for himself the task of finding 'a shorter all-season route between the Isle of France and India'. Rochon, already recognised as one of France's foremost astronomers, was not able to accompany Grenier at once, but lost no time, once he had caught up with the ambitious mariner, in seeking to demonstrate the superiority of science over seamanship. His primary task, however, was to

Abbé Rochon, shown here with ship's captain Bory.

prepare for an important astronomical event, a transit of the planet Venus across the sun in June 1769, which would be visible from Rodrigues.

Shortly before the departure of the corvette, Jean-Baptiste d'Après de Mannevillette forwarded to Grenier a map of the Indian Ocean on which he had traced 'in yellow the places about which our knowledge remains very sketchy'.[5] On arriving at the Isle of France Grenier was requested by the Governor, Dumas, to undertake a voyage along the east coast of Madagascar. He carried out this task, but still burning to find a better route to India he finally obtained the agreement of Dumas and Poivre to set out on this mission, which they described as 'to traverse the seas which lie between here and the Maldive Islands and Ceylon, to reconnoitre their reefs and islands; to look for the most direct, and thus shortest, route to take between the Isle of France and the Coromandel coast at all times of year'. Rochon could not go with him, on account of his duties in Rodrigues – though, as Fate would have it, his ship was wrecked on the nearby Cargados shoals. The day before his departure, Grenier was given a copy of the map made by Picault in the 1740s and after consulting it, he decided to follow the 5th parallel (as Picault had done as far as Seychelles), a course that, if maintained, would take him across Speaker's Bank and on without obstacle to the Sunda Strait.

On 30 May 1769 he set sail northwards from the Isle of France, sighting Saint Brandon on 2 June, the bank of Saya de Malha on 4 June and arriving at the Seychelles on 14 June. His route to the Indies, Grenier reasoned correctly, should take him close to the 'Adu islands', which had been recorded in detail only by Moreau and Rivière from *Le Favori* in March 1757. Moreau's journal had described his approach to and the position of these islands as follows:

> From 25-27 March 1757. Observed white seabirds all afternoon; yesterday at 6 in the evening saw bottom, with no land in sight; took soundings, revealing rocks, and more soundings to establish the depth; had 19 fathoms, with the bottom consisting of coral and broken shells. At 6.45 large red coral; the same at 7.30, but hardly any rocks and the lead brought up a small red fish, still alive, plus some tiny shrimps and shellfish, with beautiful, pure white sand; at 8.45 bottom rocky, depth 15 fathoms; immediately sounded again and found same bottom, but 21 fathoms;

> at 9.30, fine white sand at 47 fathoms. We were close-hauled on a port tack, wind NW. At 11.30, same bottom at 49 fathoms; at midnight, same bottom at 45 fathoms; at 6 a.m. today espied land to the NNW at an estimated distance of 6-7 leagues; at 7.30 spotted another island to the SSE; at 8 o'clock sounded again without finding bottom at 75 fathoms. At this point the westernmost island lay a little to the north of north-west and we had covered about 8 and a half leagues* upon it; allowing for the necessary corrections, it probably extended further northwards. At 8 a.m., as it was fine weather, with a very calm sea, we dispatched the ship's dinghy … At midday, the observed latitude was S. 5° 05', as against our expected lat of S 5° 11'. At midday the land visible lay as follows: the most southerly islet at a little westward of NW; the most northerly a little northwards of NE, the nearest land being one and a half leagues distant.[6]
>
> * One French league was equal to three English nautical miles.

Grenier had consulted this record and concluded that the 'Adu islands' must be along his projected new route to the Indies. As we have already explained, however, in the last pages of Chapter 2, the islands encountered by Moreau were those of Salomon, centred on Lat 5° 20' S Long 69° 51' East of Paris. Moreau's meticulous soundings enable us to calculate that the bank over which *Le Favori* passed during the night was Victory bank, while the island visible to the SE must have been Nelson Island, not knowingly seen again until 1820.

