

## **ANNEX 1**

Definitive Treaty of Peace and Amity between his Britannic majesty and his most Christian  
majesty (of France) 1814, article 8

cation between nations, and continually to render them less strangers to each other, shall likewise examine and determine in what manner the above provision can be extended to the other rivers which, in their navigable course, separate or traverse different States\*.

VII. The Island of Malta and its dependencies shall belong in full right and Sovereignty to His Britannic Majesty.

VIII. His Britannic Majesty, stipulating for Himself and His Allies, engages to restore to His Most Christian Majesty, within the term which shall be hereafter fixed, the colonies, fisheries, factories, and establishments of every kind, which were possessed by France on the 1st of January, 1792, in the seas and on the continents of America, Africa, and Asia; with the exception however of the Islands of Tobago and St. Lucia and of the Isle of France and its dependencies, especially Rodrigues and the Séchelles, which several colonies and possessions His Most Christian Majesty cedes in full right and Sovereignty to His Britannic Majesty, and also the portion of St. Domingo ceded to France by the Treaty of Basle, and which His Most Christian Majesty restores in full right and Sovereignty to His Catholic Majesty.

IX. His Majesty the King of Sweden and Norway, in virtue of the arrangements stipulated with the Allies, and in execution of the preceding Article, consents that the Island of Guadaloupe be restored to His Most Christian Majesty, and gives up all the rights He may have acquired over that island.

X. Her Most Faithful Majesty, in virtue of the arrangements stipulated with Her Allies and in execution of the 8th Article, engages to restore French Guyana as it existed on the 1st of January, 1792, to His Most Christian Majesty, within the term hereafter fixed.

The renewal of the dispute which existed at that period on the subject of the frontier, being the effect of this stipulation, it is agreed that that dispute shall be terminated by a friendly arrangement between the two Courts, under the mediation of His Britannic Majesty.

XI. The places and forts in those colonies and settlements, which, by virtue of the 8th, 9th, and 10th Articles, are to be

\* See General Treaty of Congress, signed at Vienna, 9th June, 1815. Page 3.

## **ANNEX 2**

Mauritius and Dependencies, Ordinance No. 20, 2 June 1852



MAURITIUS AND DEPENDENCIES.

# ORDINANCE

No. 20 of 1852.

*Enacted by the Governor of Mauritius with the advice and consent of the Council of Government thereof.*

**TITLE.** For empowering the Governor in certain cases to extend to the Seychelles Islands and other Dependencies of Mauritius the laws and regulations published in this Island.

**PREAMBLE.** WHEREAS some of the laws and regulations published in this Colony may be conveniently adapted to the local circumstances of the Seychelles and other Dependencies, and it is expedient that sufficient power should be given to the Governor for that special purpose.

*His Excellency the Governor in Council has enacted, and does hereby enact as follows:*

Art. 1.—The Governor is hereby empowered to extend to the Seychelles Islands and other Dependencies of Mauritius any laws or regulations published in this Colony, under such restrictions and modifications in the said laws and regulations as the Governor may deem fit, according to the local circumstances of the said Dependencies.

Art. 2.—The present Ordinance shall take effect from the fifth day of June 1852.

Passed in Council at Port Louis, Island of Mauritius, this second day of June 1852.

*H. M. Whiteley*  
*Secretary to the Council.*

### **ANNEX 3**

Mauritius and Dependencies, Ordinance No. 14, 23 March 1853

MAURITIUS & DEPENDENCIES.

ORDINANCE

No. 14 of 1853.

—Enacted by the Governor of Mauritius with the advice and consent of the Council of Government thereof.

TITLE. For amending and repealing Ordinance No. 20 of 1852.

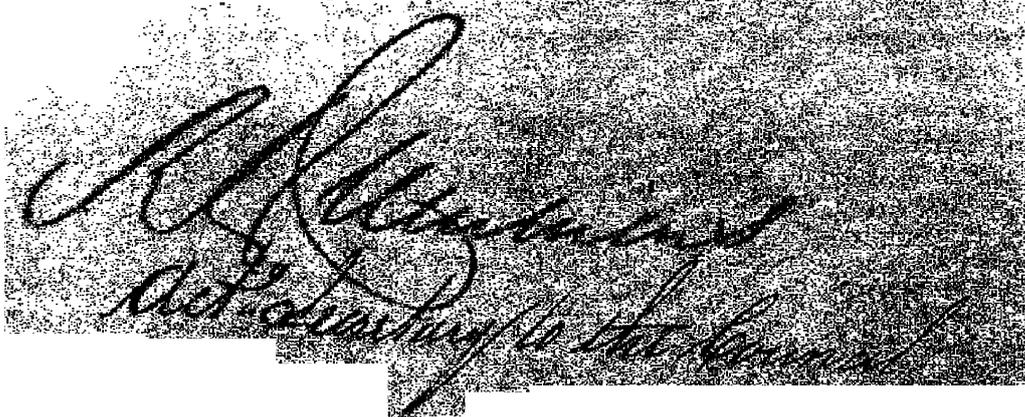
PREAMBLE. WHEREAS an Ordinance has been passed on the 2nd day of June 1852, No. 20, for empowering the Governor in certain cases to extend to the Seychelles Islands and other Dependencies of Mauritius, the laws and regulations published in this Island, and it is expedient that such power be vested in the Governor and His Executive Council.

*His Excellency the Governor in Council has enacted and does hereby enact as follows :*

Art. 1.—Ordinance No. 20 of 1852 is hereby and shall be repealed, and it is enacted that the Governor in his Executive Council is hereby empowered to extend to the Seychelles Islands and other Dependencies of Mauritius, any laws or regulations published in this Colony, under such modifications and restrictions in the said laws and regulations as the Governor may deem fit, according to the local circumstances of the said Dependencies.

Art. 2.—The present Ordinance shall take effect from the twenty sixth day of March 1853.

Passed in Council at Port Louis, Island of Mauritius, this twenty third day of March 1853.

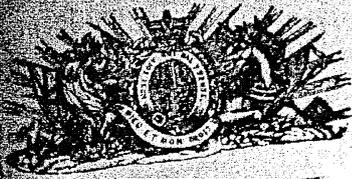


*W. R. ...*  
*Secretary to the Council*

**ANNEX 4**

Ordinance No. 41, 31 December 1875

ORDINANCE No. 41 of 1875.



## AN ORDINANCE

*Enacted by The Governor of Mauritius,  
and its Dependencies with the advice  
and consent of the Council of Govern-  
ment thereof.*

To appoint a Police and Stipendiary Magistrate for the smaller Dependencies commonly called "Oil Islands" and those other Islands, Dependencies of Mauritius, in which there are or may be Fishing Stations, and to appoint permanent Officers of the Civil Status for those Islands.

*J. M. Maguire  
31 Dec 1875*

WHEREAS it is expedient to appoint a Police and Stipendiary Magistrate for the smaller Dependencies commonly called "Oil Islands," and those other Islands, Dependencies of Mauritius, in which there are or may be Fishing Stations, and to appoint permanent Officers of the Civil Status for those Islands ;

WHEREAS it is expedient that such Police and Stipendiary Magistrate should have summary jurisdiction, and should from time to time visit the aforesaid Dependencies to administer justice therein ;

BE IT THEREFORE ENACTED by His Excellency the Governor, with the advice and consent of the Council of Government, as follows :

Police and Stipendiary Magistrate to be appointed.

1.—It shall be lawful for Her Majesty the Queen, Her Heirs and Successors, from time to time, to appoint a fit and proper person to be a Police and Stipendiary Magistrate for the smaller Dependencies of Mauritius enumerated in Schedule A.

Residence of Magistrate.

2.—Such Police and Stipendiary Magistrate

shall not reside permanently in any one of the Dependencies subject to his jurisdiction, but shall, from time to time, visit

Magistrate to visit Dependencies.

such Dependency to administer Justice therein between private individuals and between Master and Servant,

he shall also report to His Excellency the Governor, the result

To report

of each visit paid as aforesaid;

he shall make a return of all Judgments and Convictions by him given or awarded in each Dependency separately.

Salary.

3.—There shall be paid

to such Magistrate a salary not exceeding Five hundred pounds per annum, and a further sum not exceeding One hundred pounds per annum for travelling expenses. He shall be entitled to no other allowance.

Free passage.

Such Magistrate shall

further be entitled to obtain a free passage to and from any of the said Dependencies on board the ships or coasters belonging to, or chartered, or employed by the proprietors or lessees of such Dependencies.

Contribution to be made by proprietors of Oil Islands.

4.—The salary and travelling expenses of the said Magistrate shall be

paid partly out of a sum of Four hundred pounds sterling which the proprietors or lessees of the Dependencies commonly called "Oil Islands," shall pay into the Treasury, on or before the 15th day of January in each year, and partly out of the General Revenues of this Colony.

Tax to be levied in default of contribution.

5.—In default of the said sum of Four hundred pounds sterling being paid

as aforesaid by the proprietors or lessees aforesaid, on or before the 15th day of January as aforesaid, there shall be levied by the Collector of Customs on each Gallon of Oil imported into this Colony from the said Oil Islands, the sum of one half-penny.

Powers of Stipendiary Magistrate.

6.—The said Magistrate shall have the powers

and authority vested in Stipendiary Magistrates in Mauritius by the Order in

Council of 7th September 1838 and Ordinance No. 15 of 1852, but under the modifications hereinafter enacted.

**Duties & powers.** 7.—He shall examine into the conduct and state of the Laborers or Servants employed for hire in the said Islands, and if the wages of the said Laborers and Servants have not been duly paid; or if medicines or proper house accommodation have not been duly provided for the said Laborers and Servants; or if they have been maltreated by their Master or Masters, or by any Agent of such Master or Masters, he shall have in each such case power

Engagements to be annulled. to dissolve and annul the engagements of the said Servants or Laborers, and to send them by the first ship to Mauritius, and he shall have further power to adjudge that the costs and expenses of the return passage of such Servants or Laborers to Mauritius, shall be paid by their Master or Masters.

Power to send back Servants to Mauritius. 8.—In every case in which the said Stipendiary Magistrate shall find that any Servant or Laborer in the said Islands, has been brought to the said Islands to work there for a limited space of time and after the expiration of his engagement has been detained upon the said Islands, or refused a passage back to Mauritius, then it shall be lawful for the said Stipendiary Magistrate to take the necessary measures to convey the said Servant or Laborer to Mauritius, and to adjudge that the expense and

Passage money of Servant to be paid by Master. costs of the return-passage of such Servant or Laborer to Mauritius shall be borne by the Master and all expenses and costs adjudged by the said Magistrate under this Article and the preceding one to be paid by a Master shall be recoverable in Mauritius in virtue of such adjudication before the competent Court of Law in Mauritius.

Further powers. 9.—In every case in which a complaint shall in the said Islands be brought before the said Magistrate by a Master or his Agent against a Servant, and the said Servant shall be found guilty under the provisions of the aforementioned Order in Council, or of the aforementioned Ordinance No.

15 of 1852, the said Stipendiary Magistrate shall have power to annul the engagement of the said Servant and to take the necessary measures to bring him back to Mauritius and whatever wages are owed to the said Servant shall be paid to the said Magistrate and go in deduction of the passage-money.

Complaint may be made in Mauritius.

10.—After the arrival of a Master or Servant in Mauritius, complaint may be brought by any Master or Servant for any offence or breach of the law committed in the said Islands, and mentioned in the said Order in Council, or in the said Ordinance No. 15 of 1852, before the Stipendiary Magistrate of Port Louis, and the said Magistrate shall deal with the said offence according to the provision of the laws of Mauritius applicable to such offence, and in the same way as if the said offence had been committed in Port Louis, provided no judgment or order has been given in the matter by the Stipendiary Magistrate of the said Islands.

Judgments to be final.

11.—All judgments of the said Stipendiary Magistrate given in the said Islands shall be definitive and final to all intents and purposes.

Persons committed to Prison may be detained in Port Louis Gaol.

12.—Every Warrant which shall be issued by the person so appointed as a Stipendiary Magistrate for the committal to Prison of any person, may be lawfully executed by the removal of the Offender to the Gaol of Port Louis, and by his detention therein in terms of the said Warrant.

Magistrate to have powers of District Magistrate.

13.—The said Magistrate shall also have the powers and authority vested in District Magistrates of Mauritius by the said Ordinances Nos. 34 and 35 of 1852 and all other laws regulating their jurisdiction and in force in Mauritius for the time being, but with the modification hereinafter mentioned.

Concurrent jurisdiction with Magistrate of Port Louis.

14.—The said person so appointed, on being duly sworn before any Judge of the Supreme Court in terms of Ordinance No. 12 of 1869, shall

during his tenure of office, have in and over the said Islands concurrent jurisdiction with the District Magistrate of Port Louis.

Persons committed to Prison may be detained in Port Louis Gaol. 15.— Every warrant which shall be issued by the Person so appointed as a Magistrate for the committal to Prison of any Person, may be lawfully executed by removal of the Offender to the Gaol of Port Louis, and by his detention therein in terms of the said warrant.

To compel attendance before Supreme Court of witnesses, &c. 16.— The Person so appointed as a Magistrate shall have further and additional power to make all orders, and to take all necessary measures to secure the attendance before the Supreme Court of Mauritius, of all the Witnesses required to be heard against or in favor of every Offender committed by him for trial as aforesaid.

District and Stipendiary Clerk unnecessary. 17.— It shall not be necessary for the said Magistrate in and for the discharge of his duties as a District and Stipendiary Magistrate to have a District and Stipendiary Clerk.

Magistrate to have powers of Clerk. For the purposes of this Ordinance the said Magistrate is invested with the functions and is empowered to perform within the said Islands the duties of Clerk of a District Court as defined by Ordinances Nos. 34 and 35 of 1852.

Register of Orders, Judgments, &c. 18.— The said Magistrate shall keep a Register in which shall be entered a note of all orders, judgments and executions and of all other proceedings by him given or issued and the entry in such Register or a true copy thereof signed by the Magistrate shall at all times be admitted as evidence of such entries, and of the proceedings referred to being such entry or entries and of the regularity of such proceedings without further proof.

District Clerk, Port Louis, to recover fines, &c. 19.— It shall be the duty of the District Clerk of Port Louis, whenever fines inflicted or monies ordered to be

paid by the Magistrate aforesaid have not been received or paid in the said Dependencies, to issue a warrant of execution under the seal of the District Court for the execution in this Colony of the order, judgment or conviction left unexecuted, and such warrant shall issue on the production to such District Clerk of a copy certified by the Magistrate to be a true copy of the original entry in the Register aforesaid of the order, judgment or conviction.

Judgment not to be quashed, challenged, &c. And it shall not be lawful for any Court,

Judge or Magistrate to quash, set aside, modify or challenge in any way whatsoever such order, judgment or conviction, except upon the Go-

Exception. verner's fiat that a question of law is involved in the issue which deserves and requires to be considered by a higher tribunal, and in no case shall it be lawful to issue such fiat, until the amount of the fines or the sum or sums ordered to be paid, have been deposited in the Registry of the Supreme Court.

## CHAPTER II

### *Civil Status.*

Manager to be Officer of Civil Status. 20.—The Manager of each of the Islands or group of Islands in Schedule A mentioned, may be Officer of the Civil Status within the Island or group of Islands placed under his management.

Births, Deaths and Marriages to be notified to Registrar General. If any Birth or Death occur or any Marriage be celebrated in any of the Islands or group of Islands in Schedule A mentioned, it shall be the duty of the Officer of the Civil Status of every such Dependency or of any part thereof where the Birth, or Death has occurred or the Marriage has been celebrated upon the first occasion when intercourse can take place between the said Dependencies and Mauritius, to notify the said Birth, Death or Marriage to the Registrar General with a full and circumstantial Memorandum of the said Birth, Death or Marriage signed and dated by him.

Notification to be submitted to Procureur General. The said Notification and Memorandum shall be submitted by the Regis-

Registrar General to the Procureur General, and the Birth, Death or Marriage shall be registered in the Central Civil Status Office according to the directions of the Procureur General.

House of Acting Officer of Civil Status to be Civil Status Office. 21.—The House in which the Person appointed to act as Officer of the Civil Status resides, shall be to all intents and purposes the Civil Status Office.

Salary. 22.—He shall receive a salary of £ 25 per annum payable by the Colonial Treasury, and he shall be liable to the penalties enacted in part X of Ordinance 17 of 1871 (Articles 112 and following) against Offences committed by the Officers of the Civil Status.

Prosecution, where to take place. Provided that the prosecution shall take place before one of the District Magistrates of Port Louis, and be carried on in manner and form provided for by Article 112 of Ordinance No. 17 of 1871.

Registers to be kept. 23.—The Officer of the Civil Status shall keep one Register for Births, another for Marriages and another for Deaths, and such Registers shall be examined and signed by the Magistrate whenever he visits the Islands aforesaid.

Amendment of Acts of Civil Status. 24.—Whenever it shall be necessary to amend an Act of the Civil Status relative to the inhabitants of the said Islands, such amendment shall take place free of expense, on the Magistrate being satisfied that it ought to take place and a note of such amendment shall be entered in the Register and returned by the Officer of the Civil Status as soon as practicable to the Registrar General.

Further amendments. Provided that the Registrar General shall have the right to apply to a Judge or Magistrate to have the said Act further amended or the amendment set aside, if such amendment has been effected by fraud or by means of illegal methods or for illegal purposes.

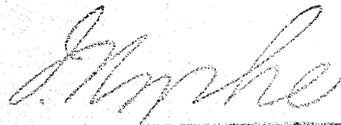
Marriage can be celebrated after one publication.

25.—A Marriage may be celebrated in any of the said Islands after one publication only.

Ordinance No. 17 of 1871 to have force in the Oil Islands.

26.—The provisions of Ordinance No. 17 of 1871 shall have force in the said Islands provided nevertheless, that it shall be lawful for the Governor in Executive Council, to frame Regulations for the forms of Contracts of Service, the management of camps, hospitals and shops, and also whenever the local circumstances of the Islands shall require it, to modify or restrict the provisions of this Ordinance, and all such Regulations shall be enforced by penalties not exceeding £5 sterling or imprisonment not exceeding three months. And such Regulations shall be laid on the table of the Council of Government, and if not disallowed within one month, shall be published in the Government Gazette, and shall then and thenceforth have force of law as if they formed part of this Ordinance.

PASSED in Council, at Port Louis, Island of Mauritius, this Twenty-eighth day of December One thousand Eight hundred and Seventy-five.



Acting Secretary to the Council  
of Government

SCHEDULE 

*Dependencies to which this Ordinance  
applies.*

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Diego Garcia  
Six Islands  
Danger Island  
Eagle Island  
Peros Banhos  
Coetivy  
Solomon Islands  
Agalega  
St.-Brandon Islands, also and  
otherwise called Cargados  
Carayos.  
Juan de Nova.  
Trois Frères.  
Providence.

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## **ANNEX 5**

The Lesser Dependencies Ordinance, Ordinance No. 4, 18 April 1904

No. 4 of 1904.

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## AN ORDINANCE

*Enacted by the Officer Administering  
the Government of Mauritius  
and its Dependencies, with the  
advice and consent of the Council  
of Government thereof.*

**To provide for the Government  
of and the Administration of  
Justice in the Lesser Dependencies.**

*I reserve this Ordinance for the  
signification of His Majesty's pleasure  
thereon.*

*Graham Power*

Officer Administering  
the Government.

18<sup>th</sup> April, 1904.

BE IT ENACTED by the Officer  
Administering the Government, with  
the advice and consent of the Council  
of Government, as follows:—

Short Title. 1. This Ordinance may  
be cited as "The Lesser  
Dependencies Ordinance".

Definitions. 2. In this Ordinance:

"Owner" includes lessee.

"Islands" means the Lesser Depen-  
dencies mentioned in Schedule A, or  
any one of them.

"The Magistrate", or "a Magistrate",  
means any one of the District and  
Stipendiary Magistrates for the Lesser  
Dependencies appointed under this  
Ordinance, and includes an Additional  
Magistrate appointed under Article  
3 (3).

"Servant" "Master" and "Em-  
ployer" have the meanings attached to  
them by the Labour Law, 1878.

Appointment of  
Magistrate.

3. (1) It shall be lawful for the Governor, subject to the approval of the Secretary of State, to appoint two fit and proper persons to be District and Stipendiary Magistrates for the Lesser Dependencies, mentioned in Schedule A.

(2) Each of the said Magistrates shall act independently of the other, and shall have the rights, duties, powers and jurisdiction defined by this Ordinance.

(3) It shall further be lawful for the Governor when necessity arises to issue a commission to any other fit or proper person to act as Additional Magistrate for the Lesser Dependencies, and such Magistrate shall, in virtue of such commission and during its continuance, have all the powers of a Magistrate for the Lesser Dependencies.

Visits of Magis-  
trate to Islands.

