

# INTERNATIONAL COURT OF JUSTICE

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

### REQUEST FOR ADVISORY OPINION

#### ORAL PROCEEDINGS

**THE RT. HON. SIR ANEROOD JUGNAUTH, GCSK, KCMG, QC, MINISTER MENTOR,  
MINISTER OF DEFENCE, MINISTER FOR RODRIGUES OF THE REPUBLIC OF MAURITIUS**

### OPENING STATEMENT

1. Mr President, Members of the Court, it is a special honour for me to open the oral pleadings on behalf of the Republic of Mauritius.
2. I sincerely thank the Court for promptly organising these proceedings on the General Assembly's request for an Advisory Opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. I also extend my Government's appreciation to all the participants in this process.
3. Mr President, I have been immensely privileged to witness and participate in my country's political advancement, from a colony to independence on 12 March 1968. I am the only one still alive among those who participated in the Mauritius Constitutional Conference at Lancaster House in 1965 where talks on the ultimate status of Mauritius were held.
4. Today Mauritius is a peaceful and stable democratic State. It has maintained excellent relations with all States concerned with the questions referred to the Court. However, I am sorry to say that more than fifty years after independence, and more than fifty years after I travelled to London for the Constitutional Conference, the process of decolonisation of Mauritius remains incomplete, as a result of the unlawful detachment of an integral part of our territory on the eve of our independence.

5. Following long periods of Dutch and French occupation from 1638 to 1810, there followed 157 years of British colonial rule. Throughout that period, the Chagos Archipelago was always an integral part of Mauritius, and was treated as such by successive administering powers.

6. Mr President, Members of the Court, as you will have read in our Written Statement, in the run-up to the 1965 Conference, officials of the colonial power devised a strategy by which Mauritian representatives were given no room for any choice.<sup>1</sup> In parallel with the scheduled constitutional talks, smaller private meetings on “defence matters” were organised by the Colonial Secretary in London, to which only five Mauritian representatives were invited, including Premier Sir Seewoosagur Ramgoolam.<sup>2</sup> These secret meetings were not, at that time, made known to the other Mauritian representatives, myself included, although we were later told of the immense pressure that was imposed on the small group. The official records, which only came to light many years later, reveal that during the first two meetings, on 13 and 20 September 1965, Mauritian representatives had indeed expressed strenuous opposition to the proposal to detach the Chagos Archipelago.<sup>3</sup>

7. In the face of this opposition, the then Prime Minister, Harold Wilson, decided to have a “private word” with Sir Seewoosagur.

8. Speaking notes prepared for Mr Wilson set out in clear and unambiguous terms that the object of that meeting was:

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<sup>1</sup> See Written Statement of the Republic of Mauritius (1 Mar. 2018), paras. 3.15-3.90 (hereinafter “Written Statement of Mauritius”). See also Written Comments of the Republic of Mauritius (15 May 2018), paras. 1.14-1.32.

<sup>2</sup> See Written Statement of Mauritius, paras. 3.59-3.84.

<sup>3</sup> See *ibid.*, paras. 3.30, 3.36-3.38 and 3.51-3.52.

**“to frighten [Sir Seewoosagur] with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.”<sup>4</sup>**

9. The record of that meeting shows how the then Prime Minister of the colonial power put this objective into practice. He told Sir Seewoosagur that he and his colleagues could return to Mauritius “either with Independence or without it”, and that “the best solution of all might be Independence and detachment by agreement”.<sup>5</sup>

10. Sir Seewoosagur understood Prime Minister Wilson’s words to be in the nature of a threat. It is against that backdrop of immense pressure and in circumstances amounting to duress, that less than five hours later, four of the five Mauritian representatives yielded to the detachment of the Chagos Archipelago.<sup>6</sup> They did so only because the administering power made it abundantly clear that independence would only be granted if they “agreed” to the detachment, and the dismemberment of Mauritius.

11. Mr President, the administering power now contends that Mauritius freely consented to the detachment of the Chagos Archipelago.<sup>7</sup> Yet the choice we were faced with was no choice at all: it was independence on condition of “agreement” to detachment, or no independence, with detachment anyway. This was not – and cannot be treated as – the freely

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<sup>4</sup> U.K. Colonial Office, *Note for the Prime Minister’s Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965) (Written Statement of Mauritius, Annex 59).

<sup>5</sup> See U.K. Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (Written Statement of Mauritius, Annex 60) (“The Prime Minister went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although we could not of course commit the Colonial Secretary at this point.”)

<sup>6</sup> See Written Statement of Mauritius, paras. 3.82-3.84.

<sup>7</sup> Written Statement of the United Kingdom of Great Britain and Northern Ireland (15 Feb. 2018), paras. 1.4, 1.23, 3.7-3.8, 3.35-3.37, 3.52.

expressed will of the people of Mauritius. It cannot meet the requirements of self-determination. At no time were the Mauritian people, either as a whole or through their representatives, given any opportunity to retain the Chagos Archipelago.

12. Six weeks after the 1965 Conference, the administering power unilaterally detached the Chagos Archipelago from the territory of Mauritius. It did so by way of Order in Council, which created a new colony, the so-called “BIOT”. Its sole purpose was the establishment of a military base on Diego Garcia, the largest island in the Chagos Archipelago.