Thus, when *L'Heure du Berger* passed Moreau's estimated position, there were many seabirds – the vessel was close to Speakers Bank, but no islands in view. Grenier concluded, again correctly, that Moreau had been somewhat further south than he believed. When Rochon and Grenier made the trip together later in the year, with the same result, Rochon was able to argue that Grenier had simply not made his case: there were still unknown dangers. On their return to France, their rival claims to be the best person to chart the new 'route to the Indies', either through or around Chagos, stirred up a controversy which necessitated the intervention of French ministers and notable academicians, dragged in Jean-Baptiste d'Après de Mannevillette (1707-1780)[7] and Alexandre Guy Pingré (1711-1796) astronomer and naval geographer, who were forced to judge their peers, and precipitated a storm of mémoires and counter-mémoires, which are breathtakingly vituperative but a useful source of material for the truly committed historian of Chagos cartography.

Both men were right; their arguments were not mutually exclusive. At first, the venerable academicians came down firmly on the side of Grenier, agreeing that the route proposed was shorter and attacking the '*sophismes*' of Rochon. For example, they countered Rochon's argument that this was already a well-travelled route, demonstrating that James Lancaster had followed a different trajectory:

> That Admiral, who left Antongil Bay on 6 March 1602 and, after observing the

> Island of Roquepiz on the 16th, headed south as far as the 6 degree line, between the isles and reefs of Pedros Banhos and those to the NW of Chagas Island, his route demonstrating that his successful transit of the archipelago had nothing in common with the route proposed by Monsieur Grenier.[8]

The arguments raged until July 1771. Then the 'great and good' reached a more nuanced view: the route was a new and shorter one, for which Grenier deserved credit, whilst admitting their ignorance about other possible 'dangers' and supporting the need for further exploration. Indeed both men later returned to Mauritius to pursue their researches. A full account of their quarrel need not detain the reader here.[9] Suffice it to say that Rochon, in his 1791 publication *Voyage à Madagascar, et aux Indes Orientales*, was to have the last word:

> Vessels leaving the Isle of France for India were forced, during both monsoon seasons, to take a long, indirect route so as to avoid the archipelago of islands and reefs to the north of the Isle. As long as the real positions of these dangers remained unknown, there remained risks for any squadron which might attempt to take a more direct route ... If improved knowledge of the Archipelago allows a more direct route to be tried in both seasons, I dare to flatter myself that I have played a part in rendering this service to navigation, given that I have been the first to establish, through astronomical observations, the precise position of the main hazards.[10]

On a more general point, that the shortest route was not necessarily the fastest, Rochon could also have claimed victory. In the mid-1770s, the Governor of the Isle of France, the Chevalier de Ternay, offered his opinion on the 'new route to the Indies' of Grenier, which all had supported against Rochon. He commented, 'Every vessel leaving here in 1775 and following the route proposed by Mr Grenier has experienced storms, calms and contrary winds, which have occasioned prodigious delays, even, in one case, resulting in a voyage which took four months to reach the Malabar coast'.[11]

Having said that, the efforts of Rochon and Grenier had in reality accomplished less than either claimed. In particular, their supposition that they had observed Peros Banhos was mistaken; their visit to Diego Garcia established its exact latitude while still mistaking its longitude by two whole degrees; they did not recognise the islets now known as the Three Brothers, did not notice Danger, Egmont or Eagle Islands and they did not find the islands already visited by Moreau in 1757.