4 (1) The Magistrates shall visit the Islands at such times as they shall be directed by the Procureur General, and shall administer justice therein between the Crown, private individuals, and masters and servants as defined by the Labour Law, 1878.

Provided that so far as may be possible each Island shall be visited at least once in every twelve months: and if any Island has not been visited for a period of twelve months it shall be visited on the first opportunity in the ensuing twelve months.

(2) The Magistrates shall further have power to visit and inspect all the establishments on the Islands, and all camps and houses (other than private dwelling houses) thereon, to inspect the books of the establishment and of the shops, and to test the weights and measures used in such shops.

(3) They shall respectively report to the Governor the result of each visit and of the inspections made, and generally on all matters connected with the well-being of the Islands and the welfare of the inhabitants. There

shall also be included in such report a return of all decisions given, and action taken, in all matters brought before them or which have come under their notice.

Salary of Magistrate.

5. The salary of each of the Magistrates shall be 6,000 Rupees which shall be paid by the Treasury. The said salary shall cover all expenses and allowances hitherto allowed, to which the Magistrates shall henceforth have no further claim.

Provided that any Magistrate appointed under Article 3 (3) shall be entitled to an allowance for expenses of 5 Rupees a day during his absence from Mauritius, which allowance shall be paid by the Treasury.

Contribution to cost of administration by owners.

6. (1) The owners of the Islands shall contribute to the cost of administration of the Islands the sum of 12,000 Rupees in two half-yearly instalments, payable in the manner hereinafter provided, on or before the 31st. January and 31st. July in every year.

(2) The said contribution shall be apportioned between the owners of the Islands, according to the number of labourers employed by each of them, and the sum due by each owner shall be paid into the Treasury on or before the dates above-mentioned. For the purpose of such apportionment, each of the owners shall furnish the Receiver General with a statement of the said number of men so employed on the 30th. June and 31st. December in each year. The statement may be controlled by the Magistrate, and any owner making a false statement shall be liable to a fine not exceeding 1,000 Rupees.

(3) For the recovery of the said amount due from each owner the Government shall have a privilege, and the extent and conditions of such privilege shall be governed by Ordinance No. 18 of 1843, and shall be assimilated to the land tax mentioned in Article 31 of that Ordinance.

(4). When it is necessary for the purpose of any criminal trial or other proceeding in Mauritius that any persons should come to Mauritius as witnesses, or be brought to Mauritius as prisoners, the passage of such persons shall be provided free of cost on the vessels belonging to or chartered or employed by the owner of the Island on which the acts occurred out of which such trial or proceeding arises, and in their ordinary voyages. The cost of feeding to be refunded to the owners.

Free passage of  
Magistrate.

7. (1) Any Magistrate who is about to visit one of the Islands shall be provided by the owners with free passage and maintenance to and from such Island on board any vessel belonging to, or chartered or employed by, the owner of such Island, and to maintenance while on such Island.

(2) Vessels going to and from the Islands shall carry mails free on behalf of the Post Office.

Jurisdiction of  
Magistrates.

8. (1) The Magistrate shall be vested with the power and authority of District and Stipendiary Magistrates respectively in Mauritius, subject only to the modifications hereinafter enacted.

(2) A Court shall be held in such convenient room or place in the Island, and on such days and at such hours as the Magistrate shall determine.

(3) The Magistrate shall have power, in any case or matter, to appoint and swear in such person as he deems fit to act as interpreter.

Engagement of  
servants.

9. (1) All servants, other than artisans, proceeding to the Islands for employment shall previously enter into a written contract of service passed as follows :—

(i) If in Mauritius, then before a Magistrate, or before the Stipendiary Magistrate of Port-Louis.

(ii) If in the Islands, then before a Magistrate.

Provided that in either case the Magistrate shall be satisfied that such servant is free to enter into such contract.

(iii) If in Seychelles, then before any officer of Seychelles authorised by the laws of Seychelles to pass such contracts.

Provided that the conditions and forms of such contracts, and the powers of the officer aforesaid in respect to passing them, are in all respects identical with the conditions and forms of the contracts, and the powers of the Magistrate passing such contracts, as determined by this Ordinance.

(2). Provided further that when any person on the Islands desires to enter into a written contract of service such contract may be passed in the Island before the Magistrate, and shall be in the same form and subject to the same conditions as the contract herein provided.

Contracts of service. 10. (1). Written contracts of service shall be in the form of Schedule B, (which may be amended by the Regulations), and shall not exceed three years; in the case of contracts entered into by members of the same family, they shall all expire at the same time: the word "family" in this Article shall include husbands, wives and children. Certified copies of all contracts shall be sent to the Manager.

(2) In all contracts the nature of the work for which the servant is engaged shall be specified, but where the nature of the work is general and not capable of express specification the Magistrate may, in passing the contract, describe such work as "general".

(3) In case any Island be sold, alienated or transferred to another person, or succeeded to by another person, before the termination of the contracts of service entered into with the servants engaged on the Island, such servants shall serve such other person according to the terms of the contract, and such new employer or master shall be held bound towards the said servants in all the stipulations

and obligations incumbent upon the employer or master so replaced by him.

(4) The Magistrate before whom such contracts are passed in Mauritius or in the Islands shall have the powers vested in Stipendiary Magistrates by Articles 100 and 101 of the Labour Law, 1878.

(5) The provisions of Article 102 of the Labour Law, 1878, shall apply to fictitious contracts.

Contracts to continue till renewal decided by Magistrate. 11. (1) Written contracts of service for whatever period they may be entered into shall continue in force from the day of their termination until the question of their renewal has been submitted to the Magistrate.

(2) At the expiry of any written contract of service as provided in the preceding paragraph it shall be optional for the servant and owner to renew the engagement either by written or verbal contract: provided that in the case of verbal contracts notice of such contract shall be given to the Magistrate by the Manager, and that the Magistrate is satisfied that the contract has been entered into.

Free passage of wives and children. 12. Servants under written contract who proceed to the Islands shall have a right for themselves and their wives, and minor children who shall proceed in the same ship, to free passage and subsistence to and from Mauritius or Seychelles, as the case may be.

Contracts with minors. 13. Contracts with minors shall be subject to the conditions prescribed in Article 99 of the Labour Law, 1878, except the fifth paragraph.

A sufficiency of rations to be kept on the Island. 14. Every contract of engagement as aforesaid shall stipulate that there shall be a sufficient supply of rations on the Island on which the labourers are to be employed to meet every contingency, which supply shall always be equal to the average consumption on the Island during four months.

No contract of service shall be passed for the employment of labourers in the Islands, unless the Magistrate is satisfied that arrangements have been made to secure the provisions of the preceding clause being strictly carried out; and any failure to comply with the terms of any contract as regards this provision shall render the owner liable to a fine not exceeding 1,000 Rupees.

Servant not proceeding to Island after written contract. 15. (1) Any servant who, after entering into a written contract of service, or any artisan who after entering into any contract of service, shall, without sufficient excuse, decline or neglect to proceed in the vessel provided to take him to the Island in which he has contracted to work shall be liable to be arrested.

(2) For this purpose a warrant shall be issued by the Magistrate or the Stipendiary Magistrate of Port Louis on the application of the master or his agent.

(3) The punishment shall be imprisonment not exceeding three months to be awarded by the Magistrate, or in his absence by the Stipendiary Magistrate of Port Louis who may further give judgment in respect of any advances made or alleged to have been made to such servant or artisan.

(4) Such sentence shall operate as a discharge from the contract whether written or verbal.

Undue detention on Islands. 16. The undue detention on the Island of any servant beyond the termination of his contract, or not providing means of return to any servant entitled thereto, by the ship next proceeding to Mauritius or Seychelles, as the case may be, shall be punishable by a fine not exceeding 500 Rupees, without prejudice to any action in damages in respect of such detention.

In case of undue detention, it shall be lawful for the Supreme Court, on motion by the "Ministère Public" to order the owners to take such measures for terminating such detention within

such time as to the Court may seem fit and proper.

Obligations and penalties of Labour Law imposed.

17. Where not otherwise provided, masters and servants under this Ordinance shall be subject to all the duties and obligations imposed upon masters and servants respectively by the Labour Law, 1878, and, for any breach thereof, the Magistrate shall impose the penalties therein prescribed.

Power to annul engagement and send servant home.

18. If in virtue of the Labor Law the Magistrate shall annul the contract, he shall send the servant back by the first ship, to Seychelles if the servant has been engaged in Seychelles, to Mauritius if the servant has been engaged in Mauritius, on the Islands, or elsewhere. The cost of such return passage shall, unless the Magistrate otherwise order, be paid by the employer.

Judgment of Magistrate to be final.

19. All judgments of the Magistrate given in the said Islands shall be definitive and final to all intents and purposes except as herein provided ; and no proceeding shall be commenced having for object to quash, set aside, modify, or challenge in any way whatsoever such order, judgment or conviction, except upon an *ex parte* order of a Judge in Chambers that a question of law is involved in the issue, which deserves and requires to be considered by a higher tribunal, and in no case shall such order be issued until the amount of the fines, or the sum or sums ordered to be paid, have been deposited in the Registry of the Supreme Court.

Imprisonment on the Islands or in Mauritius.

20. Any warrant issued by the Magistrate for the imprisonment of any person may be executed in the prison in the Island, or by the removal of the said person from the Island on board ship to the civil prisons in Mauritius, and by his detention therein as the Magistrate shall direct.

Jurisdiction may be exercised in Mauritius.

21. If in any case arising in the Islands, it is necessary to exercise jurisdiction in Mauritius, for the

purpose of either (a) determining any civil dispute between parties : or (b) determining any dispute between master and servants : or (c) holding any preliminary enquiry : or (d) trying any person charged with an offence, the Magistrate may exercise such jurisdiction, or if neither of the Magistrates is in Mauritius, or if there be no such Magistrate, or if the Magistrate who may be in Mauritius is incapacitated from acting, then such jurisdiction shall be exercised by one of the District Magistrates of Port Louis, in civil and criminal actions, and by the Stipendiary Magistrate of Port Louis, in stipendiary matters.

The Magistrate, when exercising any jurisdiction under this or any other Article, in Port Louis, shall hold his Court in the Stipendiary Court of Port Louis or in such other place as the Governor may appoint, and he shall have for the purpose of exercising this jurisdiction all the powers of a District or Stipendiary Magistrate acting as such in Mauritius, as the case may be.

Attendance of witnesses in Mauritius. 22. The Magistrate shall have power to make all orders, and to take all necessary measures to secure the attendance before the Supreme Court of Mauritius of all the witnesses on any Island who are required to be heard against or in favour of any offender committed by him for trial.

Magistrate may take evidence *de bene esse*. 23. (1) The Magistrate shall have power to summon before him, and to take the evidence on oath of, any person in the Islands whenever such evidence is required in any case pending before any Court in Mauritius or Seychelles, and such evidence taken *ex proprio motu* in cases of which he may take cognisance, or, in other cases, on the request of any Judge or Magistrate before whom such case is pending, shall be held to be evidence taken *de bene esse*.

(2) The Magistrate shall have the same power, acting *ex proprio motu*, with regard to evidence required in any case within his jurisdiction, and

he shall have power whenever he deems it expedient to try such cases partly in Mauritius and partly in the Islands.

Magistrate to perform duties of clerk. 24. (1) The Magistrate is empowered to perform within the said Islands the duties performed by a District or a Stipendiary Clerk in Mauritius.

(2) When the Magistrate exercises any jurisdiction under this Ordinance in Mauritius, it shall be lawful for the Governor to depute any district or stipendiary clerk to act as such in the Court in which the Magistrate holds his sitting.

Register of judgments &c. 25. The Magistrate shall keep a register in which shall be entered a note of all orders, judgments and executions and of all other proceedings by him given, issued or taken; and the entry in such register, or a true copy thereof signed by the Magistrate, shall at all times be admitted as evidence of such entries and of the proceedings referred to in such entry and of the regularity of such proceedings without further proof.

Execution of judgments. 26. It shall be the duty of the District Clerk of Port Louis, whenever fines inflicted or monies ordered to be paid by the Magistrate aforesaid have not been received or paid in the said Dependencies, to issue a warrant of execution under the seal of the District Court, for the execution in this Colony or in the Dependencies of the order, judgment, or conviction left unexecuted, and such warrant shall issue on production to such District Clerk of a copy certified by the Magistrate to be a true copy of the original entry in the register aforesaid of the order, judgment or conviction.

Lodging to be furnished. 27. In all the Islands the proprietors shall be bound to furnish their labourers with good and sufficient lodging, having sufficient air-space to afford four hundred cubic feet of air for each adult and child above ten years of age, and two hundred and fifty cubic feet for each child under ten years of age, with

a floor space of at least 10 feet by 5 feet for each adult and child above ten years of age, and half that amount for each child under ten years of age.

The Manager shall be bound to see that the camp is kept clean and in good order.

Register of camps to be kept.

A register shall be kept of the houses and huts in the camp by the Manager showing their dimensions and number of persons inhabiting them.

List of task-work to be posted up.

28. A list of the task-work shall be drawn up by the Manager and posted up in the place where the rations are issued on the Islands, and a copy kept at the office of the owners or owners' agents in Mauritius, who shall produce the same before the Stipendiary Magistrate before whom the labourers are engaged. In this list the nature and duration of the *corvée* required from the labourers shall be specified.

"Corvée" and "field labour". "Corvée" and "field labour" shall be subject to the provisions of Articles 111 and 112 of the Labour Law, 1878.

Hospital to be provided.

29. (1) A hospital shall be constructed on each Establishment which shall be in charge of the manager who shall employ a competent warder paid by the owners.

The hospital shall contain at all times accommodation and beds or other sleeping places for at least the following proportion of servants; namely, 40/0 on the number of servants engaged at the time: provided that in no case shall the hospital contain beds or sleeping places for fewer than four servants.

The hospital shall be constructed so as to contain one thousand cubic feet per bed, and to afford a floor space of 12 feet by 6 feet for each bed.

(2) Separate accommodation in the hospital shall be provided for women on the Island; one quarter of the number of beds as above provided being set apart for that purpose.

Power of imprisonment by Manager.

30. (1) In order to secure order and the proper and peaceful behaviour of the labourers in camps, it shall be lawful for the Manager of any of the Islands to imprison for a period not exceeding six days labourers who are guilty of insolence and insubordination. He shall also have the power to detain those who are disturbing or threatening to disturb the public peace, until the danger of disturbance is over.

(2) For the purposes mentioned in the preceding paragraph, a proper prison shall be provided on such Establishment of such dimensions as to afford four hundred cubic feet of air-space and 10 feet by 5 of floor-space for each person confined therein. In this prison there shall be a separate room for the women.

Power of fining by Manager.

31. In cases of petty praedial larcenies the Manager shall have power to inflict a fine not exceeding 10 Rupees.

Record of each imprisonment to be kept.

32. The Manager shall be bound to record in a book each case of fine or imprisonment with the causes and circumstances thereof, which shall be submitted to the Magistrate on his next visit. The Magistrate shall have power to remit or approve such fines, and to approve the imprisonment. If he is of opinion that the imprisonment was not justified, he shall have power to award compensation to the labourers.

Nothing herein contained shall in any way interfere with the power of the Procureur General to prosecute criminally in case of need.

Penalty for breach of Regulations.

33. Any breach of this Ordinance not otherwise provided for shall be punished by a fine not exceeding 100 Rupees, and the Magistrate may also pronounce the cancellation of the engagement of the labourer to the prejudice of whom such breach has been committed.

Manager to be agent of owners.

34. In all matters in connection with the engagement, and in all judicial proceedings arising thereunder, the

Manager shall be held to be the agent of the owners, and such owners may sue and be sued through such agent.

Civil Status registers. 35. Subject to the provisions of Article 7 of Ordinance No. 26 of 1890, the Civil Status Officers in each Island shall keep all Civil Status Registers in duplicate, in such manner as may be provided by the Registrar General. One of the duplicates shall be forwarded to the Registrar General after examination by the Magistrate as hereinafter provided.

(2) The Magistrate shall, on each visit to any Island, examine, inspect and verify the said Registers, making a note of such examination in the margin of each act, and report thereon to the Registrar General. He shall further have power, *ex proprio motu*, to order the rectification, amendment or annulment of any act, reporting his action in any case to the Ministère Public, who shall have power to refer the matter for subsequent order to the Supreme Court.

(3) The Magistrate shall on his next visit to every Island examine the entries in the existing Registers made since the coming into force of the Civil Status Ordinance 1890, reporting thereon to the Registrar General, after taking such action as he is empowered to take by paragraph (2) of this Article as the circumstances of each case may require.

Legal assistance to servants by Protector. 36. The powers vested in the Protector of Immigrants with regard to servants and immigrants in Mauritius by Articles 22, 23 and 24 of the Labor Law, 1878, shall be exercised by the "Ministère Public" with regard to all servants in the Islands.

Power of Governor. 37. The powers given to the Governor in Executive Council under Article 284 of the Labor Law 1878, shall apply *mutatis mutandis* to the Islands.

Medical inspection. 38. The Governor shall have power to order the inspection by a duly qualified medical

man of any one or more of the Lesser Dependencies, and such medical inspector shall be entitled to a free passage to the Island to be inspected and his subsistence while on duty there.

Duty of Collector to withhold clearance, when.

39. It shall be the duty of the Collector of Customs before giving clearance to any vessel bound for the Islands, in addition to any duties in respect of clearance imposed by the Merchant Shipping Act, 1894, to ascertain whether the labourers on board other than artisans are all under written contract : and to refuse clearance until the fact is established to his satisfaction.

Power to make Regulations.

40. The Governor in Executive Council shall have power to make Regulations, which shall be laid on the Table of the Council, with respect to—

*i.* the employment of labourers on the Islands or in any one of them, their rates of pay, rations, tasks, hours of labour, hospital treatment, supply of medicines, passages to and from the Islands ;

*ii.* the general conduct of the shops on the Islands, and the weights and measures to be used therein ;

*iii.* the prevention and removal of nuisances and all matters relating to the public health, and such measures as may be necessary to facilitate the sanitary administration of the Islands: and to impose penalties for any breach thereof not exceeding 1,000 Rupees.

Extension of District Court Ordinances.

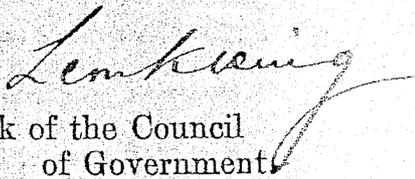
41. The District Court Ordinances, namely; Ordinances Nos. 21, 22 and 23 of 1888, and all Ordinances amending the same, are extended to the Islands, in so far as they may be applicable, or have not been modified by the provisions of this Ordinance, and the Governor in Executive Council shall have power to make Regulations which shall be laid on the table of the Council, analogous to the Rules of Court, for the purpose of regulating the procedure under the said Ordinances.

Repeal. 42. The following enactments are repealed :

Ordinance No. 5 of 1872.  
,, No. 41 of 1875.  
,, No. 62 of 1898-99.  
,, No. 3 of 1901.

Government Notice No. 124 of 1877,  
and so much of Ordinance No. 11 of  
1870 as remains unrepealed.

Passed in Council at Port Louis,  
Island of Mauritius, this twenty-ninth  
day of March, One thousand nine  
hundred and four.

  
Clerk of the Council  
of Government

---

*Came into force on 7<sup>th</sup> July 1904  
(see Proclamation 30 of same date)*

## **ANNEX 6**

Cayman Islands and Turks and Caicos Islands Act 1958, section 1

## 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]

**B**E 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.  
26 & 27 Vict.  
c. 31.  
36 & 37 Vict.  
c. 6.  
4 & 5 Eliz. 2.  
c. 63.

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,—

- (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.

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. Power to authorise making of emergency laws.

(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 Short title. and Caicos Islands Act, 1958.



## **ANNEX 7**

Declaration of the Organization of African Unity Assembly of Heads of State and  
Government, Cairo, 17-31 July 1964

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**DENUCLEARIZATION OF AFRICA  
(ORGANIZATION OF AFRICAN UNITY  
RESOLUTION 11(1), 1964)**

**Adopted on:** 17 to 21 July 1964

We, the Heads of African State and Government, meeting in the First Ordinary Session of the Assembly of the Organization of African Unity, in Cairo, UAR, from 17 to 21 July 1964, Conscious of our responsibilities towards our peoples and our obligations under the Charter of the United Nations and the Charter of the Organization of African Unity to exert every effort to strengthen international peace and security, Determined that conditions conducive to international peace and security should prevail to save mankind from the scourge of nuclear war; Deeply concerned with the effects resulting from the dissemination of nuclear weapons;

Confirming resolution 1652 (XVI) of the General Assembly of the United Nations which called upon all States to respect the Continent of Africa as a nuclear-free zone;

Reaffirming the Resolution on General Disarmament adopted by the Conference of Heads of State and Government in Addis Ababa in May 1963;

Bearing in mind that the General Assembly of the United Nations in its Sixteenth Session called upon "All States, and in particular upon the States at present possessing nuclear weapons, to use their best endeavours to secure the conclusion of an international agreement containing provisions under which the nuclear States would undertake to refrain from relinquishing control of nuclear weapons and from transmitting the information necessary for their manufacture to States not possessing such weapons, and (containing) provisions under which States not possessing nuclear weapons would undertake not to manufacture or otherwise acquire control of such weapons";

Convinced that it is imperative to exert new efforts towards the achievement of an early solution to the problem of general disarmament

1. SOLEMNLY DECLARE their readiness to undertake in an International Treaty to be concluded under the auspices of the United Nations not to manufacture or acquire control of nuclear weapons;
2. CALL UPON all peace-loving nations to adhere to the same undertaking;
3. CALL UPON all nuclear powers to respect and abide by this Declaration;
4. INVITE the General Assembly of the United Nations, in its 19th Regular Session, to approve this Declaration and take the necessary measures to convene an International Conference with a view to concluding an international treaty.