13. To facilitate that, between 1967 and 1973, the administering power forcibly removed the entire population of the Chagos Archipelago. Some 1,500 men, women and children, many of whom had ancestors originating and living in those islands for generations, were forcibly removed. A few of them are in the courtroom today and later this morning you will see a video statement from one of them. The shameful eviction caused and continues to cause immense suffering to part of the Mauritian population, commonly referred to as Chagossians.

14. The Chagossians have fought for more than four decades for the right to return to their place of birth, but without success. While the U.K. contend that they have given financial support to them, let me say that no amount of monetary compensation can remedy the flagrant and on-going breaches of their fundamental human rights, rights that are an inherent part of the principle of self-determination. Mauritius fully supports their immediate right of return to the Chagos Archipelago, to their homes. But as long as our decolonisation is not complete, we are not able to implement a programme for resettlement.

15. Mr President, Members of the Court, one of the facts revealed by the release of records from the British archives, decades after the event, shows that the administering power sought to carry out the detachment as quickly as possible, so as to present the United Nations

– and its Committee of 24 – with a *fait accompli*.<sup>8</sup> Mr President, there was a clear plan to do the excision behind the back of the United Nations.

16. There is a complaint that Mauritius relies primarily on the colonial power's documents and has failed to produce its own contemporaneous records.<sup>9</sup> But Mauritius was a colony of the United Kingdom before, during and for three years after the 1965 Conference. It was British Colonial and Foreign Office officials who produced records of all the relevant meetings at Lancaster House. Those official records, and the views expressed by its own politicians and officials, seem to be challenged by no one, except the former administering power which produced them.

17. Mr President, Members of the Court, after achieving independence, and as soon as its socio-economic conditions permitted, Mauritius has consistently voiced its opposition to the detachment of the Chagos Archipelago.<sup>10</sup> It has done so dozens of times before the United Nations General Assembly, over many decades, and it has done so before many other UN and international fora. There is widespread recognition among the international community, including the African Union and the Non-Aligned Movement, that the process of decolonisation of Mauritius remains incomplete.<sup>11</sup> This overwhelming consensus is also reflected in the written submissions made to the Court in these proceedings.

18. Mauritius has been clear that this Request for an advisory opinion is not intended to bring into question the presence of the base on Diego Garcia, only one of the islands of the Chagos Archipelago. Mauritius recognises its existence and has repeatedly made clear to the

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<sup>8</sup> U.K. Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister*, FO 371/184529 (5 Nov. 1965), para. 7 (Written Statement of Mauritius, Annex 70). *See also* Written Statement of Mauritius, paras. 4.24-4.41.

<sup>9</sup> Written Comments of the United Kingdom of Great Britain and Northern Ireland (14 May 2018), para. 2.49.

<sup>10</sup> *See* Written Statement of Mauritius, paras. 4.2-4.22.

<sup>11</sup> *See* Written Statement of Mauritius, paras. 4.42-4.48.

United States and the administering power that it accepts the future operation of the base in accordance with international law.<sup>12</sup> This is a solemn commitment on behalf of Mauritius and we trust the Court will recognise it as such. Mauritius is also committed to the protection of the environment and has been a responsible guardian of other areas of great environmental significance within its territory.<sup>13</sup>

19. Monsieur le Président, Mesdames et Messieurs de la Cour, la question qui se trouve au coeur de cette requête – l’achèvement de la décolonisation de Maurice – est inextricablement liée à l’un des principaux buts des Nations Unies: “développer entre les nations des relations amicales fondées sur le respect du principe de l’égalité de droits des peuples et de leur droit à disposer d’eux-mêmes”. La République de Maurice est attachée à la règle de droit et consciente de la place toute particulière de la Cour dans l’ordre juridique international. Le peuple mauricien espère que la Cour remplira son mandat et répondra aux deux questions posées par l’Assemblée générale dans la résolution adoptée par une majorité écrasante des votes exprimés. Un avis consultatif de la Cour contribuerait indubitablement à la décolonisation de Maurice et permettrait la réinstallation des Chagossiens qui le souhaitent.

20. Monsieur le Président, je vais maintenant indiquer comment la présentation de Maurice sera organisée. Le professeur Pierre Klein me succédera et traitera des questions de compétence et d’opportunité. Me Alison Macdonald traitera ensuite de la première question et Me Paul Reichler de la seconde. Enfin, le professeur Philippe Sands conclura la

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<sup>12</sup> See *ibid.*, para. 1.30 and Chapter 7, Part III. B. 2. See also: *Letter* from the Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000) (Written Statement of Mauritius, Annex 141); *Letter* from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (Written Statement of Mauritius, Annex 147); *Letter* from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (Written Statement of Mauritius, Annex 148); *Note Verbale* from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (Written Statement of Mauritius, Annex 168); *Letter* from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (Written Statement of Mauritius, Annex 193).

<sup>13</sup> See Written Statement of Mauritius, para. 1.30.

présentation de Maurice en parlant du rôle de la Cour en matière de droit à l'autodétermination. Il présentera aussi une vidéo qui permettra à la Cour d'entendre Mme Marie Liseby Elysé qui représente les personnes qui ont été expulsées de force de l'archipel des Chagos.

21. Monsieur le Président, Mesdames et Messieurs de la Cour, c'est un privilège pour Maurice d'apparaître pour la première fois devant la Cour. Et c'est un privilège tout particulier pour moi de me présenter devant vous aujourd'hui. Je resterai à la disposition de la Cour pour toute assistance qui serait requise durant ces audiences. Je vous demanderais maintenant de bien vouloir passer la parole au professeur Klein et vous remercie pour votre aimable attention.