Diego Garcia: the Coiled Serpent

If the efforts of the French to establish the best route to India were inconclusive, the visit of Rochon and Grenier to Diego Garcia alerted the French authorities

4

Early Settlements: 1776–1789

DESPITE being in possession of the nearby Mascarene islands for many years, and making occasional use of Diego Garcia for a supply of turtles and coconuts, it was not until the 1770s that the French governors of the islands formally claimed and settled any part of the Chagos archipelago. Governor Souillac asserted that the *Vert Galant* had been sent to Diego Garcia by Chevalier Desroches to claim the island for the French in 1770 and that in 1778 Dupuis de la Faye, commander of the *Europe*, raised the French flag in the 'northern bay' of Diego Garcia as per the orders of the French governor M. le Chevalier de la Brillanne.[1] This did not prevent at least two British East Indiamen visiting the Chagos in the following year – the *Luconia* and the *Resolution*. In 1781, claimed the Vicomte de Souillac, de la Faye was succeeded by M. Pastor who was given the task of maintaining the flagstaff, and raising the French colours whenever circumstances required. Pastor also made an arrangement with the Government of the Isle of France to supply the Mascarenes with the produce of Diego Garcia.

The corsair of Chagos

Deschiens de Kérulvay, as we have seen (p. 34), had made several visits to the Chagos archipelago in the 1770s both for purposes of exploration and cartography and to exploit the produce of the atolls for the benefit of his sailors and the French settlers on the Isle of France. In 1776, he records that he set up an establishment there to capture turtles and to harvest coconuts, of which he delivered a large quantity to the Isle of France. After hostilities were declared between Britain and France in 1778, during the American Revolutionary War, Deschiens captained a corsair ship, *la Bouffonne*, later renamed *Philippine* and financed by the Pitot brothers. In December 1779, with a cargo of slaves on board, he

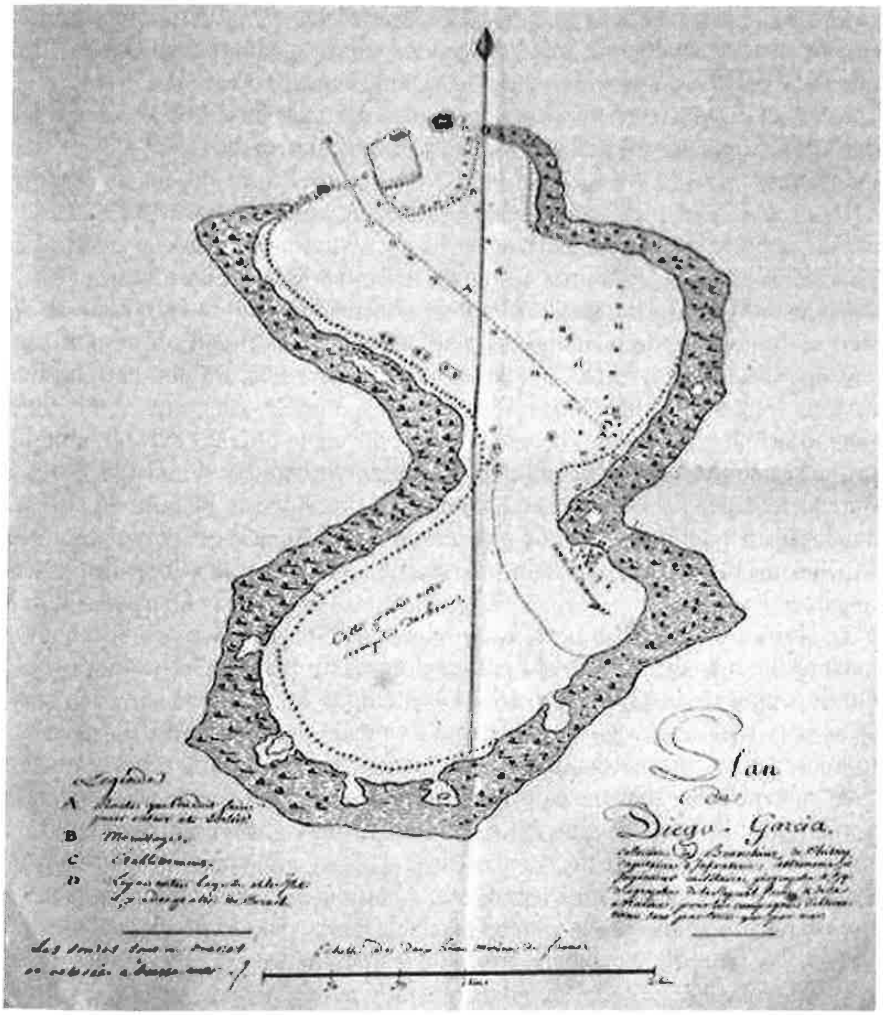
reportedly stopped at Diego Garcia to 'refresh' them. Among the slaves sent ashore, four men and a woman ran away. What became of them is unknown. The instructions for Kérulvay's next voyage, dated 17 April 1780, were to commence with a visit to the Chagos islands, to take on board a supply of turtles. The corsair returned to France at the end of the war, and settled in Saint Brieuc where he married, and raised a family. In 1786 he addressed a memoir to the French naval minister requesting a 20 year concession of Diego Garcia and the use of two ships in order to set up a slave trading depot. He proposed to collect slaves from Africa and to bring them to Chagos where they could be 'refreshed' and 'acclimatised' before being taken to the Caribbean. However, he was too late – Diego Garcia had already been claimed by a French settler on the Isle of France. The minister wrote to Kerulvay, refusing his request on 16 June 1786.[2]