## **ANNEX 8**

UK comments on Friendly Relations Declarations, 18 September 1964

**FILE**  
**UNITED NATIONS**

**GENERAL  
ASSEMBLY**

PLEASE RETURN TO  
DOCUMENTS SECTION

*CF*



Distr.  
GENERAL

23 SEP 1964 *(2)*

A/5725/Add.4 ✓  
22 September 1964

ORIGINAL: ENGLISH

Nineteenth session

CONSIDERATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING  
FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN  
ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS

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*Chatt.*

Comments received from Governments

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United Kingdom of Great Britain and Northern Ireland . . . . .	2

*\$5.00*

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[Original: English]  
18 September 1964

Her Majesty's Government submit the following comments on the principle of equal rights and self-determination of peoples referred to in paragraph 5 of resolution 1966 (XVIII); they reserve the right to present at an appropriate time additional comments on this principle as well as on the other two principles referred to in paragraph 5 of resolution 1966 (XVIII).

The principle of equal rights and self-determination of peoples

In the opinion of Her Majesty's Government the two elements in the principle of equal rights and self-determination of peoples are complementary to one another, and in so far as self-determination is a legal, and not merely a political concept, it is properly expressed as a principle and not as a right. The concept of self-determination has been invoked, or prayed in aid, in a number of different circumstances; its relevance, it is submitted, can only be determined in relation to the circumstances of each particular case, and in the light of other principles which are affirmed in the United Nations Charter.

Scope of the concept of self-determination

Self-determination was one of the basic concepts of the peace settlement which followed the First World War, and its application in that context considerably reduced the number and size of national minorities in Europe. The concept then meant, broadly, that the wishes of the peoples concerned should be taken into account before any territorial changes were made. It was clear that the concept of self-determination was considered in this context, as well as in the context of the aspirations of peoples who had not yet attained a full measure of self-government, by the framers of the United Nations Charter. Differing views were then expressed as to the scope of the concept. These are summarized as follows in the summary report of Committee I/1 which contains the following passage:

"Concerning the principle of self-determination, it was strongly emphasized on the one side that this principle corresponded closely to the will and desires of people everywhere and should be clearly enunciated in the Charter; on the other side, it was stated that the principle conformed to the purposes of the Charter only in so far it implied the right of self-government of peoples and not the right of secession" (UNCIO, Vol. 6, p. 296).

Expression of the principle of equal rights and self-determination of peoples in the United Nations Charter

The principle now under examination is expressed in Article 1 of the United Nations Charter. In paragraph (2) of that Article one of the purposes of the United Nations is stated to be:

"To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

In recommending the adoption of this paragraph Committee I/1 of the San Francisco Conference stated that it understood

"that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct; that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people ..... " (UNCIO, Vol. 6, p. 455).

It can therefore be seen that the principle of equal rights and self-determination of peoples is, and was intended by those who drew up the Charter to be, a principle of universal application. The Charter itself is expressed in its Preamble to have been made in the name of "the peoples of the United Nations", determined, *inter alia*, "to reaffirm faith in the equal rights .... of nations large and small"; but, as only States can be Members of the United Nations, it is apparent, that the reference to "peoples" in the context of the Charter is directed to those who are so organized as to constitute a State in the territory which they occupy. Therefore, the principle of equal rights and self-determination of peoples applies primarily to the equal rights and self-determination of independent States. Understood in this sense, the principle is clearly linked

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to other concepts which are expressed and recognized in the United Nations Charter, such as the sovereign equality of States, territorial integrity and political independence, and the principle of non-intervention. Nevertheless, as a political principle, self-determination is not limited to States and in any event must be subject to the obligations of international law both customary and conventional. As pointed out above, after the First World War the principle of self-determination was applied mainly to minorities. This illustrates the flexibility of the application of the principle to particular circumstances, and emphasizes that it is not necessarily confined in its application to independent sovereign States.

Although the term "self-determination" is not used in Chapters XI and XII of the Charter, the concept itself is implicit in both chapters. One of the basic objectives of the trusteeship system is stated in Article 76 (b) to be "to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the people concerned". Similarly, Article 75 of the Charter provides that States responsible for the administration of territories whose peoples have not yet attained a full measure of self-government should "promote to the utmost, within the system of international peace and security established by the . . . . Charter the well-being of the inhabitants of these territories" and to this end should, inter alia,

"develop self-government . . . . take due account of the political aspirations of the peoples and . . . . assist them in the progressive development of their free political institutions according to the particular circumstances of each territory and its peoples and their varying stages of advancement".

The development of self-government and the progressive development of free political institutions are both entirely compatible with the concept of self-determination. Indeed, the principle of self-determination has been of fundamental importance in British policy towards the non-self-governing territories and has played a cardinal part in their evolution to self-government and independence. It is, however, in the opinion of Her Majesty's Government to place an

/...

unwarrantable gloss on the Charter to derive from the wording of either Article 1 (2) or of Articles 73 (b) and 76 (b) a "right" of self-determination. As is pointed out in Commentaries on the Charter (Goodrich and Hamboro (revised edition), pp. 95-96: Bentwick and Martin, p. 7) the language used in Article 1 (2) was not intended to form any basis on which a province, or other part, of a sovereign independent State could claim to secede from that State, or to form the basis for immediate demands for independence on the part of peoples who had not yet attained a full measure of self-government. Nor has Article 73 of the Charter created, as is sometimes alleged, a "right" of self-determination for territories which have not yet achieved a full measure of self-government, since although its provisions are entirely compatible with the concept of self-determination, it relates to the objectives to be pursued by States administering such territories and does not purport to create, in this or any other respect, any enforceable rights.

#### Conclusions

To speak of a "right" of self-determination implies that regardless of circumstances, any group of "peoples" may at any time assert their independence, and ignores the fact which, as has already been seen, was recognized by those who drew up the United Nations Charter, that the two concepts enshrined in the principle now under consideration are complementary parts of one standard of conduct. If a "right" of self-determination were held to exist it could be invoked in circumstances in which it would be in conflict with other concepts enshrined in the Charter. It could, for instance, be held to authorize the secession of a province or other part of the territory of a sovereign independent State, (e.g. the secession of Wales from the United Kingdom,) or the secession from the United States of America of one of its constituent States. It could also be held to authorize claims to independence by a particular racial or ethnic group in a particular territory, or to justify, on the basis of an alleged expression of the popular will, claims to annexation of a certain territory or territories.

In the opinion of Her Majesty's Government, although the principle of self-determination is a formative principle of great potency, it is not capable of sufficiently exact definition in relation to particular circumstances to amount to

a legal right, and it is not recognized as such either by the Charter of the United Nations or by customary international law.

It must also, as emphasized above, be considered in the context of other relevant provisions of the Charter and, in particular, as part of a wider principle which recognizes the concept of sovereign equality of States as well as the concept of self-determination.

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## **ANNEX 9**

Manuscript letter of 1 October 1965

Mr. S. Rangoolam  
Strand Palace Hotel

STRAND LONDON. W.C.2

TELEPHONE: TEMPLE BAR 3060

CABLES: LUXURY, LONDON WCa



273

Acc<sup>d</sup> in indent 1st Oct. 65-

Dear Mr Trafford-Smith,

I and  
Mr. Mohamed have gone through  
the enclosed paper on the  
question of Diego Garcia and  
another near island (i.e. two  
altogether) and we wish  
to point out the amendments  
that should be effected on  
page 4 of this document. The  
matters to be added formed

part of the original  
requirements submitted  
to H. M. G. We think  
that these can be  
incorporated in any  
final agreement.

With kind regards

Yours truly  
S. Ranque

P.S. The two copies handed over  
to me are herewith enclosed

Sh

# Strand Palace Hotel

STRAND LONDON. W.C.2

TELEPHONE: TEMPLE BAR 8000

CABLES: LUXURY, LONDON W.C.2



( See below )

vii) Sanitation & Meteorological  
facilities 272/E

(viii) Fishing rights

(ix) Use of Air Strip for Emergency  
landing and if required  
for development of the other  
islands.

(x) Any mineral or oil discovered  
on or near islands to  
revert to the Mauritius  
Government.

(For J Rampoburn's proposed  
addition to last as p 4 of  
recap of L.H. file. 23rd September

H.B.  
Pencilled  
note my  
Co. Office  
C. Troland  
Smith

## **ANNEX 10**

British Indian Ocean Territory Order 1965 (S.I. 1965/1920)

1965 No. 1920

## OVERSEAS TERRITORIES

## The British Indian Ocean Territory Order 1965

Made - - - - 8th November 1965

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

Present,

The Queen's Most Excellent Majesty in Council

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

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

2.—(1) In this Order—

“the Territory” means the British Indian Ocean Territory; Inter-pretation.

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

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

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

3. As from the date of this Order—

(a) the Chagos Archipelago, being islands which immediately before the date of this Order were included in the Dependencies of Mauritius, and British Indian Ocean Territory to be a separate colony.

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

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

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

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be Powers and duties of Commissioner.

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(a) 58 & 59 Vict. c. 34.

(b) Rev. XX, p. 688: 1948 I, p. 4730.

(c) 52 & 53 Vict. c. 63.

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

Oaths to be taken by Commissioner.

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

Discharge of Commissioner's functions during vacancy, etc.

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

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

(3) For the purposes of this section—

(a) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office, by reason only that he is in the Colony of Seychelles or is in passage between that Colony and the Territory or between one part of the Territory and another; and

(b) the Commissioner shall not be regarded as absent from the Territory, or as prevented from, or incapable of, discharging the functions of his office at any time when an officer is discharging those functions under section 8 of this Order.

Discharge of Commissioner's functions by deputy.

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

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

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

Official Stamp.

9. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith.

Constitution of offices.

10. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may

from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise—

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted ; and
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

11.—(1) The Commissioner may make laws for the peace, order and good government of the Territory, and such laws shall be published in such manner as the Commissioner may direct. Power to make laws.

(2) Any laws made by the Commissioner may be disallowed by Her Majesty through a Secretary of State.

(3) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner as he may direct.

(4) Every law disallowed shall cease to have effect as soon as notice of disallowance is published as aforesaid, and thereupon any enactment amended or repealed by, or in pursuance of, the law disallowed shall have effect as if the law had not been made.

(5) Subject as aforesaid, the provisions of subsection (2) of section 38 of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an enactment by an Act of Parliament.

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

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

13. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office— Concurrent appointments.

- (a) another person may be appointed substantively to that office ;
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

14. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty. Disposal of land.

15.—(1) Except to the extent that they may be repealed, amended or modified by laws made under section 11 of this Order or by other lawful authority, the enactments and rules of law that are in force Existing laws.

immediately before the date of this Order in any of the islands comprised in the Territory shall, on and after that date, continue in force therein but shall be applied with such adaptations, modifications and exceptions as are necessary to bring them into conformity with the provisions of this Order.

(2) In this section "enactments" includes any instruments having the force of law.

Exercise of  
jurisdiction  
by courts.

16.—(1) The Commissioner, with the concurrence of the Governor of any other colony, may, by a law made under section 11 of this Order, confer jurisdiction in respect of the Territory upon any court established for that other colony.

(2) Any such court as is referred to in subsection (1) of this section and any court established for the Territory by a law made under section 11 of this Order may, in accordance with any directions issued from time to time by the Commissioner, sit in the Territory or elsewhere for the purpose of exercising its jurisdiction in respect of the Territory.

Judicial  
proceedings.

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

(a) any proceedings that, immediately before the date of this Order, have been commenced in any court having jurisdiction in any of the islands comprised in the Territory may be continued and determined before that court in accordance with the law that was applicable thereto before that date;

(b) where, under the law in force in any such island immediately before the date of this Order, an appeal would lie from any judgment of a court having jurisdiction in that island, whether given before that date or given on or after that date in pursuance of paragraph (a) of this subsection, such an appeal shall continue to lie and may be commenced and determined in accordance with the law that was applicable thereto before that date;

(c) any judgment of a court having jurisdiction in any such island given, but not satisfied or enforced, before the date of this Order, and any judgment of a court given in any such proceedings as are referred to in paragraph (a) or paragraph (b) of this subsection, may be enforced on and after the date of this Order in accordance with the law in force immediately before that date.

(2) In this section "judgment" includes decree, order, conviction, sentence and decision.

Amendment  
of  
Seychelles  
Letters  
Patent  
1948 and  
Mauritius  
(Constitu-  
tion) Order  
1964, etc.

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

(a) the words "and the Farquhar Islands" are omitted from the definition of "the Colony" in Article 1(1);

(b) in the First Schedule the word "Desroches" and the words "Aldabra Group consisting of", including the words specifying the islands comprised in that Group, are omitted.

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

(a) S.I. 1955 II, p. 3217. (b) S.I. 1964 I, p. 1163.

““Dependencies” means the islands of Rodrigues and Agaléga, and the St. Brandon Group of islands often called Cargados Carajos;”.

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

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

*W. G. Agnew.*

### SCHEDULE 1

Section 6

#### OATH (OR AFFIRMATION) OF ALLEGIANCE

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

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

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

### SCHEDULE 2

Section 2(1)

Diégo Garcia  
Egmont or Six Islands  
Péros Banhos

Salomon Islands  
Trois Frères, including Danger  
Island and Eagle Island.

### SCHEDULE 3

Section 2(1)

West Island  
Middle Island  
South Island

Cocoanut Island  
Euphratis and other small Islets.

### EXPLANATORY NOTE

*(This Note is not part of the Order.)*

This Order makes provision for the constitution of the British Indian Ocean Territory consisting of certain islands hitherto included in the Dependencies of Mauritius and certain other islands hitherto forming part of the Colony of Seychelles.

## **ANNEX 11**

Mauritius Constitutional Conference 1965, presented to Parliament by the Secretary of State  
for the Colonies by Command of Her Majesty, Command Paper 2797 (October 1965)



MAURITIUS  
CONSTITUTIONAL  
CONFERENCE  
1965

*Presented to Parliament by the Secretary of State for the Colonies  
by Command of Her Majesty  
October 1965*

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## MAURITIUS CONSTITUTIONAL CONFERENCE, 1965

### REPORT BY THE CHAIRMAN

In the final communique of the Mauritius Constitutional review talks in July, 1961, two stages of constitutional advance were proposed, on the assumptions:—

- (i) that constitutional advance towards internal self-government was inevitable and desirable ;
- (ii) that after the introduction of the second stage of constitutional advance following the next general election, Mauritius would, if all went well, be able to move towards full internal self-government before the next following election ; and
- (iii) that at that time it was not possible to foresee the precise status of Mauritius after full internal self-government had been achieved.

The communique further recorded the general wish that Mauritius should remain within the Commonwealth ; but whether as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries, was a matter which should be considered during the next few years in the light of constitutional progress generally. A copy of the communique is attached at Annex A.

2. The two stages of constitutional advance envisaged in the 1961 communique were duly carried into effect ; and when early in 1964 the Mauritius (Constitution) Order 1964 was made and the present all-party government of Mauritius had taken office, the constitutional advances foreshadowed in the 1961 communique were complete. The move to full internal self-government, and the ultimate status to be aimed at, thus became matters for discussion and decision.

3. During the discussions early in 1964 leading to the formation of the present all-party government, the timing of a conference to consider further constitutional advance was considered and it was agreed that this should be at some convenient time after October, 1965. Further discussions on the occasion of the Secretary of State's visit to Mauritius in April, however, made it seem probable that a conference in September, 1965, would be acceptable and, particularly in view of the importance of bringing to an end the period of uncertainty in Mauritius as soon as possible, it was decided to convene the conference in September. The Secretary of State's Despatch of the 8th June, 1965, to the Governor conveying an invitation to the Premier and the other leaders of parties represented in the legislature to attend a constitutional conference opening in London on 7th September, 1965, is attached at Annex B.

4. The main task of the Conference was to reach agreement on the ultimate status of Mauritius, the timing of accession to it, whether accession should be preceded by consultation with the people, and if so in what form.

## THE CONFERENCE

5. The Conference met at Lancaster House under the chairmanship of the Secretary of State for the Colonies, Mr. Anthony Greenwood, from 7th September, 1965 until 24th September, 1965, assisted by the Joint Parliamentary Under-Secretary, Lord Taylor. It was attended by representatives of all the political parties in the Mauritius Legislature, namely:

*The Mauritius Labour Party* (Leader The Hon. Sir Seewoosagar Ramgoolam) which at the last election won 19 out of the 40 seats in the legislature and polled 42·3 per cent. of the votes cast.

*The Parti Mauricien Social Démocrate* (Leader The Hon. J. Koenig, Q.C.) which won 8 seats and polled 18·9 per cent. of the votes.

*The Independent Forward Bloc* (Leader The Hon. S. Bissoondoyal) which won 7 seats and polled 19·2 per cent. of the votes.

*The Muslim Committee of Action* (Leader The Hon. A. R. Mohamed) which won 4 seats and polled 7·1 per cent. of the votes.

Two independent members of the legislature, The Hon. J. M. Paturau and The Hon. J. Ah Chuen also attended.

A full list of those attending the Conference is attached to this Report.

6. The main debate at the Conference was between the advocates of independence and of continuing association with Britain as the ultimate status of Mauritius. The Secretary of State for his part had repeatedly indicated that he did not wish to form any view as between these courses in advance of the Conference; that no proposals for the constitutional future of Mauritius were ruled out in advance; and that he hoped that every effort would be made in preliminary discussions in Mauritius to reach agreement on as many as possible of the matters before the Conference. These varying points of view were brought out in the speeches by the Secretary of State and the leaders of the four Mauritius parties at the opening session. The texts are given in Annex C.

## CONSTITUTION

7. The Conference recognised that there were a number of matters which would have to be provided for in the constitution of Mauritius which would not be affected by the decision on final status. All the delegates agreed to discuss these matters without prejudice to their views on this question. Subject to this reservation on ultimate status, a large measure of agreement was reached on the details of a constitutional framework covering the great majority of these matters. A framework embodying these points and in such a form that it could be used as the basis of the new constitution, whichever way the decision eventually went on ultimate status, is set out in Annex D.

8. Since it had proved impossible to reach agreement at the Conference on the electoral system, and the Secretary of State was reluctant to determine such an important matter without further consultation, he decided that a Commission should be appointed to make recommendations to him on:—

- (i) the electoral system and the method of allocating seats in the Legislature, most appropriate for Mauritius, and
- (ii) the boundaries of electoral constituencies.

The Commission should be guided by the following principles:—

- (a) The system should be based primarily on multi-member constituencies.
- (b) Voters should be registered on a common roll ; there should be no communal electoral rolls.
- (c) The system should give the main sections of the population an opportunity of securing fair representation of their interests, if necessary by the reservation of seats.
- (d) No encouragement should be afforded to the multiplication of small parties.
- (e) There should be no provision for the nomination of members to seats in the Legislature.
- (f) Provision should be made for the representation of Rodrigues.

9. The Conference also considered the question of Mauritian citizenship. It was recognised that should the decision on ultimate status be in favour of independence, the independence constitution would have to include provisions governing citizenship. Moreover, the type of association considered by the Conference involved provision for Mauritius to move on, by due constitutional process, to full independence without having to seek the approval of the British Government. The British Government would therefore wish to determine, at the time of a decision on association, the arrangements governing Mauritian citizenship if and when a move from associated status to full independence should take place. The Conference discussed the citizenship question against this background, without prejudice to their views as to the ultimate status of Mauritius. It was not possible to go into the matter in detail, but the Secretary of State made it plain that the British Government would wish to ensure that the arrangements governing Mauritian citizenship followed the general principles adopted in many Commonwealth countries, and set out in Annex E.

10. The position of Mauritius civil servants for whom the Secretary of State had responsibility was also considered, in view of the decisions implicit in the constitutional arrangements described in Annex D, that Mauritius should proceed to the stage of full internal self-government and that the Service Commissions should become executive. The Secretary of State informed the Conference that the standard practice was that when a country moved to full internal self-government with executive Service Commissions, and in consequence the Secretary of State's power to continue to carry out his responsibilities towards the officers concerned inevitably ceased, a compensation scheme should be introduced under which the officers concerned would be able to retire with compensation for loss of career prospects. He went on to explain that it would be necessary for the Mauritius Government to agree to the introduction of such a compensation scheme and the related Public Officers Agreement, both following the usual pattern, and in terms satisfactory to the British Government. The details of these arrangements remain to be settled in negotiations between the British and Mauritius Governments.

## POPULAR CONSULTATION

11. The Conference devoted a considerable time to consideration of whether advance to ultimate status should, in the words of the Secretary of State's Despatch of 8th June "be preceded by consultation with the people and if so in what form". It was argued that no such consultation was necessary, as the wish of the people of Mauritius for independence had been amply demonstrated by the support accorded in three general elections to parties which favoured independence. It would, however, be appropriate that there should be a fresh general election, under whatever electoral arrangements were agreed upon at the Conference, in advance of independence; and that the government then elected should lead the country into independence. On the other hand it was argued that the question of independence had not been a prominent issue in previous general elections and that it was doubtful whether a majority desired it. At general elections, voters directed their attention mainly to other issues, and were distracted by communal considerations. Cases were cited within the Commonwealth where decisions on ultimate status had been made by referendum, and it was argued that these precedents should be followed in the case of Mauritius.

## ULTIMATE STATUS

12. In addition to the arguments relating to ultimate status summarised in the preceding paragraph it was also contended that to grant independence would be in accordance with British policy and practice; and that independence was a goal which Britain herself should encourage her dependent territories to attain. Given the universal desire in Mauritius to remain within the Commonwealth and on terms of close friendship with Britain, there was little reason for stopping short of full independence at the hitherto untried intermediate status of association. Finally, it was argued that only through independence could Mauritius achieve unity, and attain membership of the Commonwealth and of the United Nations.

13. Against independence and in favour of association it was argued that the results of previous general elections were irrelevant, since independence had not been in issue. There were on the contrary, grounds, in the support accorded in political meetings throughout Mauritius to those advocating association, for doubt whether a majority of the people wanted independence. Mauritius was too small, isolated, and economically vulnerable to be viable as an independent country. Emphasis was laid on her dependence on sugar exports, and her liability to cyclones. It was further argued that should Britain ever accede to the Treaty of Rome and enter the European Economic Community, Mauritius would have a far better chance of negotiating advantageous arrangements with the Community as a territory associated with Britain than if she were independent. The problems of growing population and unemployment in Mauritius, were also emphasised.

## THE BRITISH GOVERNMENT'S VIEWS

14. In the face of this conflict between the advice afforded to the British Government by the various parties in Mauritius as to the ultimate status of the country and given the general recognition of the importance of terminating as rapidly as possible the recent period of uncertainty, it was clear during the Conference that it would fall to the British Government to

make a decision as between independence and association and on the question of popular consultation, without the benefit of unanimous advice from the parties at the Conference.

15. The Mauritius Labour Party and the Independent Forward Bloc, which advocated independence had between them 26 out of the 40 seats in the legislature and the support at the 1963 election of 61.5 per cent. of the voters. The Muslim Committee of Action was also prepared to support independence, provided that certain conditions regarding the electoral system were met.

16. On the other hand, a significant section of the population, especially in the community known as the General Population, was opposed to independence. In view of the complex composition of the population, the Secretary of State attached great importance to ensuring that full weight was given to the views of the Parti Mauricien delegates and the two independents.

17. He concluded, however, that the main effect of the referendum for which they asked would be to prolong the current uncertainty and political controversy in a way which could only harden and deepen communal divisions and rivalries. He therefore came to the conclusion that a referendum would not be in the best interests of Mauritius, and that it was preferable that a decision on ultimate status should be taken at the present Conference.

18. The proposals for association developed by the Parti Mauricien did not rule out the possibility of Mauritius becoming independent. It was inherent in this form of association, as distinct from the normal colonial relationship, that the territory itself should be free at any time to amend its own constitution and, by due constitutional process, to move on to full independence. Given the known strength of the support for independence, however, it was clear that strong pressure for this would be bound to continue and that in such a state of association neither uncertainty nor the acute political controversy about ultimate status would be dispelled.

19. The Secretary of State had throughout the Conference emphasised the importance that he attached to the constitution containing every possible safeguard against the abuse of power. Discussions at the Conference had shown that there was good ground for believing that such safeguards and many other provisions of the internal scheme of government would command general acceptance, whatever the ultimate status. In considering his final decision, therefore, the Secretary of State felt confident that it would be possible to produce a constitution which would command the support and respect of all parties and of all sections of the population.

20. The Secretary of State accordingly announced at a Plenary meeting of the Conference on Friday, 24th September, his view that it was right that Mauritius should be independent and take her place among the sovereign nations of the world. When the electoral Commission had reported, a date would be fixed for a general election under the new system, and a new Government would be formed. In consultation with this Government, 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. Her Majesty's Government would expect that these processes could be completed before the end of 1966.

21. It would be the British Government's intention, in preparing the draft of the Independence Constitution, to recommend the inclusion in it of the provisions set out in the constitutional framework in Annex D to this Report. This scheme had been devised to take the fullest possible account of the views expressed by delegates at the Conference. In addition to these provisions, however, and in consequence of the decision that the ultimate status of Mauritius will be Independence, it will be necessary to include in the Independence Constitution additional arrangements for the appointment and removal of ambassadors, high commissioners and principal representatives abroad of Mauritius. The usual arrangements would be followed and appointment and removal in respect of these offices would take place on the advice of the Prime Minister, who would consult the Public Service Commission before tendering advice in cases where career civil servants were involved.

22. The Secretary of State also referred to discussions he had had with the individual Parties regarding the adoption of certain constitutional practices concerning the appointment and tenure of office of the Queen's representative in an independent Mauritius. The Queen's representative would have special responsibilities which he would exercise in his personal discretion, and the Secretary of State stressed that it was of fundamental importance to make special arrangements protecting the impartiality of the Queen's representative. The individual Parties to the Conference agreed that to this end the following constitutional practices should be adopted: In making his recommendation for the appointment of the Queen's representative, the Prime Minister would take all reasonable steps to ensure that the person appointed would be generally acceptable in Mauritius as a person who would not be swayed by political or communal considerations; it would be for the Prime Minister of the day to make arrangements to give effect to this practice. In the case of the recommendation to Her Majesty for the appointment of the first Governor General of an independent Mauritius, the person appointed would come from outside Mauritius and the name would be agreed between the British Government and the Prime Minister before it was submitted to Her Majesty. Once appointed, the Governor General would, unless he resigned, be permitted to continue in office for his full term unless a recommendation was made to Her Majesty for the termination of his appointment on medical grounds established by an impartial tribunal appointed by the Chief Justice.

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

There would also be joint consultation on any request from the Mauritius Government in the event of a threat to the internal security of Mauritius. Such an agreement would contain provisions under which on the one hand the British Government would undertake to assist in the provision of training for, and the secondment of trained personnel to, the Mauritius police and security forces ; and on the other hand the Mauritius Government would agree to the continued enjoyment by Britain of existing rights and facilities in H.M.S. Mauritius and at Plaisance Airfield.

24. As regards membership of the Commonwealth, the Secretary of State referred at the Final Plenary session to the general desire expressed to him by all parties that Mauritius should remain within the Commonwealth. He made it plain that, as delegates would appreciate, the question of membership of the Commonwealth was a matter not for the British Government alone but for the members of the Commonwealth as a whole to decide. He indicated that the British Government would be happy, if the desire of Mauritius for membership of the Commonwealth were confirmed by a resolution of the legislature elected at the general election which was to be held before independence, to transmit such a request to other Commonwealth governments.

25. Finally the Secretary of State underlined the importance attached by Britain to the maintenance of the close and friendly relations which had existed between Britain and Mauritius for over 150 years. The achievement of independence would, in his belief, strengthen rather than weaken these ties of friendship. Mauritius would naturally continue to be eligible for economic assistance from Britain, in the same way as other formerly dependent territories and would still benefit from the Commonwealth Sugar Agreement.

26. The Secretary of State said that he felt sure that all the political parties represented at the Conference and every man and woman in Mauritius would loyally accept the decision that Mauritius should become independent, and would co-operate in making a success of the new constitutional arrangements.

Signed : ANTHONY GREENWOOD,  
*Chairman.*

Lancaster House, S.W.1.  
*24th September, 1965.*

## LIST OF THOSE ATTENDING CONFERENCE

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

Lord Taylor,  
Parliamentary Under-Secretary of State for the Colonies.

Mrs. Eirene White, M.P.,  
Parliamentary Under-Secretary of State for the Colonies.

### U.K. DELEGATION

Sir Hilton Poynton, G.C.M.G.  
Mr. A. N. Galsworthy, C.M.G.  
Mr. Trafford Smith, C.M.G.  
Mr. M. G. de Winton.  
Mr. A. J. Fairclough.  
Mr. R. Terrell.

### GOVERNOR OF MAURITIUS

Sir John Rennie, K.C.M.G., O.B.E.

### MAURITIUS DELEGATION

Sir Seewoosagur Ramgoolam.  
Hon. J. Koenig, Q.C.  
Hon. S. Bissoondoyal.  
Hon. A. R. Mohamed.  
Hon. J. M. Paturau, D.F.C.  
Hon. J. Ah Chuen.  
Hon. G. Forget.  
Hon. V. Ringadoo.  
Hon. S. Boolell.  
Hon. H. Walter.  
Hon. R. Jomadar.  
Hon. R. Jaypal.  
Dr. the Hon. L. R. Chaperon.  
Dr. the Hon. M. Cure.  
Hon. V. Govinden, M.B.E.  
Hon. H. Ramnarain.  
Hon. S. Virah Sawmy.  
Hon. R. Modun.  
Hon. G. Duval.  
Hon. R. Devienne.  
Hon. J. C. M. Lesage.  
Hon. H. Rossenkhan.  
Hon. A. W. Foondun.  
Hon. D. Basant Rai.  
Hon. A. Jugnauth.  
Hon. S. Bappoo.  
Hon. H. R. Abdool.  
Hon. A. H. Osman.

CONFERENCE ADVISER

Professor S. A. de Smith.

SECRETARIAT

Mr. M. M. Minogue.

Mr. T. C. Platt.

Mr. E. C. Reavell.

Mr. J. K. Sawtell.

Mr. N. N. Walmsley.

## ANNEX A

### FINAL COMMUNIQUE ISSUED AFTER CONSTITUTIONAL REVIEW TALKS, 1961

The following final communique was approved at the sixth and final Plenary Session of the Mauritius Constitutional Review Talks at the Colonial Office today, Friday (7th July, 1961), with the Secretary of State for the Colonies (Mr. Iain Macleod) in the chair:—

At the invitation of the Secretary of State for the Colonies representatives of the Mauritius Labour Party, the Independent Forward Bloc, the Muslim Committee of Action, the Parti Mauricien and two independent members of the Mauritius Legislative Council met in London from 26th June to 7th July to exchange views on the present Constitution and to discuss the extent, the form and timing of any changes. Sir Colville Deverell, the Governor of Mauritius, and Professor S. A. de Smith, the Constitutional Commissioner, were present throughout the talks.

2. After an initial plenary meeting and separate and frank discussions with each of the groups the Secretary of State tabled proposals which were discussed at two plenary sessions. In the light of the comments made upon them by delegates, the proposals were further modified by the Secretary of State and discussed at further plenary sessions on 5th and 6th July.

3. The proposals are based on the assumption that constitutional advance in Mauritius towards internal self-government is inevitable and desirable; that the extent and timing of any advance must take into account the heterogeneity of the population and include provisions for adequate safeguards for the liberties of individuals and the interests of the various communities. It is that and not any lack of talent or aptitude for government which conditions the pace of advance in Mauritius.

4. Two stages of advance are proposed. The first stage is to be brought into operation as soon as the necessary arrangements can be made. The second stage presents a broad basis of the constitution for adoption after the next General Election and in the light of that Election if, following an affirmative vote by the Legislative Council, they are recommended to the Secretary of State by the Chief Minister. On the assumption that the second stage is implemented after the next General Election, it would be expected that during the period between the next two General Elections or what has been called the Second Stage, if all goes well and if it seems generally desirable, Mauritius should be able to move towards full internal self-government.

5. It is not possible at this stage to suggest what should be the precise status of Mauritius after the attainment of full internal self-government. It is the general wish that Mauritius should remain within the Commonwealth. Whether this should be achieved as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries, are matters which should be considered during the next few years in the light of constitutional progress generally.

6. The changes proposed are:—

### **First Stage**

(1) The Leader of the Majority Party in the Legislature would be given the title of Chief Minister.

(2) The Governor would consult the Chief Minister on such matters as the appointment and removal of Ministers, the allocation of portfolios and the summoning, proroguing, and dissolution of the Council. It would be understood that in general he would not be bound to accept the Chief Minister's advice but that he would act on the advice of the Chief Minister in the appointment or removal of Ministers belonging to the Chief Minister's party.

(3) An additional unofficial ministerial post would be created. The new Ministry would have responsibility for Posts and Telegraphs, Telecommunications, The Central Office of Information and the Broadcasting Service.

(4) The Colonial Secretary would be re-styled "Chief Secretary".

### **Second Stage**

#### (1) *Executive Council*

- (a) The Council would be called the Council of Ministers.
- (b) The Chief Minister would be given the title of Premier.
- (c) The Premier would be appointed by the Governor in accordance with the conventions obtaining in the United Kingdom; that is to say, the Premier would be the person who, in the opinion of the Governor, was most likely to be able to command the support of the majority of members of the Legislature.
- (d) The Council would not be a purely Majority Party government but as at present would include representatives of other Parties or elements which accepted the invitation to join the Government and the principle of collective responsibility.
- (e) In appointing Ministers from groups other than the Premier's Party, the Governor would act in his discretion but would consult with the Premier and such other persons as he deemed fit to consult.
- (f) The Financial Secretary would cease to be a member of the Council.
- (g) Provision would be made for the post of Attorney General to be filled by an Official or by an unofficial Minister. In the former case the holder would cease to be a member of the Council but would continue to be available to attend meetings as an Adviser. In the latter case it would be necessary to create a new official post of Director of Public Prosecutions who would be solely responsible in his discretion for the initiation, conduct and discontinuance of prosecutions and would in this respect be independent of the Attorney General.
- (h) The Chief Secretary would continue to be a member of the Council and would become in addition to his substantive appointment Minister for Home Affairs.

- (i) An Unofficial Deputy Minister for Home Affairs would be appointed.
- (2) *Legislative Council*
- (a) The Council would be re-named the Legislative Assembly.
- (b) The Assembly would contain 40 elected members. The maximum number of nominated members would be increased to 15. It is contemplated that two or three of these appointments should be held in reserve.
- (c) The Speaker would be elected by the Legislative Assembly from among its members but this provision would only become effective on the retirement of the present Speaker.
- (d) The Financial Secretary and (if the post were held by an Official) the Attorney General would cease to be members of the Legislative Assembly.
- (e) The Governor in his discretion would summon, prorogue and dissolve the Assembly after consultation with the Premier.
- (3) *The Public Service, Police Service and Judiciary*
- (a) The Public Service and Police Service Commissions and the proposed Judicial and Legal Service Commission would remain advisory to the Governor. The Governor would however be required to consult the Premier in respect of certain appointments viz. Permanent Secretary (or by whatever title the senior administrative officer in a Ministry is described) and Heads of Departments.
- (b) The Chairman and members of the Commissions would continue to be appointed by the Governor in his discretion.
- (c) The Membership and procedure of the Commissions, in the second stage, would so far as possible be conducive to the development of these bodies in such a way as to enable them to become fully executive.
- (d) During the life of the Legislative Assembly following the next General Election the Service Commissions would become executive. At this stage, while the Chairman and Members of the Commission would continue to be appointed by the Governor in his discretion, he would be required to consult the Premier in respect of these appointments.
- (e) The appointment of the Chief Justice would remain as at present.
- (4) *External Affairs, Defence and Internal Security*
- (a) These matters would remain within the responsibility of the Governor who would however consult with the Premier about these matters.
- (b) The operational control of the Police and Special Force would continue to be the responsibility of the Commissioner under authority of the Governor.
- (5) *Human Rights*
- The Constitution would include provision for the safeguarding of human rights and fundamental freedoms and for the redress of infringements of these rights and freedoms in the courts.

7. The Independent Forward Bloc and the Parti Mauricien, for reasons which they gave in full to the conference, were unable to accept the Secretary of State's proposals.

8. The Mauritius Labour Party considered that the proposals did not provide the measure of advance which they were fully justified in claiming. They were, however, prepared to accept them, if reluctantly, as a compromise, on the recommendation of Her Majesty's Government, in the best interests of Mauritius.

9. The Muslim Committee of Action did not consider that the proposals adequately safeguarded the interests of the Muslim community. Reluctantly, however, and as a compromise, they too were prepared to accept them in the general interest of Mauritius as a whole.

10. The two independent members considered that it would not be wise in present circumstances to go beyond the proposals put forward by the Secretary of State. They recognised that some measure of advance was inevitable and as the electorate would be given an opportunity of expressing its views before the second and more important stage was introduced, they too accepted them.

11. The Secretary of State informed the Conference that while it was clear that unanimous agreement could not be reached, in his view a sufficient measure of acceptance had been indicated to justify his recommending the adoption of his proposals.

12. Certain delegates proposed the creation of a "Council of State" or "high-powered Tribunal". The functions and composition of such a body would, however, present problems of some complexity and would need careful study. The Secretary of State proposed to address a despatch to the Governor giving his considered views on this, after consultation with the Constitutional Commissioner. The Secretary of State would at the same time indicate the arrangements which could be made to ensure that the Information and Broadcasting Services should continue to operate on a non-partisan basis.

13. It was agreed that consideration should be given at a later stage to the question whether a visit to Mauritius by the Constitutional Commissioner, Professor de Smith, would be valuable in examining in greater detail the broad conclusions of the Conference and considering particular aspects which had not come within its scope.

*July 7, 1961.*

Note to Editors:—Elections to the Mauritius Legislative Council were held in March, 1959, with the following results:—

Mauritius Labour Party	...	...	...	...	23 seats
Trade Union candidates	...	...	...	...	2 seats
Muslim Committee of Action	...	...	...	...	5 seats
Independent Forward Bloc	...	...	...	...	6 seats
Parti Mauricien	...	...	...	...	3 seats
Independent	...	...	...	...	1 seat
					—
Total	...	...	...	...	40 seats
					—

## ANNEX B

### DESPATCH FROM THE SECRETARY OF STATE TO THE GOVERNOR OF MAURITIUS

COLONIAL OFFICE,  
LONDON.

8th June, 1965

SIR,

I have the honour to address you on the subject of the future constitutional development of Mauritius. During my recent visit I had extensive discussions with the Premier and the leaders of all the parties represented in the Legislature. I am most grateful to them and to many others who were good enough to give me their views on the problems which now confront the people of Mauritius.

2. The overriding impression with which I was left was the need to end as quickly as possible the present period of uncertainty. Divergent views are current as to the direction which future constitutional development should take; and it is understandable that until firm decisions can be reached, based upon the widest possible measure of agreement, there should persist a malaise which has doubtless contributed to recent civil disturbances, of which I have learned with distress, and which are foreign to the reputation for goodwill and orderly behaviour which Mauritius has earned over many years.

3. You will recall that it was agreed at the talks held in London under the Chairmanship of Lord Lansdowne in February, 1964, that the next conference should be held "during the third year counting from the elections held in October, 1963, i.e. at any convenient time after October, 1965". It happens that I should not be free, because of other commitments, to preside at a Conference in October, though I could do so in the early part of September. I should be grateful therefore if, on my behalf, you would convey to the Premier, and to the other leaders of Parties represented in the legislature, an invitation to attend a Constitutional Conference in London during September, and suggest to them that Tuesday, 7th September, would be an appropriate date for the opening session. I should welcome your early recommendations as to the numbers of representatives which the various Parties should bring.

4. With regard to the Agenda of the Conference, paragraphs 4 and 5 of the 1961 Communique indicate the range of matters for discussion. It will be for delegates to advise me as to whether it is the wish of the people of Mauritius to go ahead, in the words of paragraph 5 of the communique "as an independent state, or in some form of special association either with the United Kingdom or with other independent Commonwealth countries"; and I wish to make it plain that no proposals for the constitutional future of the island are ruled out in advance.

5. It does appear however that consideration of the question of the ultimate status of Mauritius has now reached the point where specific alternatives are emerging. The main task of the Conference should therefore be to endeavour to reach agreement on this status, the timing of accession to it, whether such accession should be preceded by consultation with the people,

and if so in what form. The Conference will of course also consider the changes in the constitution required by full internal self-government, it being understood that these may well be affected by the final view reached on the question of future status. The electoral system and any constitutional changes which this might involve would also have to be decided upon and Professor de Smith's report will provide a useful basis for discussion.