Le Normand's Southern Bay establishment

In 1783, Pastor and the French governor accepted the proposition of Sieur Le Normand to take over the establishment and the job of maintaining the flag staff on Diego Garcia. Le Normand accordingly settled in the southern bay. The map opposite, only recently discovered in the French Colonial Archives at Aix-en Provence, is of uncertain date and authorship, but appears to correspond closely to the state of knowledge in 1793.[3] The products of Diego Garcia which he intended to exploit are described as follows: coconuts and wood, including tatamaka, '*bois blanc*', described as good for building boats, and wood for burning. The island was found to abound in fish, turtles, seabirds and wild hens, but was without a good source of water, which could only be obtained by digging down into the sand which produced a brackish but not unhealthy drink.[4]

In a letter detailing his grievances, addressed to the Colonial Assembly of the Isle of France some years later, Le Normand provides further information concerning his concessionary arrangement. Anxious to establish his status as the first lessee, Le Normand denied claims of a pre-existing French establishment on Diego Garcia. He wrote that at the time he had demanded his concession, the island was uninhabited and virtually unknown. Le Normand claimed that the agreement made on his behalf on 24 February 1783 had alone forced the British to discontinue their visits. Le Normand stressed that the then Governor, Souillac, was pleased with his request for the concession and authorised him to make the necessary expenses, informing him that if no-one else claimed the island he could have the concession (*jouissance*).[5]

Following his arrangement with Souillac, Le Normand went to Diego Garcia with materials and slaves but departed early in 1784 leaving a set of instructions for his manager François and the workers. The document, subsequently trans-



lated into English, but dated 1 May 1784 reads:

> The property of the island of Diego Garcia having been granted to me ... I establish the herein named François to represent me during my absence and to work along with the negroes whom I have committed to his care at the several occupations respecting the trade of the partnership I have entered into with M. Lambert for the terrestrial and marine produce of the island. François de Moulereau shall assist him and shall be employed by the said François at whatever he may desire and shall represent him in case of death or sickness in every respect according to the following instructions.

be transferred to Agalega, which the participants hoped might be separately transferred to Seychelles jurisdiction.[27]