6. Before leaving Mauritius I expressed to you, and to the leaders of the main parties separately, the urgent hope that they would use the period before the Conference for serious thought and discussion with one another, so as to reach agreement locally, where possible, and to identify the more difficult points which would need to be resolved at the Conference. I hope that the all-party Government may find it possible to subscribe to a single document setting out the areas of agreement and disagreement. You undertook to do all you could to further preliminary discussions to this end, and I trust that it will be possible to do much useful preparatory work in this way. I believe that if the Party leaders will co-operate with you in setting practical discussions of this kind in motion, that will of itself do much to reduce the tension which has been so evident.

7. In connection with these preliminary discussions a number of particular points arise. In regard to the Labour Party's proposals, I note that a desire has been expressed for a continuing close link with Britain; if by this is meant some special relationship with Britain over and above the relationship all members of the Commonwealth have with each other, I am sure that it would be valuable if before the Conference the implications of such a relationship could be worked out in some detail; similarly, if the Labour Party contemplated suggesting further safeguards for minorities, it would I am sure be helpful if these could be formulated now. As regards the Parti Mauricien's proposals, reference has been made to both "integration" and "association", and some of their detailed proposals appear more akin to the former, others to the latter. It would I am sure be of assistance if further clarification of the Parti Mauricien's wishes could be obtained and if the distinction between the concepts of integration and association could be recognised. As regards the Independent Forward Bloc and the Muslim Committee of Action, these parties would no doubt also welcome further clarification of the Labour Party's and the Parti Mauricien's proposals and, in defining their own particular wishes, would no doubt wish to consider how best these might be reconciled with the main alternatives which so far appear to be under discussion.

8. In the short remaining period before the Conference a heavy responsibility rests on everyone in Mauritius, and particularly on the Party leaders, the Press, and all who are in a position to influence opinion, to think of the interests of Mauritius as a whole, and to avoid doing or saying anything that might increase tension between sections of all communities.

I have the honour to be,

Sir,

Your most obedient  
humble servant,

ANTHONY GREENWOOD.

## ANNEX C

### **OPENING STATEMENTS BY MR. GREENWOOD, SIR SEEWOOSAGUR RAMGOOLAM, MR. KOENIG, MR. MOHAMED AND MR. BISSOONDOYAL**

#### 1. STATEMENT BY THE SECRETARY OF STATE

MR. GREENWOOD said—

“I should like to begin by thanking you all for accepting my invitation to come to this conference. This is a moment to which I have looked forward with pleasure for nearly a year, and still more eagerly since my visit to your idyllic country in April.

I feel now that I can welcome you, not just formally and politically, on behalf of my colleagues and myself, but also in terms of personal friendship as one who knows and loves the people of Mauritius and who knows and respects their leaders.

May I therefore welcome you all very warmly to this conference on the constitutional future of your country. I only wish I had been able to provide the same overwhelming reception for everyone of you that you arranged for me when I drove from the Airport to Le Reduit.

This is a conference which the people of our two countries, bound closely together for over 150 years, will watch with eager interest, praying that there will emerge from it a generally acceptable solution which will give Mauritius a secure, prosperous, and happy future. When there is so much strife in the world it is incumbent upon us all to narrow the areas of disagreement and to remove possible causes of friction. And I know that in the talks ahead we shall all of us keep before us one clear goal—quite simply, what is best for Mauritius and her people as a whole.

Before I refer to the subject matter of the conference may I make two personal points. First, I know that everyone around the table will have shared my delight that the Premier should have been honoured by Her Majesty The Queen. It is an honour, Mr. Premier, which was richly deserved and which delighted your friends throughout the Commonwealth who hold in high esteem your statesmanship and wisdom.

I should also like to say how sorry I have been to learn that some of my friends here have experienced ill-health since we last met. I am very glad to see Mr. Koenig, your Attorney General and leader of the Parti Mauricien, Mr. Ringadoo, Minister of Education, and Mr. Devienne, Minister of State, with us today and I hope that their health is fully restored, and that the proceedings of our conference will not be so arduous as to put any undue strain upon them.

This conference has its origin in the series of constitutional talks held under the chairmanship of Mr. Macleod, in 1961. The constitutional advances agreed upon then have been carried smoothly into effect with general agreement and goodwill. The 1961 talks, and the London talks eighteen months ago on the formation of the present all-party Government, looked forward to the present conference.

What emerges from these facts of recent history, however, that I would like principally to stress is that the background against which this conference is being held is one of gradual and steady progress achieved by

discussion and agreement. Mauritius is a sophisticated and politically sensitive community. Despite many differences, it has always been possible for the leaders of the various parties and communities in the end to reach agreement, and I have every confidence that this enviable record will continue an unbroken one when we conclude our present labours.

Ever since I visited you in April, I have stressed both in public and in private that I would not prejudice in any way the outcome of the present conference. No solutions have been ruled out in advance. I adopted this point of view partly because I do not think that it is right that the British Government, although it has ultimate constitutional responsibilities, should attempt to lay down in advance constitutional solutions for highly developed communities many thousands of miles away—those days are far behind us: but also I took this line because I know of Mauritius's record of working out solutions by discussion and negotiation between her political leaders. I felt, and still feel, that this is the best possible way to reach durable agreements on constitutional matters. For this reason, too, I urged upon you when I visited Mauritius, and have since continued to press upon you, the necessity for discussing the issues arising and endeavouring to reach agreement amongst yourselves.

This still remains my position. I still regard it as being of primary importance that you in the Mauritius Delegation should agree between yourselves upon the constitutional steps you want your country to take. You who live in Mauritius and who represent the various communities that make up its population are the best judges of how you can live together in peace and friendship which I know is what you all wish.

I conceive my role at this conference and that of Her Majesty's Government as being one of counsellor and friend. We in the Colonial Office, as you know, have a good deal of experience of constitutional conferences and of constitutions, in practice; of means of meeting particular situations and particular problems; and of devising machinery which can resolve doubts and set fears at rest. We shall seek to help in this way during this conference. Between us I hope that we can ensure that Mauritius's multiplicity of races, far from being a source of weakness, is, as it should be, a source of strength.

In these few opening remarks I shall not attempt to discuss the various constitutional steps which will be before us at the conference. We shall have to go into the implications of the possible courses in considerable detail. The basic issues we shall have to tackle are well enough known to you all and to the world at large.

I will only say now that I regard it as being of the utmost importance that our discussions at this conference should end in an agreement on the course to be pursued which can be wholeheartedly supported by all the parties represented here. Only in that way can the plan agreed upon, whatever it may be, be honestly advocated by all of you, the political leaders, to your constituents, the people of all the communities which make up the population of Mauritius.

If we can succeed in this we shall have done well, and the people of Mauritius will have cause to be thankful for what between us, we have achieved on their behalf."

## 2. STATEMENT BY THE PREMIER OF MAURITIUS AND LEADER OF THE MAURITIUS LABOUR PARTY

SIR R. SEEWOSAGUR RAMGOOLAM said—

“On behalf of the Mauritius Labour Party and in my own name I wish to thank you, Sir, for the very warm welcome you have extended to us. We are also grateful to you personally for having called this conference so that we may remove uncertainty, and colonialism and bring about independence to the people of Mauritius.

The proposals of the Mauritius Labour Party have been embodied in a memorandum which has been communicated to you. They represent a summary of our views on the constitutional changes which are required for the effective establishment of independence with guaranteed safeguards for the minorities. The Mauritius Labour Party which, by its constitution and actual working, represents a complete cross-section of Mauritian society, has received a clear mandate for independence from the people of Mauritius at the last three general elections. You have planted the Rule of Law in Mauritius and are now being invited to complete the process by the establishment of full democracy.

The Mauritius Labour Party wants the independence of Mauritius within the Commonwealth with a Governor-General appointed by Her Majesty The Queen, and with a Cabinet form of government. It is hoped that Her Majesty will be graciously pleased to become Queen of Mauritius.

The Mauritius Labour Party accepts the automatically operated best-loser system and at the same time it is prepared to consider any alternative which would secure adequate representation of the Muslim and Chinese minorities. We are also in favour of the creation of an ombudsman.

At this stage it is not necessary for me to go into a detailed examination of our proposals which are most orthodox and in line with the constitutional status of other countries which have acceded to independence within the Commonwealth, but I would like to say that the memorandum of the Mauritius Labour Party adumbrates the main principles governing our stand at this constitutional conference.

As you have said, Mr. Secretary of State, we are meeting here as friends and as a family, and we are hopeful that goodwill, understanding and wisdom will prevail at this conference and that Mauritius will emerge from it as an independent nation. To my mind it is incumbent upon the British people to help us in this march forward.

In concluding, I share with you the feeling of joy that my friend the Attorney General, my oldest friend of the Assembly, has now recovered and would wish that he will be even better as the conference proceeds. I would like to say the same for my friend the Minister of Education, Mr. Ringadoo and my friend the Minister of State, Mr. Devienne.

Finally, Sir, I am very sensible of the congratulations that you have given on the occasion of my having received the Knighthood from Her Majesty.

With these words I think I have nothing more to add except that I am personally hoping that all will go well ahead.”

3. STATEMENT BY THE LEADER OF THE PARTI MAURICIEN SOCIAL DÉMOCRATE  
MR. KOENIG said—

“I would like to thank you on behalf of my colleagues and myself for the kind words addressed to us, and I should like at the same time to thank my friend, Sir Seewoosagur Ramgoolam, for the very nice words he addressed to me.

We, Mauritians, have been loyal subjects of Her Majesty since 1810. We have stood by Britain in the dark days of two World Wars and have, in a modest but unstinting way, played our part in the defence of democracy and of the free world.

If we contend that de-colonisation there must be, we discard independence as being fatal to the prosperity and the peaceful and harmonious development of Mauritius as part of the free world.

We claim that it is the general wish of the people of Mauritius that as a substitute for independence, close constitutional associations with Great Britain should be maintained within the framework of a new pattern. We believe that the people of Mauritius must in any event have the right to express their preference in a free referendum.

The United Nations Charter recognises our right to self-determination and we are confident, Sir, that this right will be readily conceded to us by Great Britain.”

4. STATEMENT BY THE LEADER OF THE MUSLIM COMMITTEE OF ACTION  
MR. MOHAMED said—

“On behalf of my party, I associate myself with my other friends who have just been speaking to thank Her Majesty’s Government for having kindly asked us to be here to decide the future of our Colony, in other words, of our country. Sir, you have just spoken about our past association with Her Majesty’s Government, and, on behalf of the Muslim population of Mauritius, I would like to say it is our real wish that our past association of 150 years with the British Government will continue for many more centuries to come. Speaking as a delegate to this conference, I consider it my bounden duty to declare, and declare it very clearly, that the Muslims of Mauritius have always co-operated with others for the good of the country, and they are ready to co-operate in the future. We are not against any political and constitutional progress of our country provided such progress does not mean the oppression of any community in Mauritius, and because of this and other reasons I also want to make it clear that we will have to see that our political and other rights are safeguarded and that we be left neither to the mercy of, nor be forced to depend upon, the charity of others.”

5. STATEMENT BY THE LEADER OF THE INDEPENDENT FORWARD BLOC  
MR. BISSOONDOYAL said—

“I have not much to say on this occasion apart from thanking you for the very magnificent hospitality you have accorded to all the delegates from Mauritius. I have to emphasise the thankfulness of my party for the visit both of you, Sir, and of Professor de Smith, and when I refer to Professor de Smith I am referring to the proposal for the appointment of an ombudsman.

Before resuming my seat, I will ask this Government to see to it that no mischievous report reaches Mauritius as it did last time and that a strict impartiality will be observed. I say this because I see the man whom I believe to be responsible for that the last time is present in this house.”

## ANNEX D

### THE CONSTITUTIONAL FRAMEWORK

#### *Fundamental rights*

The Constitution will include a Chapter providing for the fundamental rights and freedoms of the individual which will follow closely Chapter 1 of the existing Constitution.\*

2. The Chapter on fundamental rights will contain such modifications as are necessary to secure that any religious, social, ethnic or cultural association or group will have the right to establish and maintain schools at its own expense, subject to any reasonable restrictions which may be imposed by law in the interests of persons receiving instruction in such schools, and that a parent will not be prevented from sending a child to such a school merely on the ground that the school is not a school established or maintained by the Government.

3. Derogations may be made from the provisions protecting fundamental rights by the Mauritius Government and legislature in relation to a state of war or other public emergency but only to the extent and in accordance with the procedure set out below:—

- (a) Derogations from the fundamental rights will only be permissible under a law during a public emergency and will be limited to derogations from the right to personal liberty or the protection of freedom from discrimination which are reasonably justifiable in the circumstances of the situation.
- (b) A period of public emergency for this purpose will be a period when Mauritius is at war or when the Queen's Representative, acting on the advice of Ministers, has issued a proclamation declaring that a state of public emergency exists.
- (c) When the Legislative Assembly is sitting, or when arrangements have already been made for it to meet within seven days of the date of the proclamation, the proclamation will lapse unless within seven days the Assembly approves the proclamation.
- (d) When the Legislative Assembly is not sitting and is not due to meet within seven days, the proclamation will lapse unless within twenty-one days it meets and gives its approval by a resolution supported by at least two-thirds of all the members.
- (e) The proclamation, if approved by resolution, will remain in force for such period not exceeding six months as the Assembly may specify in the resolution.
- (f) The Assembly will be empowered to extend the operation of the proclamation for further periods not exceeding six months at a time and a resolution for this purpose will also require the support of at least two thirds of all the members of the Assembly.

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\* It was noted by the Conference that the provisions in Chapter 1 of the existing Constitution containing protection against discrimination did not preclude the enactment of laws applicable to Muslims only relating to marriage, divorce and the devolution of property; the Conference accepted in principle that steps should be taken towards the introduction of Muslim personal law in respect of these matters into Mauritius.

Provision will be made for the periodic review of the case of persons who have been detained in derogation in the right of personal liberty by an independent and impartial tribunal and a detained person will have the right to information as to the ground on which he is detained, to consult a legal representative and to appear in person or by a legal representative before the reviewing tribunal.

#### *The Queen's Representative*

4. The Queen's Representative will be appointed by Her Majesty and, subject to Her Majesty's pleasure, will hold office during his period of appointment.

5. The functions of the Queen's Representative will be discharged during a vacancy, an illness or absence of the representative by such person as Her Majesty may appoint, or if there is no such person as Her Majesty may appoint, or if there is no such person appointed in Mauritius, by the Chief Justice.

6. The Queen's Representative will, in the exercise of his functions, act on the advice of the Council of Ministers or an individual Minister acting with the general authority of the Council of Ministers except in cases where he is required by the Constitution or a law to act on the advice of some other person or authority or to act in his personal discretion. The chief minister will keep the Queen's Representative informed concerning matters of government.

#### *The Council of Ministers*

7. There will be a Council of Ministers which will be collectively responsible to the Legislature. The Council of Ministers will consist of a chief minister and not more than 14 other ministers; subject to this limit, the number of ministers will be determined from time to time by the Queen's Representative on the advice of the chief minister.

8. The Queen's Representative, acting in his personal discretion, will appoint as chief minister a member of the Legislative Assembly who appears to him likely to command the support of the majority of the members of the Assembly. The ministers, other than the chief minister, will be appointed from among the members of the Assembly on the advice of the chief Minister.

9. The Queen's Representative will be empowered to remove the chief minister from office if a vote of no confidence in his government is passed in the Legislative Assembly and he does not within 3 days resign or advise a dissolution, and also, following a general election, where the Queen's Representative considers that as a result of the election the chief minister will not be able to command a majority in the new Assembly. Any other minister will vacate office if the Queen's Representative revokes his appointment on the advice of the chief minister, if the chief minister goes out of office in consequence of a vote of no confidence or on the appointment of any person to be chief minister. The chief minister and any other minister will vacate office if he ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution or if, at the first meeting of the Assembly following a dissolution, he is not a member of the Assembly.

10. The chief minister will preside in and summon the Council of Ministers and portfolios will be allocated to ministers on his advice.

11. There will be provision in the Constitution for the appointment of a minister to carry out the functions of the chief minister when the chief minister is unable to act because of illness or absence from Mauritius. Such an appointment will be made by the Queen's representative on the chief minister's advice unless it is impracticable to obtain this advice because the chief minister is too ill or is absent, in which case the Queen's representative will make the appointment without obtaining advice.

12. The Constitution will provide for the appointment of Parliamentary Secretaries, whose number will not exceed five. A Parliamentary Secretary will be appointed on the advice of the chief minister from among the members of the Legislative Assembly and will hold office on the same terms as a minister (other than the chief minister).

### *The Legislature*

13. The Legislature will consist of Her Majesty and the Legislative Assembly. The Legislative Assembly will consist of elected members. The Constitution will provide for the electoral system\*.

14. The provisions for the franchise and for the qualifications and disqualifications for election to the Legislative Assembly and for the Speaker and Deputy Speaker will follow the corresponding provisions in the existing Constitution. The official language of the Legislative Assembly will be English but any member will be able to address the chair in French.

15. The Constitution will provide for the establishment of an Electoral Boundaries Commission which will review the boundaries of the constituencies every ten years or, if the Commission considers it necessary after the holding of a census, and to make recommendations to the Legislative Assembly. The members of the Commission will be appointed by the Queen's representative on the advice of the chief minister after the latter has consulted the leader of the opposition. The principles which the Commission will be required to apply will be specified in the Constitution. The recommendations of the Commission as to the alteration of the boundaries of the constituencies will be submitted to the Legislative Assembly which may approve them or reject them but may not alter the recommendation; if approved by the Assembly, they will become operative upon the next dissolution of the Legislature.

16. The Constitution will also provide for an Electoral Commissioner who will be a public officer and will be appointed by the Judicial and Legal Service Commission. The functions of the Electoral Commissioner will be to supervise the compilation of electoral registers and the holding of elections. The Electoral Commissioner will have security of tenure similar to that of a judge, i.e. his retiring age will be prescribed by the Constitution and he will not be removable except on the grounds of inability or misbehaviour and after there has been an enquiry by a tribunal consisting of persons who are or have been judges and the tribunal has recommended his removal. Any proceedings for the removal of the Electoral Commissioner will be initiated by the Judicial and Legal Service Commission.

17. The office of leader of the opposition will be established by the Constitution. Appointments to this office will be made by the Queen's representative acting in his personal discretion from among the members of

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\* See paragraph 8 of the Report.

the Legislative Assembly and he will be guided by provisions in the Constitution as to the person to be selected for appointment to this office. The Queen's representative, acting in his personal discretion, will have power to revoke the appointment of the leader of the opposition if he ceases to fulfil the qualifications specified in the Constitution, and the office of leader of the opposition will also become vacant if another person is appointed to the office after a dissolution of the Legislature, or if he ceases to be a member of the Legislative Assembly otherwise than by reason of a dissolution.

18. Bills passed by the Legislative Assembly will be assented to by the Queen's representative on the advice of the Council of Ministers.

19. The life of the Legislature will be 5 years but there will be provision under which the Legislature may extend its life during any period of war for 12 months at a time, up to a maximum of 5 years. The power of the Queen's representative in relation to the dissolution of the Legislature will be exercised on the advice of the chief minister, but the Queen's representative will have power in his personal discretion to dissolve the Legislature if the Legislative Assembly passes a vote of no confidence in the government and the chief minister does not either resign or recommend a dissolution, and the Queen's representative will also be required to dissolve the Legislature if the office of the chief minister is vacant and the Queen's representative considers that there is no prospect of his being able, within a reasonable time, to appoint a chief minister who can command a majority in the Legislative Assembly.

#### *The Judicature*

20. The Constitution will continue to provide for the Supreme Court. The judges of the court will be a Chief Justice, a senior Puisne Judge and other Puisne Judges. The qualifications for appointment will be prescribed in the Constitution, and will follow the present qualifications.

21. The Chief Justice will be appointed by the Queen's representative in his personal discretion after consultation with the chief minister. The senior Puisne Judge will be appointed by the Queen's representative on the advice of the Chief Justice. The other judges of the Supreme Court will be appointed by the Queen's representative on the advice of the Judicial and Legal Service Commission.

22. The security of tenure of the judges of the Supreme Court will be protected by provision on the same lines as exists in the present Constitution. The procedure for removing a judge will be initiated by the Queen's representative, acting in his personal discretion, in the case of the Chief Justice and by the Chief Justice in the case of the other judges of the Supreme Court.