Britain and Mauritius

By far the best account available of this negotiation is that of Chan Low.[28] Relying on the British documentary records available before 2012, he traces the British Ministerial discussions in 1964 and, particularly, in 1965, together with the reports and activities of the British governors of Mauritius. He describes the differences of perspective between the Ministers primarily involved, in particular those between the Colonial Secretary, Anthony Greenwood and the Secretaries of State for Foreign Affairs, Defence and Commonwealth Affairs. Greenwood, deeply concerned about the communal tensions in Mauritius, was determined to avoid adding to them by inserting the potentially destabilising issue of the Chagos into the constitutional conference scheduled to be held in September. The other Ministers were acutely aware of American pressure to secure access to Diego Garcia on the terms already agreed. Although Chan Low does not make the point, the new Prime Minister, Harold Wilson, had to balance both these specific concerns and more general political differences between (in over-simplistic terms) the right and left wings of his administration – the latter, suspicious of America, being notably represented by Greenwood.[29] He also faced the highly divisive issue of Vietnam, on which President Johnson was seeking not just political support, but a British contribution of troops, however small. This being politically unacceptable, Wilson must have been casting about for some other way to demonstrate timely support for the USA.[30]

It is unnecessary to replicate Chan Low's impressively balanced and objective accounts of the progress of the constitutional talks and the increasingly frequent inter-ministerial discussions of their handling in relation to the Chagos issue.[31] As matters turned out, the Chagos issue did prove destabilising, to the extent that one of the four parties represented in the Mauritian government walked out of the conference. This was the Parti Mauricien Social Démocrate (PMSD), resolutely opposed to the country's independence, whose departure left the way clear for Ramgoolam to make his own judgment of what terms he might be able to achieve and hold to on his return home. The issue remained unresolved until, as Chan Low describes,

> On the morning of 23 September [1965] S. Ramgoolam met Harold Wilson at Downing Street. The British Prime Minister, after deploring that the Mauritians were raising the stakes too high, stated that 'there was a number of possibilities: the Premier (Ramgoolam) and his colleagues could return to Mauritius either

> with independence or without it. On the Defence part, Diego Garcia could either be detached by Order in Council or with the agreement of the Premier and his colleagues. The best of all might be independence and detachment by agreement, although he could not of course commit the Colonial Secretary on this point.

As Chan Low comments, Ramgoolam understood perfectly what was at stake: 'Sir Seewoosagur Ramgoolam said that he was convinced that the question of Diego Garcia was a matter of detail. There was no difficulty in principle'.[32] When the conference resumed the same afternoon, the Mauritian delegation (the PMSD still being absent), given reassurances on various issues (including fishing rights), agreed to the excision of the Chagos in return for compensation of £3 million. This opened the way for Greenwood to close the conference the following morning with an announcement inviting the Mauritians to decide upon independence at their next general elections, that is, rejecting the PMSD's demand for a referendum on the subject.

Did this agreement entail, as Chan Low concludes, deceit and blackmail? Each of the two leaders had his own political objectives; each faced important political pressures, from the US in Wilson's case and, in Ramgoolam's, from strong domestic opposition to independence. As is in the nature of political bargains, each paid what he regarded as an acceptable price for reconciling their primary aims.[33]

Britain and the United States

Following the 1964 survey visit, as Bandjunis records,[34] enthusiasm for developing Diego Garcia grew sharply within the Department of Defense, and included, for the first time, expressions of interest from the US Air Force. Well-informed press reports also began to proliferate, inspiring expressions of concern at the United Nations. However, in the US there were also other political preoccupations. President Johnson, now standing for election in his own right, secured the passage through Congress of a resolution giving him greatly increased freedom of action in Vietnam and presaging a major escalation of hostilities there. The Chagos issue was lost to view. In December, the British urged the US to decide how exactly they wished to proceed. In January 1965, the Americans responded that they had definite military plans for Diego Garcia, but wished the rest of the Chagos Archipelago to be included, 'primarily in the interests of security and in order to have other sites available for future contingencies'. They also asked for Aldabra, Coëtivy, Agalega, Farquhar, Desroches and Cosmoledos to be included in the 'detachment package'.

In April, British ministers reacted favourably to the American requests, but

decided to seek an American contribution to the costs of detachment. The Americans, after reminding the British of their previous acceptance of such costs (page 469 above), agreed to contribute up to half of the anticipated £10 million involved. At the prevailing rate of exchange (£1=$2.8), this share amounted to $14 million. However, in view of the likelihood that Congress would refuse to appropriate funds for this purpose, the payment would be made secretly by waiving part of the research and development costs of an ongoing missile programme.[35] Conveniently, the US Chiefs of Staff concluded that perpetual access was worth $15 million,[36] while the State Department official who presented the resulting draft agreements in September explained that the US Government wanted an 'Ascension-type' agreement with once-for-all compensation.[37] As in all their dealings concerning Diego Garcia, then and subsequently, the Americans sought to avoid any direct dealings with Mauritius concerning compensation. Their consistent policy was to deal only with Britain as the responsible sovereign power.

BIOT is born

With the political obstacles cleared, the way was now open to set up the new colonial entity and the British government lost no time in doing so. Instructions were sent to the Governors of Mauritius and Seychelles to seek formal agreement of the local representative bodies to the detachment of the various islands concerned. This was given by Seychelles on 1 November and Mauritius on 5 November.[38] On Monday 8 November 1965, by Order-in-Council, the British Indian Ocean Territory was formally promulgated (and soon became known by its acronym BIOT), with parliament informed two days later by Written Answer to an arranged parliamentary question. From the larger number of islands earlier proposed, only the Chagos, together with three Seychelles islands (Aldabra, Farquhar and Desroches) were included. The Order also provided for the Territory's administration by a Commissioner (the existing Governor of Seychelles) assisted by an Administrator. The Answer explained that 'the islands will be available for the construction of defence facilities by the British and US Governments, but no plans have yet been made by either Government. Appropriate compensation will be paid'. On 12 November, three PMSD Ministers of the Mauritius coalition government resigned, on the ground that Mauritius had been inadequately compensated. There followed a whole year before any further public moves were made.[39]

BIOT and the United Nations

Nevertheless, the announcement of the creation of BIOT occurred while the annual General Assembly of the UN was in session. As usual, Britain had many contentious issues to face, not least the decolonisation questions arising in the Fourth Committee. Here, the UK was accustomed to take a strong stand in defence of the right of the Falkland islanders to decide their own future. The potential embarrassment of having to defend the very different arrangements envisaged for BIOT was obvious and officials turned urgently to examine how oversight by the UN might legitimately be avoided. One option – to remove the populations of all the islands ahead of any defence construction, was quickly rejected as being indefensible, for economic reasons in Seychelles and political reasons in Mauritius. Officials concluded almost as quickly that the only basis for denying the existence of a permanent settled population in BIOT was to define their presence in terms solely of their employment and their links with either Mauritius or Seychelles. Vulnerability to criticism of this approach in UN fora was foreseen, but judged less damaging than the expected interference of UN bodies. Thought was then given to ways of presenting this choice so as to blunt criticism as far as possible. It could be pointed out that all those on the islands were contracted employees of the companies concerned (or dependants thereof) and all had established links with either Mauritius or Seychelles. No-one obtained a living from independent economic activity. On this last point, the views of Newton were sought. He replied that '… as a matter of personal interest, [he had been] anxious to try to find established communities on the islands, particularly people who had made their living by fishing or market gardening, etc. [He] failed to find any'.[40] However, as it turned out, the timetabling of the agenda that year made it unnecessary to deploy the proposed arguments.

Notes to Chapter 22

1 TNA CO 968/842 Robert Newton, CMG, *Report on the Anglo-American Survey in the Indian Ocean*, 1964, submitted to Secretary of State Duncan Sandys on 23 September 1964. Born in 1908, Newton had wide experience of colonial administration, having served in Nigeria, Palestine and Jamaica, before his appointment in 1953 as Colonial Secretary [deputy to the Governor] in Mauritius, from where he retired in 1961. He then obtained election to the Exeter City Council, later being chosen as one of its Aldermen.