23. There will be a Judicial and Legal Service Commission established by the Constitution. The Commission will be composed of the Chief Justice (as Chairman), the senior Puisne Judge, the Chairman of the Public Service Commission and an appointed member selected from persons who are or have been judges. "The appointed member of the Commission will be appointed by the Queen's representative on the advice of the Chief Justice; he will hold office for a period of 3 years and will be removable only on the grounds of inability or misbehaviour after a tribunal consisting of persons who are or

have been judges have investigated any complaints against the member and recommend his removal ; the procedure for removing the appointed member will be initiated by the Queen's representative on the advice of the Chief Justice. The Commission will have the power to make appointments and exercise powers of discipline and removal in respect of the same offices as are now included in Schedule 2 to the existing Constitution (with the exception of the Director of Public Prosecutions).

24. The Constitution will provide for the Supreme Court to have unlimited original jurisdiction to hear and determine any civil or criminal proceedings under any law. It will also confer on the Supreme Court jurisdiction to supervise civil or criminal proceedings before all subordinate courts, with power to issue the necessary orders, etc., for the purpose.

25. The Constitution will provide for an appeal as of right to the Privy Council from final decisions of the Supreme Court on questions as to the interpretation of the Constitution, and will also include provision for rights of appeal from the Supreme Court to the Privy Council in other cases (which will follow the existing rights of appeal to the Privy Council from decisions of the Supreme Court in ordinary civil and criminal cases).

26. There will be included in the Constitution rights of appeal from the subordinate courts to the Supreme Court. These rights of appeal will include appeals from decisions of the subordinate courts on the interpretation of the Constitution and minimum rights of appeal in ordinary civil and criminal proceedings based on the rights of appeal which exist at present under Mauritius Ordinances.

#### *The Director of Public Prosecutions*

27. The Constitution will establish the office of Director of Public Prosecutions who will have independent powers in relation to criminal prosecutions corresponding to those vested in the Director by the existing Constitution. A person will not be qualified to be or act as Director unless he is qualified for appointment as a Supreme Court judge. The Director will be appointed by the Judicial and Legal Service Commission. His security of tenure will be similar to that of a judge.

#### *The Public Service*

28. There will be a Public Service Commission which will be composed of a Chairman and four other members. Members of or candidates for election to the Legislative Assembly or any local authority will be disqualified for appointment. Appointments to the Commission will be made by the Queen's representative acting in his personal discretion after consulting the chief minister and the leader of the opposition. The term of office of the members of the Commission will be 3 years. The members of the Commission will be removable in the same manner and in the same circumstances as the appointed member of the Judicial Service Commission, except that the procedure for removal will be initiated by the Queen's representative acting in his personal discretion.

29. The Public Service Commission will have powers of appointment, discipline and removal in respect of all public offices (other than those coming under another Service Commission or those offices for which other provision is made in the Constitution). The Commission will be authorised to delegate any of its powers to a member of the Commission or a public officer.

30. Permanent Secretaries will be appointed by the Public Service Commission, but the Commission will be obliged to inform the chief minister of any proposed appointment and the chief minister will have the right to veto the appointment. Transfers between the offices of permanent Secretary which carry the same emoluments will be made on the advice of the chief minister.

31. The retirement benefits of public officers will be guaranteed by the Constitution against unfavourable alteration. Reduction or withholding of the pension of a public officer will require the approval of the appropriate Service Commission.

### *The Police*

32. The Chief of Police will be appointed by the Police Service Commission after consultation with the chief minister and he will have security of tenure similar to that of a judge. The procedure for the removal of the Chief of Police will be initiated by the Police Service Commission.

33. The Constitution will place the police force under the command of the Chief of Police, and will provide that, in the exercise of his power to determine the use and to control the operations of the police force the Chief of Police will be under an obligation to comply with general directions of policy with respect to the maintenance of public safety and public order given him by the responsible Minister; in the exercise of his command of the force in other respects the Chief of Police will act on his own responsibility and will be independent. The organisation, maintenance and administration of the police force will be the responsibility of Ministers.

34. There will be a Police Service Commission which will consist of the Chairman of the Public Service Commission as Chairman and four\* other members who will be appointed by the Queen's representative in his personal discretion, after consulting the chief minister and the leader of the opposition. Members of the Commission, other than the Chairman, will hold office for a period of 3 years. They will be removable in the same manner and on the same grounds as the appointed member of the Judicial Service Commission. The procedure for the removal of a member of the Commission will be initiated by the Queen's representative in his personal discretion.

35. Subject to the arrangements specified above for the Chief of Police, the Police Service Commission will have powers of appointment, discipline and removal in respect of all police officers. The Commission will be authorised to delegate its powers of discipline and removal to the Chief of Police or any other officer of the police force, but any decision taken by an officer to whom powers are delegated to dismiss a police officer will require the confirmation of the Commission.

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\* The word "three" was inserted inadvertently in the advance copies of this Report.

## *The Ombudsman*

36. The Constitution will establish the office of Ombudsman. Appointments to this office will be made by the Queen's representative in his personal discretion after consulting the chief minister, the leader of the opposition and the other persons who appear to the Queen's representative to be leaders of parties in the Legislative Assembly. The Ombudsman will hold office for a period of four years and will be removable only on the grounds of inability or misbehaviour after a tribunal consisting of persons who are or have been judges have investigated any allegation against him and have recommended his removal; the procedure for removing the Ombudsman will be initiated by the Queen's representative in his personal discretion.

37. The Ombudsman will have jurisdiction to investigate complaints regarding the acts, omissions, decisions and recommendations of specified public bodies and other officers which affect the interests of individuals or bodies of persons. He will be entitled to act upon his own initiative or upon receiving a complaint from an individual or a body and matters may also be referred to him for consideration by ministers and members of the Legislative Assembly. The bodies which the Ombudsman will be authorised to investigate will include Government Departments, their officers, tender boards, the police and prison and hospital authorities. The personal acts and decisions of ministers and decisions of the Service Commissions will be excluded from investigation by the Ombudsman.

38. The investigation of the Ombudsman will be carried out in private and what occurs during the course of an investigation will be absolutely privileged. The Ombudsman will not be required to give anybody a hearing save where it appears to him that there are grounds for reporting adversely on the conduct of the department, organisation or person concerned. There will be powers to examine witnesses and also powers vested in the appropriate Government authority to prevent the disclosure of information on the grounds that it prejudices defence, external relations or internal security or that it might divulge the proceedings of the Council of Ministers. The Ombudsman will be entitled to refuse to investigate any complaint that is more than six months' old or on the ground that it is vexatious or too trivial or that the complainant has insufficient interest in the matter and he will be enabled to discontinue an investigation for any reason that seems fit to him. He will be precluded from investigating any matter in respect of which there is a statutory right of appeal to or review by a court or tribunal. However, he will not be precluded from investigating a matter merely because it will be open to the complainant to impugn the measure, act or decision in the matter as a violation of the constitutional guarantees of fundamental rights.

39. The Ombudsman will be entitled to report unfavourably on any decision, recommendation, act or omission on the ground that it is contrary to law, based wholly or partly on a mistake of law or fact, unreasonably delayed or otherwise manifestly unreasonable. He will address his report, recommending any remedial action that he thinks proper, to the department or organisation concerned. If no adequate remedial action has been taken within a reasonable time, he will be empowered to make

a special report to the Legislative Assembly. The principal functions of the Ombudsman will be included in the Constitution, the supplementary provision being made in an ordinary law of Mauritius.

#### *Financial procedure*

40. The Constitution will provide for a procedure with respect to the appropriation and expenditure of public monies, which will ensure the control by the Legislature of Mauritius of public money. The Constitution will accordingly establish a Consolidated Fund into which (with certain exceptions) there will be paid all revenues of Mauritius and out of which (with certain exceptions) all expenditure will be met. Estimates of expenditure expected to be incurred in a financial year will be laid in the preceding financial year before the Legislature for its approval and will be included in an appropriation law to be passed by the Legislature. Except in the case of expenditure charged on the Consolidated Fund and certain other cases, no money will be withdrawn from the Consolidated Fund except under the authority of an appropriation law. The Constitution will provide for the presentation of supplementary estimates and the enactment of supplementary appropriation laws, where this is necessary, and will also establish a Contingencies Fund out of which payment may be made to meet urgent and unforeseen needs.

41. There will be a Director of Audit who will have the function of auditing all public accounts and reporting on them to the Legislature. The Director of Audit will be appointed by the Public Service Commission after consultation with the chief minister and the leader of the opposition and will have security of tenure similar to that of a judge.

42. The salary and conditions of service of the Queen's representative, judges of the Supreme Court, Members of the Service Commission, the Director of Public Prosecutions, the Chief of Police, the Director of Audit, the Electoral Commissioner and the Ombudsman will be protected in the same manner as the salary and conditions of service of judges are protected under the existing Constitution.

#### *The Prerogative of Mercy*

43. The prerogative of mercy will be exercised by the Queen's representative on the advice of a special committee. The members of the committee will be appointed by the Queen's representative acting in his personal discretion. The Constitution will require that capital cases should be taken into account at a meeting of the special committee.

#### *Alteration of the Constitution*

44. The legislature of Mauritius will have power to alter the constitution. The procedure will be as follows :—

- (a) A Bill for an amendment to the provisions of the constitution (other than the entrenched provisions specified below) will require the support of not less than two-thirds of all the members of the Legislative Assembly to pass the Assembly.
- (b) A Bill for the amendment of the entrenched provisions of the constitution will require the support of not less than three-quarters of all the members of the Legislative Assembly to pass the Assembly.

45. The entrenched provisions of the Constitution will be those relating to :—

- (a) The establishment of the Legislature and its power to make laws, the electoral system, Annual Sessions, the life of the Legislature and its dissolution ;
- (b) Human Rights ;
- (c) The judicial system (including appeals to the Privy Council) ;
- (d) The Public Service and the Police ;
- (e) The Ombudsman ;
- (f) The Director of Public Prosecutions ;
- (g) The position of the Crown and the Queen's representative ;
- (h) The method of altering the constitution.

## ANNEX E

### CITIZENSHIP

The Constitution should provide for the following classes of persons automatically to acquire citizenship of Mauritius :

(a) All persons born in Mauritius, whether before or after Independence Day.

(b) All persons born outside Mauritius of a father born in Mauritius.

In the case of persons alive on Independence Day, both (a) and (b) would be subject to the proviso that they were then still citizens of the United Kingdom and colonies.

2. The Constitution should confer a right to acquire Mauritius citizenship on application on all women who have at any time been married to a citizen of Mauritius or to a person who would have become a citizen of Mauritius automatically on Independence Day had he still been alive.

3. The Constitution should either automatically confer citizenship or a right of registration on the following classes of persons—

All persons naturalised or registered in Mauritius as citizens of the United Kingdom and colonies, and

All persons born outside Mauritius of fathers in this category, providing that in both cases they were still citizens of the United Kingdom and colonies on Independence Day.

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## **ANNEX 12**

House of Commons Debate 10 November 1965, volume 730 – 2W

## Defence Facilities

*HC Deb 10 November 1965 vol 720 cc1-2W* [1W](#)  
[§ Mr. James Johnson](#)

asked the Secretary of State for the Colonies what further approaches have been made to the Mauritius and Seychelles Governments about the use of islands in the Indian Ocean for British and American defence facilities.

[2W](#)

[§ Mr. Greenwood](#)

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

## **ANNEX 13**

Reports of the Forth Committee of the United Nations General Assembly on 16 November  
1965



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Chairman: Mr. Majid RAHNEMA (Iran).

Requests for hearings (continued)

REQUEST CONCERNING FERNANDO POO AND RIO MUNI (AGENDA ITEM 23) (continued) (A/C.4/657)

1. The CHAIRMAN asked the Committee to consider the request for a hearing contained in document A/C.4/657.
2. Mr. DE PINIES (Spain) pointed out that the United Nations Charter expressly authorized the hearing of petitioners from the Territories coming under Chapter XIII but not from those under Chapter XI. Having made that reservation, he would not object to the petitioners being heard.
3. The CHAIRMAN said that if there were no objections, he would take it that the Committee wished to grant the hearing.

*It was so decided.*

AGENDA ITEM 23

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: A/5800/Rev.1, chapters VII, IX, X and XIII-XXVI; A/6000/Rev.1, chapters IX-XXV (continued) (A/5959 and Corr.1, A/6084, A/6094, A/C.4/L.802)

HEARING OF PETITIONERS ON FERNANDO POO AND RIO MUNI

*At the invitation of the Chairman, Mr. Atanasio Ndong Niyone, Mr. Adolfo Obiang Bike and Mr. Rafael Evita, representatives of the Mouvement national de libération de la Guinée équatoriale (MNLGE), took places at the Committee table.*

4. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) said that the people of Equatorial Guinea had now realized that they could no longer tolerate a régime whose aims seemed to it to be mysterious, to say the least. They had accepted the Basic Law of 20 December 1963 more or less enthusiastically because they had seen in it an essential, though transitory, stage in their attainment of national independence. According to the Spanish Government that law was based on the right of peoples to self-determination and established a system of self-government based on that right. The people of Guinea, however, had soon understood the Spanish Government's game and had resolved to put an end to that régime.

5. The allegedly self-governing institutions established under the Basic Law, namely, the General Assembly, the Governing Council and the local government organs, had no real influence, as was clear from articles 17, 18 and 19 (chapter V), 22, 23 and 29 (chapter VI) and 35, 38, 48, 51, 52, 66 and 67 (chapter VII) of the law published in the Spanish Government's *Boletín Oficial Extraordinario* of 10 April 1964. All powers were, in fact, in the hands of the Commissioner-General, who exercised complete and absolute jurisdiction in all questions of security, law and order, foreign relations, information media and so forth, could suspend decisions of the Governing Council, appointed the heads of departments of the Administration, all of whom were Spanish, and installed the President and members of the Governing Council, administering to them an oath of allegiance to the fundamental laws of Spain.

6. On 2 and 15 March 1964, elections had been held for councillors representing professional, cultural, economic and co-operative organizations and for councillors representing heads of family. The members of the Governing Council had been appointed on 15 May 1964 and the President of the Council twelve days later. The fact was, however, that neither those elections nor the referendum of 15 December 1963 had been held according to democratic methods. It was known that Mr. Luis Maho, one of the present members of the Governing Council, had sent a cable to the United Nations (A/AC.109/PET.255) informing it that the Spanish authorities had had the people fired on in order to force them to go to the polls and

that he had denounced the results of the referendum of 15 December 1963 and had asked for fresh elections to be held under United Nations supervision. The Secretary-General of the MNLGE had also declared, on the same occasion, that the self-government was only a façade and that the main defect of the Legislative Decree of 1 January 1964 was that it had not fixed any date for the Territory's attainment of independence. Similarly, the people of Guinea denounced Mr. Ondo Edú, the present President of the Governing Council, who had spoken before the Committee at its 1550th meeting, on 8 November 1965. Contrary to what he had implied, he did not represent his fellow-countrymen, any more than did other individuals whose loyalty Spain had purchased.

7. However that might be, he hoped that the Spanish Government would behave honourably and would lead Equatorial Guinea to its destiny as a free and independent nation. Spain, and indeed other friendly nations, could be assured of the co-operation of independent Guinea and its future national institutions in strengthening their mutual well-being in a spirit of understanding, dignity and equality.

8. In conclusion, he emphasized that the Guinean people refused to regard the present system of self-government as the last stage in its evolution. He requested that a date should be set for the Territory's attainment of independence and that all the political forces of the country should be invited to take part in the establishment of democratic institutions calculated to help towards the attainment of that objective. Anything that the United Nations could do to help the people of Guinea to gain their right to self-determination would be welcomed.

9. Mr. SAO (Cameroon) asked the petitioner whether the MNLGE had had any contacts with the Spanish Government in order to explain its position, which seemed to him to be quite moderate.

10. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) replied that there had not yet been any official contacts between the MNLGE and the Spanish Government.

11. Mr. SAO (Cameroon) asked whether the MNLGE had responded to the appeal made to all Guineans by the President of the Governing Council of Equatorial Guinea to co-operate in the work of national reconstruction.

12. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) thought that the appeal had probably been transmitted individually to Guinean nationalists living abroad through the Governments of the host countries.

13. Mr. SAO (Cameroon) said that he would like to know why the meeting of all the political parties held at Bata had been a failure, as the President of the Governing Council had told the Committee in his statement at the 1550th meeting.

14. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) explained that there were no political parties in Guinea, in accordance with the Spanish political system, but only a national liberation movement which everyone interpreted in his own

way. The MNLGE had not taken part in the Bata meeting, since its leaders had been against it, thinking it better for the movement to continue its activities abroad.

15. Mr. SAO (Cameroon) thanked the petitioner and proposed that his statement, which threw light on certain aspects of the question about which the Committee was not sufficiently informed and would be useful for the rest of the discussion, should be issued in full as a Committee document.

*It was so decided.*<sup>1/</sup>

16. Mr. DIAZ GONZALEZ (Venezuela), recalling that the petitioner had mentioned the lack of political parties in the Territory, asked him to explain how it was that in those circumstances the draft Basic Law establishing a new political and administrative structure had received such a large number of votes in the referendum of 15 December 1963.

17. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) replied that there were indeed no political parties properly so called in Equatorial Guinea but only national liberation movements working to bring about the independence of the Territory. The reason why the Basic Law had gained so many votes was that the MNLGE had been able, by its action both within Guinea itself and outside the Territory, to encourage the Guinean people to accept the proposed status on a provisional basis, for it had felt that that status, despite its inadequacies, constituted a necessary stage on the path to independence.

18. Mr. EVITA (Mouvement national de libération de la Guinée équatoriale) reminded the Venezuelan representative that there were no political parties in Spain.

19. Mr. DE PINIES (Spain), speaking on a point of order, pointed out that the Fourth Committee was discussing Equatorial Guinea, not the political situation in Spain.

20. Mr. EVITA (Mouvement national de libération de la Guinée équatoriale) explained that he had simply wanted to say that the lack of political parties in Equatorial Guinea was due to the same causes as the lack of political parties in the metropolitan country.

21. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) said that, unlike other colonial Powers, Spain did not prohibit contacts between the Guinean population and the petitioners. The MNLGE, which had offices in Guinea, did not follow any communist or other ideology and was striving only for the achievement of independence by the Territory in an atmosphere of friendly relations with Spain.

22. Mr. BRUCE (Togo) asked the petitioners whether there was any concerted action by the nationalist movements outside the country. He was at a loss to see how the nationalists working outside the Territory could succeed in their demands without a genuine political organization, since nothing was happening

<sup>1/</sup> The complete text of Mr. Ndong's statement was subsequently circulated as document A/C.4/659.

in the country, and the people had even approved the Basic Law by a very strong majority.

23. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) said that besides the MNLGE-FRENAPO (Frente Nacional y Popular de Liberación de la Guinea Ecuatorial)—a movement which brought together all Guineans who were aware of what was really taking place in Africa and wished their country to achieve independence without thereby ceasing to co-operate with Spain, and whose views carried some weight at the international level—there was another political organization that had existed since 1964, namely, the Movimiento de Unión Nacional de la Guinea Ecuatorial (MUNGE), which had shown much less flexibility in its activities.

24. Mr. BRUCE (Togo) said that even the most noble aspirations were doomed to failure if they were not backed by some kind of definite political structure. If there were no political parties in Equatorial Guinea itself, then at least the liberation movements waging the struggle abroad should be organized on a solid basis. They should cease to be mere associations of individuals, all wishing more or less to take command, and should become a well-organized party more representative of the aspirations of the people.

25. Mr. DE CASTRO (Philippines) wished to know MNLGE was satisfied with the Basic Law promulgated in 1963, subject to the Territory's achievement of independence at a later stage.

26. Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) replied that his movement certainly would not passively wait on the good pleasure of Spain. Once its faults were corrected, however, the Basic Law could serve as a basis for the attainment of independence by Equatorial Guinea, under the auspices of the Spanish Government and with the assistance of the United Nations.

27. In reply to a further question put by Mr. DE CASTRO (Philippines), Mr. NDONG (Mouvement national de libération de la Guinée équatoriale) replied that his movement had accepted the Basic Law in all good faith. That was a further reason for it to ask the United Nations to support it in its struggle against the disinterest which had since been shown by the Spanish Administration.

28. Mr. KEDADI (Tunisia) thanked the petitioners for the information they had given the Committee. He expressed satisfaction that the statement of Mr. Ndong was to be circulated as a Committee document, particularly since a similar decision had been taken concerning the statement of Mr. Ondó Edú (A/C.4/656), who had put forward a different point of view.

29. Mr. DE PINIES (Spain) said that he was surprised to see petitioners arrogating to themselves the right to speak on behalf of the Guinean people on the pretext that there were no democratic means of expression in Equatorial Guinea. If Mr. Ndong had carefully read the documents circulated by the Secretariat, he would not have considered it necessary to read out the clauses of a law which appeared in those documents. It was also a matter for surprise that the petitioners had denied the existence of any political parties, inasmuch as quite a number of

organizations which had played an active part in the campaign preceding the referendum were listed in chapter X of document A/6000/Rev.1. The petitioners in exile should learn to reintegrate themselves into the life of the country, as others had done before them. He himself had had occasion to advise Mr. Ndong to return to Guinea. If the petitioners representing MNLGE wished to play a part in the political life of their country, they had to do so inside the country. They certainly knew that Spain would grant independence to Equatorial Guinea as soon as it desired it.

30. He fully approved of the Committee's decision to issue the full text of the petitioner's statement as a Committee document.

*The petitioners withdrew.*

#### GENERAL DEBATE AND CONSIDERATION OF DRAFT RESOLUTIONS (continued) (A/C.4/L.802)

31. Mr. BORJA (Ecuador), speaking on the question of the Malvinas Islands, said that he wondered whether the problem was really a colonial one in the strict sense or more in the nature of a conflict of sovereignty between two States, one of which had occupied by force a part of the territory of the other. In the latter case, the dispute ought to be settled under the provisions of Chapter VI of the United Nations Charter.

32. The conflict had, in fact, arisen because the United Kingdom had established a colony on territory belonging to another State, or territory over which another State asserted its sovereignty. The first thing to be done was therefore to settle the legal aspect of the problem so as to find out which State had sovereignty the territory in question. Only then could consideration be given, if necessary, to the question of decolonization, which would be settled in accordance with the provisions of General Assembly resolution 1514 (XV). With that in mind, Ecuador saw no objection to being one of the sponsors of draft resolution A/C.4/L.802, for it was convinced that in that way it would be serving the ideal of American unity and international justice.

33. His delegation believed, moreover, that history provided irrefutable confirmation of Argentina's rights over the Malvinas Islands. If the fact of discovery conferred the right of ownership—and that had certainly been the case in European public law at the time of the great discoveries—then the Malvinas Islands had been part of the Spanish colonial possessions, since they had been discovered by Magellan's expedition in 1520, whereas the English had not landed there until 1592. In addition to the argument of discovery, there was the fact that the islands had been occupied by Spain in 1766, after their restitution by France following the claim put forward by the Spanish Government at the time of the English-French conflict regarding sovereignty over those territories.

34. The facts of history were also supported by a number of legal regulations which had been drawn up in times past by the colonial Powers in order to control navigation in certain waters and thus prevent conflicts. In that connexion, he recalled the provisions of the Treaty of Peace and Friendship between Spain and Great Britain, signed at Madrid in 1670, and the Treaty of Utrecht, signed in 1713, which had settled

the question of the delimitation of the colonial possessions of those two States in America. It thus became quite clear that the Malvinas Islands had been indisputably placed under Spanish authority from the time of the Treaty of Utrecht and that they had still been under that authority at the time when the Argentine nation had obtained its independence from Spain.

35. In that connexion, the Argentine delegation, in support of its argument, had many times cited the Papal Bulls *Inter coetera* and *Dudum si quidem* of the late fifteenth century, which had defined the zones of influence of Spain and of Portugal and had placed the Malvinas Islands in the geographical region attributed to Spain. The Ecuadorian delegation did not believe that that argument could be adduced in a conflict of sovereignty over a territory, because in its opinion a religious authority could not legally settle questions concerning the civil government of nations. The rights of Argentina had been sufficiently established without there being any need to rely on Papal Bulls, which, quite apart from the limitations referred to, could in no way be binding upon the United Kingdom.

36. The rights of Argentina over the Malvinas Islands derived from the principle *uti possidetis*, which had governed the territorial apportionment of America at the end of the colonial era, when each State, on its accession to independence, had adopted as its territorial limits the limits of the administrative divisions which had been fixed by Spain. The Malvinas Islands had come within the Viceroyalty of Río de la Plata and had therefore become part of the Argentine Republic when that Spanish colony had obtained its political emancipation. Once independence had been proclaimed and the internal situation had been consolidated, the Argentine Republic, as the inheritor of the rights of Spain, had taken possession of the Malvinas Islands. It had set up administrative authorities there, had authorized the settlement of the islands by family groups and had incorporated the islands into its territorial domain.

37. In 1833 the Malvinas Islands had been occupied by a United Kingdom naval detachment, whose captain had made known to the Argentine Commandant that he intended to exercise United Kingdom sovereignty over the islands. Despite the immediate protests of the Argentine Government, the United Kingdom had continued its occupation, displacing the Argentine authorities and creating an abnormal situation which had never been recognized by the Argentine Government and which the United Nations now had a duty to correct.

38. The Argentine Republic had never relinquished its rights to the Malvinas Islands, and it refused to recognize the *de facto* situation there. It had been supported in that matter by the countries of Latin America, which had made their position known either individually or by means of resolutions adopted by the regional organizations to which they belonged. Thus, at Bogotá, in 1948, the Ninth International Conference of American States had affirmed, in its resolution XXXIII, that the process of American emancipation would not be completed so long as there remained on the American continent any regions that were subject to the colonial system or any territories

occupied by States not belonging to that continent. At Caracas, in 1954, the Tenth Inter-American Conference had reaffirmed, in resolution XCVI, the desire of the people of America for the final abolition of the colonial system, which was being maintained against the will of the peoples concerned, and for an end also to the occupation of American territories. The attitude of the Latin American countries in that regard was dictated by their acceptance of the principle that victory created no rights and that any acquisition of territory by force or by any other form of coercion must not be recognized. That principle was, moreover, enshrined in the Charter of the Organization of American States and in the United Nations Charter, and the States that were members of those organizations were therefore morally and legally bound to apply it. His country most certainly abided by that principle.

39. The United Nations must take up the question of the occupation of the Malvinas Islands and seek a peaceful settlement of the problem. Draft resolution A/C.4/L.802 specifically recommended that the Governments of the United Kingdom and Argentina should proceed with negotiations with a view to finding a solution compatible with the principles of the United Nations Charter and the provisions of General Assembly resolution 1514 (XV). Ecuador was convinced that such negotiations would take place and would lead to a peaceful solution not only because of the demands of international justice but also for clear and compelling reasons of geography and geo-politics.

40. Mr. AKA (Ivory Coast) said, with reference to the United States Virgin Islands, that according to the information in the Special Committee's reports (A/5800/Rev.1, chap. XXV; A/6000/Rev.1, chap. XXIV), steady progress was being made by those islands towards the achievement of the objectives of General Assembly resolution 1514 (XV), the implementation of which was not being hampered by the administering Power. His delegation hoped that that trend would become more pronounced along the lines of greater democratization of the legislative and executive organs, so that the people might be able, with complete freedom, to decide on their political status and the kind of relationship they wished to have with the United States.

41. The British Virgin Islands were similar to the United States Virgin Islands with regard to geography, economy, language and ethnic composition. Politically, however, they constituted a "colony", which should be given the opportunity of choosing between self-government and some form of association with other Territories, and more particularly the West Indies. The bonds existing between all those islands were favourable for the establishment of a viable State. His delegation therefore endorsed the idea of a merger of the Virgin Islands among themselves or with other Territories, on condition that such an association corresponded to the wishes of the people as freely expressed under the conditions of political advancement which it was the duty of the administering Power to ensure. It must, however, be said that there was no clear evidence of any steps having been taken to facilitate such a change of course, and that,

for example, the British Virgin Islands were suffering from administrative and cultural under-development and were economically dependent on tourism to an excessive degree. As to the political situation in the British Virgin Islands, it was imperative for the legislative and executive organs, and particularly the Executive Council, to become more independent and more representative.

42. The same observations were equally valid for the other islands mentioned in chapter XXIV of document A/6000/Rev.1. In all those cases, the administering Powers concerned should be asked to give an undertaking that they would apply the provisions of General Assembly resolution 1514 (XV) in the very near future, and they should also be asked to ensure, for that purpose, that in all cases an administration composed mainly of indigenous inhabitants and legislative organs elected on a democratic basis and having as wide a jurisdiction as possible, at least in internal affairs, would be set up.

43. Turning next to the Malvinas Islands, he said that they had been regarded by the United Kingdom as a colony ever since it had established its sovereignty there. In fact, however, that colony was no bigger than a commune and was administered as a municipality. According to the United Kingdom representative, the inhabitants of the islands would reject any idea of independence. That gave evidence of their common sense, for it would be unrealistic to attempt to apply the provisions of resolution 1514 (XV) in a strict way to Territories such as those, which had virtually no permanent inhabitants. The institutional history of States had always swung back and forth between opposite extremes, and it had almost never been possible to find the golden mean. It was therefore particularly important for the United Nations, in its task of decolonization, to distinguish between the spirit of the law and its applicability in a particular case. His delegation was fully aware of the historical considerations impelling Argentina to claim those islands, but it felt that account must also be taken of the character of the inhabitants and of the fact that America had always been a continent in which immigration and occupation had been a dominant feature. There could be no transfer of sovereignty to Argentina without previous safeguards for the inhabitants of British stock. As the Malvinas Islands constituted a colony, the United Nations must keep the question under close review, while leaving it to the United Kingdom and Argentine Governments to settle their dispute through negotiation.

44. Mr. FOUM (United Republic of Tanzania) said that, in its consideration of the chapters of the Special Committee's reports now before it, the Committee must take a decision on the question of colonialism as a whole. The fact, moreover, that the Territories under consideration were being dealt with as a group did not in any way lessen their individual importance.

45. As a member of the Special Committee, his delegation had consistently affirmed that the provisions of General Assembly resolution 1514 (XV) fully applied to all Territories and all peoples who were still under the colonial yoke, and it was pleased that the conclusions and recommendation in the Special Committee's reports reflected and supported its own

point of view. It therefore hoped that those conclusions and recommendations would receive the widest possible support from the members of the Fourth Committee. That would be a tangible way of helping all the peoples in the world who were still fighting for their national emancipation against the forces of backwardness and colonial exploitation, and that action would give the coup de grâce to colonialism.

46. Experience had shown that certain colonial Powers gave their own interpretation to the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples and that the so-called constitutional reforms introduced in some Territories were in direct opposition to the principles on which decolonization was based. That was true, for example, of Papua and New Guinea, where the House of Assembly established by the administering Power had no real law-making powers since its decisions had to be approved by the colonial authorities. In view of the fact that freedom was indivisible, and must be unconditional, the constitutional reforms in Papua and New Guinea were actually nothing more than readjustments decided upon by Australia for reasons of convenience.

47. The situation was similar in the United States Virgin Islands, where, under a United States law, the natural rights of the population had been reduced to association with the United States. The representative of the colonial Power had said that his Government had sought to endow the Territory with a future which would, in particular, provide for the possibility of sending a representative to the United States Congress. It was obvious, in the circumstances, that the administering Power had already decided what the Territory's future would be.

48. It was extremely important for the Committee to keep a close watch on the situation of the small Territories in view of their strategic and military importance for the execution of the world policy of the colonial Powers. Thus the island of Guam, which was under colonial occupation of the United States, had become a large and dangerous military base, which the colonial Power was now using to conduct a war that was of benefit only to itself. The Press had announced on various occasions that United States military aircraft had taken off from aerodromes on the Non-Self-Governing Territory of Guam to carry out military missions in a war being waged by the United States. If those aerodromes were bombed for reasons of self-defence, the population of the colonial Territory of Guam would be involved in a war simply because it happened to be under colonial domination. One could only be thankful that the country which was being subjected to United States bombing raids was not an aggressive nation and had not decided to bomb the oppressed population of the Territory of Guam in return.

49. An analogous situation was threatening Mauritius and the Seychelles, and it was surprising to learn in that regard that five years after the adoption of General Assembly resolution 1514 (XV), certain colonial Powers were still thinking of establishing new colonies. Thus The Times of London, in its issue of 11 November 1965, and The New York Times of the same date, had announced that the United Kingdom

Government had decided to establish a new colony, which would consist of the Chagos archipelago, thus far attached to Mauritius, and of the Aldabra, Farquhar and Desroches islands, thus far attached to the Seychelles. Those islands were inhabited by 1,384 persons, and the establishment of the new colony was intended to permit the installation of military and naval bases by the Governments of the United Kingdom and the United States.

50. The joint United Kingdom-United States project was aimed at reversing the course of history. It was contrary not only to resolution 1514 (XV), but also to other resolutions adopted by different United Nations organs concerning specific colonial problems and the application of the principle of self-determination, which must be regarded as a general principle of international law. That principle would be meaningless if it could be circumvented and if, by the payment of compensation to the majority of the inhabitants of a colony, a colonial Power could retain in perpetuity a part of the territory of that colony inhabited by a minority. The right of colonial peoples to self-determination could never be subject to financial dealings, which were particularly reprehensible when their purpose was the establishment of foreign bases in a colonial Territory. It would be recalled that the Second Conference of the Heads of State or Government of Non-Aligned Countries had stated in its Cairo Declaration of 10 October 1964 that the maintenance or establishment of military bases, or the stationing of troops, in the territory of other countries against the express wishes of those countries, constituted a flagrant violation of the sovereignty of States and a threat to freedom and international peace. The Conference had also declared that it considered particularly unacceptable the existence or maintenance, in dependent Territories, of bases which might serve to perpetuate colonialism or to achieve some other objective.

51. It must not be forgotten that the nature of colonialism and imperialism remained constant and that only the tactics changed. The colonialists resorted to every stratagem in order to hold on to the positions and privileges they had acquired in the past and to prevent the people still under their sway from enjoying freedom and independence. One of those stratagems was the policy of "divide and rule". Thus, in British Guiana, the United Kingdom was employing all kinds of tactics to delay the colony's accession to independence; it was really most unfortunate that racial tensions should have developed and had lent themselves to being used to justify delays in the emancipation of the Territory. The people of British Guiana had shown that they did not want to remain under foreign domination, and his delegation hoped that the international community would help them to attain freedom and independence more speedily.

52. On the other hand, the differences between the various colonial Territories must be taken into account. Sometimes the real problem was to reach agreement by negotiations among two or more States. His delegation therefore welcomed the suggestion of the Latin American delegations to invite two Member

States to open negotiations on the subject of the Falkland or Malvinas Islands.

53. Sometimes, too, the administering Power held fast to a colony on the pretext that the colony would not be economically viable as an independent nation. The purpose of that pretext was to deny the indigenous population the enjoyment of the natural rights which were recognized to be theirs by the United Nations Charter and the Declaration on the Granting of Independence to Colonial Countries and Peoples. His delegation believed that the rights of those peoples and Territories to self-determination and independence must not be infringed by the action of the forces which prevented them from being exercised. The fact was that the economy of the colonies strengthened the economy of the metropolitan country, for economic exploitation was the essence of colonialism. His delegation wished to repeat that freedom was indivisible. The colonial Powers must first provide the peoples of the Territories in question with all that they needed to exercise their rights to self-determination and independence. When a Territory's economy was not strong enough, the free members of the international community should do everything in their power to give the people of that Territory the material assistance that would enable them to follow the path which they had chosen.

54. His delegation considered itself morally bound to reaffirm the inalienable right of all peoples and all Territories, large or small, to self-determination, freedom and independence. It believed that the Territories which the Committee was now considering should be given the means to exercise their natural rights. The establishment of institutions which provoked or encouraged racial conflict or ethnic division was an obstacle to national self-awareness; it should therefore be avoided in order that the people still under the colonial yoke might be able to accede to democratic freedom. Furthermore, the use of colonial Territories for military or strategic purposes was harmful to their interests and those of their inhabitants and delayed their independence. That was why military bases should be dismantled.

55. The Tanzanian delegation was prepared to join with all other delegations which had advocated a solution based on the principles which he had enunciated. Those who were waging an honourable struggle for emancipation must be given moral and material support by all those who cherished freedom and detested the colonial system and man's exploitation by man.

#### Organization of work

56. The CHAIRMAN read out a revised time-table<sup>2/</sup> for the Committee's consideration of the items remaining on its agenda. He suggested that if there were no objections, the revised time-table should be adopted.

*It was so decided.*

The meeting rose at 1.25 p.m.

<sup>2/</sup> Subsequently issued as document A/C.4/L.805.



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Chairman: Mr. Majid RAHNEMA (Iran).

AGENDA ITEM 23

Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples: A/5800/Rev.1, chapters VII, IX, X and XIII-XXVI; A/6000/Rev.1, chapters IX-XXV (continued) (A/5959 and Corr.1, A/6084, A/6094, A/C.4/L.802)

GENERAL DEBATE AND CONSIDERATION OF DRAFT RESOLUTIONS (continued) (A/C.4/L.802)

1. Mrs. MENESES DE ALBIZU CAMPOS (Cuba) recalled that the General Assembly had decided to establish the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples because one year after the adoption of the Declaration in question hardly any steps had been taken to implement its provisions; indeed, in some regions armed action and repressive measures had been used to prevent dependent peoples from exercising their right to complete independence. In General Assembly resolution 1654 (XVI), embodying that decision, the Assembly had noted that acts aimed at the disruption of national unity and territorial integrity were still being carried out in certain countries in the process of decolonization, and had expressed the conviction that any delay in the application of the Declaration could threaten international peace and security. It was disturbing to note that, five years after the adoption of the Declaration, the colonial Powers were still trying to obstruct the decolonizing efforts of the United Nations; they had not, however, been able to prevent the Special Committee from per-

forming a useful service in the cause of the oppressed peoples.

2. A situation which was of concern to Cuba and to many other delegations was that in so-called British Guiana. Although as far back as 1953 British Guiana had declared itself in favour of independence under the party led by Mr. Cheddi Jagan, and despite the successive electoral victories of that party, the Territory remained under colonial rule, repressive measures were enforced, many leading patriots were in prison, the majority party favouring independence was prevented from governing and artificial racial strife had been created. Indeed, the imperialists had attempted to convert the struggle of the people against foreign domination into a civil war. In the place of Mr. Jagan's party, Washington and London had placed in power a docile Government of their creation.

3. A series of futile conferences had been held in London and an attempt was still being made to deceive world opinion by that artifice. The administering Power was continuing to ignore the resolutions of the United Nations as it had done in the case of Southern Rhodesia, where the colonialist settlers had turned against their own masters. The General Assembly had repeatedly pointed out to the administering Powers that the way to avoid a catastrophe was to fix an early date for independence. A solution would not be found through the creation of docile governments with the blessing of the imperialists. That was not merely a formal blessing: The Wall Street Journal had pointed out on 11 November 1965 that the United States was rushing \$14 million in loans and grants to British Guiana during the present year, whereas aid to Mr. Jagan's Government in 1964 had amounted to only \$200,000. The same newspaper reported that the production of United Kingdom sugar companies was 50 per cent higher during the present year than during the preceding year, that installations for bauxite mining were being expanded by the aluminum companies and that the production of diamonds in the Territory had doubled in relation to 1964.

4. In other Territories, too, colonialist resistance was continuing, owing to economic, political or strategic considerations. Plans for new military bases in the Territories were increasing the threat to the peace of the oppressed peoples. Military bases in all Territories which had not gained independence must be speedily and unconditionally eliminated; they must be removed before independence and not after. Her own country knew what it was to have a foreign military base on its soil, imposed at the time of the imperialist presence there. Such bases were a constant threat to neighbouring peoples, too, and to their independence. The New York Times of 11 November 1965 had reported that a new United Kingdom territory, to become a mili-

tary base, had been created out of part of Mauritius and Seychelles. The Times of London of 11 November 1965 had quoted the United Kingdom Secretary of State for the Colonies as saying that the islands would be available for the construction of defence facilities by the United Kingdom and United States Governments. The information that compensation would be paid for the islands did not reassure her delegation. General Assembly resolution 1514 (XV) required States to respect the integrity of the national territory of dependent peoples. Her delegation could not accept the argument that payment had been made for the islands concerned; no sovereign State would allow the alienation of any part of its territory.

5. In the light of the principle of the equality of nations large and small, enshrined in the Charter, there could be no justification for questioning the right of a Territory to independence on the basis of its small population or area. Nor could economic arguments be adduced to show the incapacity of a people for independence. Such pretexts were used for the purpose of maintaining bastions of colonialism, using the subterfuge of artificial federations, or association or integration with other States. Any constitutional advance which did not give the people full control of their destiny or which maintained imperial rule in the form of a so-called association was unacceptable.

6. Mr. DIABATE (Guinea) said that the historic Declaration on the Granting of Independence to Colonial Countries and Peoples reflected not only the passionate desire of dependent peoples for freedom but also the recognition that the denial of freedom represented a threat to international peace and security. While the attainment of full sovereignty by a number of countries since the date of the adoption of the Declaration was to be welcomed, his delegation condemned the attempts of certain colonialist countries to empty the Declaration of its essential content, which was the political, economic and cultural liberation of the Territories still under foreign rule.

7. The Declaration did not justify the handing over of power to unrepresentative groups or puppets. In British Guiana, for example, an explosive situation had been created. His delegation appealed once more to the United Kingdom not to exacerbate racial tensions there, but to free the political prisoners and negotiate with the true representatives of the people, namely, the Progressive People's Party.