2 This vessel had been built in the US in 1909, as the *Telma*, and later renamed *La Perle*. She was used regularly until 1971, her last voyage being that to remove the last islanders from Diego Garcia (article dated 10 May 2004 in the Seychelles *Nation*).

3 On Diego Garcia, Harold Pouponneau succeeded Robert Talbot; on Peros Banhos, Henri Gendron joined a M. Guillemin, later taking over; on Salomon, the new man was a M. Remy.

4 TNA CO 1036/796 Letter dated 27 September 1962.

5 Marcel Moulinié, Paul's nephew, sent to replace his uncle's initial appointee, Pouponneau, spoke forcefully in this sense to NW-S during his visit to Seychelles in 1995; Talbot's comment was made in answer to NW-S's question during a visit to Mauritius in 2010. Both conversations took place before the relevant census figures were known to the latter.

6 The Mauritian newspaper *L'Express* carried articles in its issues for 24 April and 7 July 1974 about the 'Eden and hell that was Agalega'. These reported a diatribe in the Mauritius parliament by the then PMSD deputy, Raymond d'Unienville, about the consequences of the Seychellisation of Agalega following its purchase by Paul Moulinié and the subsequent appointment of Pouponneau as manager. The population had halved from its previous figure of 400, and only 80 Ilois remained, who were, according to the article, treated much more harshly than the workers introduced from Seychelles.

7 Fernand Mandarin, as dictated to his collaborator, Robert Furlong (personal communication, July 2012). Official figures, however, show a decline of only about 60 between 1962 and 1964.

8 TNA CO 968/842 Report by Robert Newton.

9 TNA CO 1036/1582 Secret and Personal Telegram No. 49 of 22 February 1963.

10 All the Seychellois were employed on either two-year (heads of families) or eighteen-month (bachelors) contracts.

11 Newton *op. cit.*, paragraph 24. Critics of this view have suggested that Newton was deliberately seeking to minimise the extent and depth of Ilois links with the Chagos, in conformity with already-formed Whitehall views. However, the issues that later concerned the British government, in particular the status of the Ilois under the UN Charter, were not to surface for at least another year.

12 TNA FCO 141/1462 Governor Seychelles Telegram No. 159 dated 10 August 1964.

13 It was in that month that the US plans were described in American and British newspapers, immediately attracting international attention.

14 Vine, D., *Island of Shame*, Princeton University Press, 2009.

15 British Embassy, Washington Note to the State Department of 29 July 1963 (Vine, *op.cit* p. 71).

16 To the consternation of officials in Whitehall, the memorandum from the US Embassy in London envisaged an eventual requirement for 3,000 acres and accommodation for 350 operatives.

17 TNA CAB 21/5418 Chiefs of Staff paper 95/64; also TNA DEF 127/123/03 memorandum following the talks.

18 Chan Low, J., 'The Making of the Chagos Affair: myths and reality', in S. Evers and M. Kooy (eds.) *Eviction from the Chagos* Islands, Brill, Leiden 2011.

19 The British interest in Aldabra clearly reflected the government's deep anxieties about developments affecting Britain's very important economic and political engagement in central and southern Africa, as well as the possible need to intervene on behalf of the large numbers of British nationals in the area. Only a few months earlier, British forces had intervened to help put down mutinies in East Africa, while the situation in Rhodesia was becoming steadily more tense. When the possibility of developing Aldabra became public, the scientific community mounted sustained opposition to the project and its eventual abandonment gave rise to the belief, still held in some quarters, that the humans of the Chagos were sacrificed for the sake of the giant tortoises of Aldabra. The prosaic facts that the Americans declined to contribute and the British could not afford to undertake such development alone were as nothing compared to so powerful a myth.

20 TNA CO 1036/1582 Sir John Rennie, letter dated 6 June 1963.

21 TNA CO 1036/1582 Colonial Office Secret and Personal Telegram No. 39 to Port Louis, dated 16 December 1963.

22 TNA FCO 141/1464 Governor, Mauritius, Secret and Personal Telegram No. 83 dated 1 July 1964.

23 TNA FCO 141/1464 Colonial Office Secret and Personal Telegram No. 19 to Governor Mauritius (also to Governor Seychelles as No. 42) dated 6 March 1964.

24 TNA FCO 141/1464 Letter dated 23 March 1964 from Smith (in Port Louis) to J.G. Marnham.

25 TNA FCO 32/484 C.C.P. Heathcote-Smith, *BIOT: Chronological summary of events leading to its creation ... and subsequent events relating to the establishment of UK/US defence facilities.* Item 7 quotes an American communication dated 10 February 1965 as follows: 'No reason to re-locate population prior

to Island coming into use to meet a requirement. This would apply to other islands of the Chagos Archipelago as long as our activity was confined to Diego Garcia'. [Heathcote-Smith, a Counsellor available between postings, had evidently been called in to summarise the material accumulated in a multitude of departmental files; the result remains an admirable aid to historians.]

26 TNA CO 1036/13 P. Lloyd, letter dated 22 June 1965.

27 TNA FO 371/184524, folio Z4/86 Letter dated 13 July 1965 from T. Smith (Colonial Office) to J.A. Patterson (HM Treasury).

28 Chan Low *op. cit.*

29 A Cabinet ally of Greenwood, Barbara Castle, referred in her published diaries to a meeting on 31 August 1965 to discuss the Chagos, remarking 'I approve the motive: to off-load on to the US some of our responsibilities East of Suez; but I don't like the method'. *The Castle Diaries 1964–70* Weidenfeld & Nicolson, 1984.

30 We do not think this suggestion is fanciful. It is, for example, put forward by Ashley Jackson (page 183 of his *War and Empire in Mauritius and the Indian Ocean*, Palgrave 2001). Also, NW-S consulted Sir Oliver Wright, the official responsible for recording what passed between Wilson and Ramgoolam. His reply, at the age of 89, was commendably Delphic, but cited another example where, in 'high politics', a favour was given, or returned, unrelated to the logic of immediate policy.

31 TNA CAB 48/18 is the main Whitehall source for this material'.

32 TNA CO 1036/253 The two quotations cited by Chan Low are from the record of conversation between Prime Minister and Premier of Mauritius at 10, Downing Street at 10 a.m. on Thursday 23 September 1965.

33 In 1982, following a general election in which Ramgoolam was defeated, he was summoned before a Select Committee on the Excision of the Chagos Archipelago, to whose questions he replied '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 never could visit … If I had to choose between independence and the ceding of Diego Garcia, I would have done again the same thing.' De l'Estrac, J.C., *Report of the Select Committee on the Excision of the Chagos Archipelago*, cited by L. Jeffery in *Chagos Islanders in the UK* (p.33) Manchester University Press 2011.

34 Bandjunis, V.B., *Diego Garcia: creation of the Indian Ocean base* (pp. 13–14) Writer's Showcase Lincoln 2001.

35 Bandjunis *op.cit.* (pp. 26–27) describes the arrangement in detail.

36 Vine *op. cit.* (p. 82).

37 TNA FCO 32/484 Heathcote-Smith *op. cit.* (item 43).

38 *Ibid.* (items 48 and 49) The two colonies' agreements came in response to Despatch No. 423 of 6 October 1965 to Port Louis and Telegram No. 338 to Seychelles, dated 20 October.

39 The procedure for announcing the government's decision was that traditionally used for reporting colonial legislation. It enabled the government to evade prior parliamentary debate and to hide both the financial arrangements (awkward for the US Administration) and questions about the treatment of the existing island inhabitants (highly embarrassing for the British). However, those (such as Vine *op. cit.* p. 83) who have claimed that the creation of BIOT was not announced publicly are mistaken.

40 TNA CO 1036/1344 Minuting by officials (T.C.D. Jerrom, H.P. Hall, K.W.S. Mackenzie) in November 1965.