8. The Declaration must also be implemented effectively in the Territories administered by the Spanish Government. His delegation had listened with interest to the statement of the President of the Governing Council of Equatorial Guinea at the Committee's 1550th meeting, but it was convinced that the higher interests of the people of Equatorial Guinea called for an end to foreign domination in all forms and manifestations. Without liberty there could be no real development.

9. His delegation would support draft resolution A/C.4/L.802, submitted by a number of Latin American countries with a view to starting a dialogue between the United Kingdom and Argentine Governments concerning the future of the Malvinas Islands.

10. Mr. PAYSSE REYES (Uruguay) said that for the moment he would confine himself to the question of the Malvinas. His delegation's position on Argentina's claim to sovereignty over the Malvinas had been clearly set out by his delegation in Sub-Committee III of the Special Committee (A/5800/Rev.1, chap. XXIII, appendix, paras. 35-57). In November 1964, the Special Committee had endorsed the conclusions of the Sub-Committee and he wished to stress in particular conclusions (b), (c), and (d) (A/5800/Rev.1, chap. XXIII, para. 59).

11. The draft resolution before the Committee (A/C.4/L.802) was based on that decision of the Special Committee. He noted that Argentina had indicated its readiness to settle the dispute direct with the United Kingdom and that the Minister for Foreign Affairs of Argentina had stated that there would be no difficulty in finding a formula which would guarantee the rights and aspirations of the people of the Malvinas Islands. It would thus be logical simply to invite the Governments of the United Kingdom and Argentina to continue negotiations directed towards finding a peaceful solution, taking into account the provisions of the United Nations Charter and of General Assembly resolution 1514 (XV) and the interests of the inhabitants. There seemed no need to discuss the question of rights of possession. The islands had belonged to Spain and had passed into the possession of the American States in 1810. The problem was to put an end to a *de facto* situation lacking all legal basis, and that was the course prescribed by the draft resolution.

12. Mr. CARDUCCI-ARTENISIO (Italy) said that his delegation, which had had the opportunity of following the constitutional developments in the Territories under consideration through its participation in the Special Committee, was satisfied in principle with the political and constitutional situation prevailing in most of the Territories and supported the steps taken by the administering Powers concerned towards the implementation of General Assembly resolution 1514 (XV). Most of the Territories enjoyed complete internal self-government and, through elections conducted on the basis of "one man; one vote", their inhabitants were able to express their views on their present constitutions and on their evolution towards self-determination and independence. In other Territories the situation was not so promising, although there were special circumstances to explain the delays in the attainment of the goals set forth in the relevant General Assembly resolutions.

13. The question had been raised whether the small area and population of certain Territories required that special criteria should be applied to them. It was perhaps unfortunate that the Special Committee had not found it possible to work out some basic principles which could be applied to the implementation of resolution 1514 (XV) in respect of such Territories. It was surely inconceivable that islands with a population of less than a hundred could become independent States without giving rise to future problems. A first step might perhaps be made by adapting the amplifying, if necessary, the criteria indicated in General Assembly resolution 1541 (XV), which might be regarded as a kind of supplement to

resolution 1514 (XV). His delegation had confidence in the various countries administering the Territories under consideration, but felt that the United Nations could indicate some guidelines.

14. With regard to the Falkland or Malvinas Islands, his delegation had stated its preliminary views in Sub-Committee III of the Special Committee in September 1964 (A/5800/Rev.1, chap. XXIII, appendix, paras. 58-63). It had drawn attention to three special features. Firstly, the Falkland Islands was a small Territory with a small and scattered population, for which full political and economic independence might be difficult to envisage; on the other hand, it constituted a Non-Self-Governing Territory and was thus within the scope of resolution 1514 (XV). Secondly, the Territory was the subject of a sovereignty claim on the part of another Member State; although the General Assembly was not a court which should be asked to decide territorial disputes, the fact that Argentina had maintained constant reservations concerning sovereignty over the islands was a factor which could not be ignored. Thirdly, there appeared to be a conflict between two principles set out both in the United Nations Charter and in resolution 1514 (XV): namely, the principle of territorial integrity and the principle of self-determination. The Italian delegation felt that the national origin of the inhabitants and the fluctuations of the population gave rise to serious doubts about the possibility of strict application of the principle of self-determination to the case. On the other hand, the geographical situation of the islands made them a physical part of the American continent.

15. His delegation did not consider that the problem could be studied from a legal point of view only; a solution should be sought through constructive and reasonable methods. It would be unfortunate if the problem became a source of tension between the United Kingdom and Argentina; the best course would therefore be to reach an understanding through bilateral consultations. His delegation sincerely hoped that the two Governments would find it possible to reach an agreement which would be mutually satisfactory and would give full consideration to the legitimate interests and special circumstances of the people who had made the islands their home. In his delegation's view, the problem was more a problem of a colonial Territory than of a colonial people. The sacred role of the United Nations as the guardian of indigenous populations under colonial rule was hardly relevant in the present problem.

16. His delegation would vote in favour of draft resolution A/C.4/L.802. The methods suggested in it were in line with the United Nations Charter and might help towards the settlement of the dispute between two friendly countries.

17. Mr. GRINBERG (Bulgaria) said that he would confine his remarks at present to the question of the Malvinas or Falkland Islands. In the Special Committee and in its Sub-Committee III, his delegation had voted in favour of the conclusions and recommendations appearing in document A/5800/Rev.1, chapter XXIII, paragraph 59. The United Kingdom's occupation of the islands had had all the characteristic features of colonialism. Throughout

the 133 years of that occupation, Argentina had constantly reaffirmed its rights over the islands. The way to a solution clearly lay in negotiations. Argentina had made clear its desire for negotiations, and notwithstanding the United Kingdom view that the question of sovereignty over the islands could not be a subject for negotiation, the Argentine Government had expressed satisfaction with the United Kingdom Government's recent acceptance of its proposal for talks. Argentina considered that the negotiations should be based on the decisions of the Special Committee and be aimed at the decolonization of the islands. His delegation must support that position as being in line with the recommendations of the Special Committee. It would therefore vote in favour of draft resolution A/C.4/L.802.

18. Mr. KEDADI (Tunisia) said that he wished first to reaffirm Tunisia's complete and unconditional attachment to the principle of decolonization. As long ago as 1959, President Bourguiba had suggested that the colonial Powers should hold a round-table conference to decide upon the procedures for the peaceful decolonization of the countries and peoples under their administration. Decolonization was inevitable and by bringing it about themselves the colonial Powers would retain the friendship of the colonized peoples. Although that suggestion had not been taken up, the United Nations had, as it were, responded to it by adopting General Assembly resolution 1514 (XV) and establishing the Special Committee. His delegation considered that the administering Powers should co-operate closely with that Committee, in their own interests and in the interests of world peace. Tunisia had no direct interests in any of the Territories under consideration; its approach was based solely on the principles of the United Nations Charter and the decisions taken by the United Nations in the matter of decolonization.

19. The great majority of the Territories were under the administration of the United Kingdom, which was accordingly called upon to play a leading role in the process of decolonization. A study of the Special Committee's reports revealed that in some cases the United Kingdom was making great efforts to raise the level of living of the inhabitants in order to help them on the road to self-government and independence; the Committee should give recognition to that fact. On the other hand, in other, more advanced, Territories the administering Power was intervening in order to direct events towards a situation which would be favourable to it in the future; the case of British Guiana was an illustration of that. In some other Territories, namely Gibraltar and the Falkland or Malvinas Islands, there was a dispute concerning sovereignty. His delegation considered that in those cases historical and geographic considerations should be the main basis for a peaceful solution. His delegation was convinced that through peaceful negotiations an agreement could be reached under which those Territories would be restored to their original owners and the recipient countries would pay substantial compensation.

20. With regard to the other Territories under consideration, it seemed that the administering Powers were duly discharging their task, although fuller information on political and constitutional evolution

would have been desirable. As an African country Tunisia could not long tolerate the continuation of foreign rule in Africa. At the Committee's 1550th meeting the President of the Governing Council of Equatorial Guinea had described the situation in his country, but it was to be noted that he had not seemed at all anxious that his country should accede to independence as speedily as possible, and the Tunisian delegation would have liked to see more stress laid on that aspect. With regard to Ifni and Spanish Sahara, his delegation considered that, as in the case of Gibraltar and the Malvinas Islands, the Territories should be returned to their original owners. The existence of enclaves administered by foreign Powers in the African continent could not be accepted. It was a question of both justice and security and, in the name of the esteem which the African countries felt towards Spain, his delegation appealed to that Power to renounce its sovereignty over those two Territories.

21. The Tunisian delegation would support any draft resolution in conformity with the position which he had outlined.

22. Mr. THERATTIL (India) said that his delegation would confine its remarks to a few Territories in which changes had been introduced, or were contemplated, which might delay the attainment of independence.

23. Among those Territories was British Guiana, a country which on one pretext or another had been denied freedom and independence for almost fifteen years by the administering Power. Until recently British Guiana had enjoyed the greatest measure of racial harmony and identity of interest common to all the people. It had had a Government, based on universal adult suffrage, in which the present leaders of the two main parties of British Guiana had been united in a single party and had worked together for the welfare and independence of the country. The administering Power had intervened and suspended the Constitution and the Government; it had then placed further obstacles in the way of the country's attainment of freedom and independence and had adopted various constitutional and unconstitutional measures designed to arrest the growth of a truly multiracial British Guiana.

24. His delegation could not but regret the attitude taken by the administering Power concerning the efforts made by the Special Committee on the Situation with regard to the Implementation of Granting of Independence to Colonial Countries and Peoples and by the General Assembly. The reports of the Special Committee (A/5800/Rev.1, chap. VII; A/6000/Rev. 1, chap. IX) clearly showed that the efforts of the Sub-Committee of Good Offices on British Guiana had been frustrated by the United Kingdom Government, which had refused to allow the Sub-Committee to visit the Territory. His delegation had no doubt that, with the full co-operation of the administering Power, the Sub-Committee and the Special Committee would be able to play an important role in assisting the people of British Guiana to achieve freedom and independence. His delegation therefore submitted that the General Assembly should endorse the work done by the Sub-Committee of Good Offices and enable it to function effectively by calling upon

the administering Power to co-operate fully with it. The General Assembly should call upon the United Kingdom to grant freedom and independence to British Guiana without further delay, an independence based on the rule of the majority with adequate and full safeguards for the interests of all minorities and free elections conducted on the basis of "one man, one vote". The Indian delegation reserved its right to comment on the results of the constitutional conference now in progress in London. It wished to stress, however, that any decision taken in London should be in keeping with the provisions of General Assembly resolution 1514 (XV).

25. Turning to Mauritius, he said that the colonial policy pursued by the United Kingdom in that Territory was no different from the pattern set in other colonial Territories. As the Committee had not been informed of the results of the constitutional conference in London, it could only be assumed that the United Kingdom Government had not yet taken any effective steps to implement the Special Committee's recommendations concerning Mauritius (A/5800/Rev.1, chap. XIV, para. 159). His delegation hoped that the United Kingdom policy in Mauritius would be changed in order to build up a multiracial, multi-religious and multi-ethnic Mauritian nation and that the United Kingdom Government, which proudly proclaimed the dignity of labour and the brotherhood of man, would grant the people of Mauritius independence based on the equality and brotherhood of man, the principle of universal adult suffrage and the concepts of democratic government and majority rule, with safeguards for minorities. Any solution based on expediency and self-interest would only result in chaos and conflict, for which the administering Power would bear the responsibility. The administering Power should bear in mind the important principle set forth in operative paragraph 6 of General Assembly resolution 1514 (XV) and not take any steps in regard to the future of Mauritius which would be contrary to that principle, even if such a sacrifice was made for national defence or any so-called vital necessity.

26. With regard to Fiji, he noted that in the resolution adopted by the Special Committee (A/5800/Rev.1, chap. XIII, para. 119) the Committee had renewed its request to the administering Power to adopt immediate measures which would enable the people of Fiji to attain freedom and independence and had further requested the administering Power to report to it and to the General Assembly on the implementation of the resolution in question. More than a year had elapsed since that request had been made and the administering Power had not submitted any report to the Special Committee or the General Assembly. He hoped that the representative of the administering Power would make a statement to the Committee during the debate on the present item. Even the constitutional conference recently held in London had failed to move in the direction of the goals set forth in General Assembly resolutions 1514 (XV) and 1951 (XVIII). The avowed purpose of the conference had been to work out a constitutional framework for Fiji which would preserve a continuing link with the United Kingdom and within which further

progress could be made in the direction of internal self-government. It was not surprising that a conference beginning with those limited objectives had failed to achieve any substantial results, although the conference report claimed that the election system had been modernized by the introduction of universal adult suffrage. On examination, however, it was found that instead of the universally accepted system of "one man, one vote", the present arrangement in Fiji would give one man one vote in the case of some but in the case of others it would give one man six or eight votes. The administering Power had instituted a complicated system of cross-voting, with equal division of seats among unequal communities, with a view to protecting the interests of the European minority.

27. As his delegation had pointed out in the Special Committee, racial discrimination was practised in Fiji. Moreover, there was a "separate but unequal" principle maintained for the benefit of the Europeans and some other minority groups. He would welcome an explanation of that unsatisfactory state of affairs from the representative of the administering Power.

28. The new Legislative Council of Fiji was not elected on a fully democratic basis and would have little effective power, since its power to legislate on any subject was curtailed by a number of restrictions and powers reserved to the Governor. His country's own experience and recent examples in other United Kingdom colonial dependencies provided ample proof that, where non-Europeans exercised a small degree of self-government, the governors and high commissioners did not hesitate to curtail the powers of the legislatures and ministers and even to suspend the constitutions.

29. His delegation had brought those facts to light in a constructive spirit and in the hope that the administering Power would take immediate action to implement the resolutions of the General Assembly and the Special Committee. He could only deprecate the administering Power's policy of separate electorates, which retarded progress towards the objective of integrating the peoples of the Territory. By advocating a democratic form of government and similar representative institutions, the United Nations would not be pleading for the sacrifice or diminution of the interests of any particular group or community. On the contrary, a fully democratic constitution would safeguard the interests of all the people of Fiji. That was what the General Assembly and the Special Committee had requested in their resolutions on the Territory and his delegation hoped that the administering Power would comply with that request.

*Mr. Bruce (Togo) Vice-Chairman, took the Chair.*

30. Mr. SANTAMARIA (Colombia) said that his delegation had often spoken out against the colonial system and had expressed its views in support of the application to all peoples of the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples. In accordance with that position, his delegation had always voted in favour of resolutions submitted with that end in view and would continue to do so to the

extent that circumstances and the provisions of the United Nations Charter made it possible.

31. Similarly, his delegation had supported the universal nature of the process of decolonization and consequently the recognition of the principle of self-determination for all peoples. Any other course would be contrary to the spirit of the Charter and an obstacle to the free development of peoples.

32. His delegation would for the moment confine itself to the question of the Malvinas, since that was a matter which concerned the American continent. His delegation had no doubt regarding the clear legal title of Argentina to the Malvinas. He would not dwell on the historic, geographic, legal, political and economic factors which confirmed the sovereign rights of the Argentine Republic over the Territory, for they had already been fully discussed, but would only note that the problem had originated by an act of force committed in 1833 against part of the territory which had belonged to Argentina since 1810. That colonial situation had persisted to the present day, in defiance of the will of all American nations, which had solemnly proclaimed their desire to eliminate all vestiges of colonialism in the hemisphere.

33. The Malvinas was a colonial Territory and therefore subject to the application of General Assembly resolution 1514 (XV). In his delegation's view, however, it was a Territory with special characteristics. It had been alienated from another State and occupied by the nationals of the administering Power. The problem of the Malvinas was that of a territory which had become a colony through the use of force, in disregard of the legitimate rights of the Argentine Republic. His delegation considered that operative paragraph 6 of General Assembly resolution 1514 (XV) applied to the particular case of the Malvinas and it was in the light of that paragraph that the situation should be examined. Failure to apply that paragraph would be tantamount to accepting the argument that might was right in international relations.

34. The Special Committee had unanimously approved the recommendation in which it recognized the existence of a dispute between the United Kingdom and Argentina concerning sovereignty over the Malvinas and invited the two Governments to enter into negotiations with a view to finding a peaceful solution to the problem. His delegation considered that the Special Committee had adopted the proper course and it was therefore happy to be a sponsor of draft resolution A/C.4/L.802, which reflected the views of the Special Committee. He hoped that it would be supported by an overwhelming majority of the Fourth Committee.

35. Mr. BHUIYA (Pakistan) said that his delegation considered that it was one of the General Assembly's most important duties to keep the situation in the Non-Self-Governing Territories under constant review and to enable the dependent peoples to obtain independence in the shortest possible time. His Government supported the vital principle of self-determination for all peoples. No matter what interests a State might have in a Territory, nothing justified the continuation of its control of the Territory in disregard of the wishes of the inhabitants. His delegation was

not prepared to compromise on the principle that all vestiges of such control should be brought to a speedy end, for it could never sacrifice the freedom of a single individual for the interests of any Power.

36. His delegation questioned the frequent assertion of the colonial Powers that many dependent peoples were not prepared for self-government. It considered that the fiction of primitive peoples who could not be trusted to govern themselves had been thoroughly discredited and it opposed the concept that colonial domination was the best means of improving the lot of dependent peoples. There was an urgent need to accelerate the decolonization process.

37. His delegation endorsed the work of the Special Committee and hoped that, by constantly pointing out the discrepancy between the present situation and the goal of full freedom for the dependent peoples, the Committee would become a powerful instrument for the liquidation of the colonial system.

38. His delegation was convinced that the appointment of the Sub-Committee of Good Offices on British Guiana had been a constructive measure and it hoped that the negative attitude of the administering Power would not deter the Sub-Committee from continuing to carry out its mission. It recognized the complexity of the situation in British Guiana and the need for a political evolution which would bring about a free and just multiracial society. That was a delicate task which required the combined skill and resourcefulness and the constant attention of the entire international community. For the Asian and African countries, the evolution of a multiracial community in British Guiana was a challenging possibility. Afro-Asian solidarity had an indestructible foundation which was rooted in common sufferings and deprivations. From the confluence of the genius of two great peoples, there might arise in British Guiana a cultural synthesis and a truly vital and rich civilization.

39. His delegation regarded the emergence of independence movements in many Territories as an encouraging development and as one of the surest signs of the political maturity of the people concerned. It would be his delegation's endeavour to keep itself well informed about the situation in order to satisfy itself that those movements were allowed to grow in an atmosphere free from repression.

40. While his delegation appreciated the information provided about conditions in the colonial Territories, it felt that information relating to economic conditions should be expanded so as to show the extent to which the natural resources of dependent Territories had been exploited by the colonial Power as well as the extent to which the benefits of such exploitation had been passed on to the people. His delegation considered the administering Powers to be under a moral as well as a legal obligation to make all reasonable efforts to harness the economic resources of the Territories for which they were responsible. The colonial Powers should encourage the establishment of larger economic units, which could only serve to facilitate the attainment of political independence by the people.

41. Mr. NKAMA (Zambia) said that his delegation considered it to be the sacred duty of all freedom-

loving peoples to take a resolute stand against the deplorable indignities imposed by foreign domination and exploitation. His delegation condemned foreign domination in all its forms and manifestations. Imperialism was the greatest enemy of mankind and the most formidable obstacle in the way of the economic and social rehabilitation of all the peoples of the world. Unless it was eliminated without delay, nations could not hope to live in peace and harmony. Foreign rule was incompatible with the fundamental principles and democracy; there could be no true happiness in the world where there were masters and slaves, self-appointed rulers and government by armed force. Africa was determined to rid itself of foreign domination not only in Africa itself but also in the islands round the continent which were ruled by foreigners. Those islands were an integral part of the African continent and the authorities concerned would be well advised not to impede the political advancement of their inhabitants.

42. Africans were not narrow-minded or parochial; they were broad-minded and peace-loving people who believed that world peace could only be achieved when all peoples had assumed their rightful role of determining their own destiny. That was why they called for the complete elimination of colonialism and hoped that the parties concerned would not fail to negotiate suitable solutions as soon as possible.

43. His delegation deemed it necessary to state that Zambia was not opposed to imperialism because it was practised by people with light skins; it abhorred colonialism because it degraded man. His delegation's position on the question of imperialism was based on its love of peace and justice and on its respect for the human person regardless of race, colour, creed or sex.

44. His delegation would support any draft resolution that was in keeping with the aims of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

45. Mr. DE CASTRO (Philippines) said that the Non-Self-Governing Territories could be divided into the following categories: comparatively large areas with sufficient inhabitants to lead an independent political existence; Territories which had freely expressed their preference for a type of political status in the exercise of their right to self-determination; Territories where the question of sovereignty was involved; and islands with a small population and limited economic potentialities.

46. With regard to the question of sovereignty over the Falkland or Malvinas Islands and Gibraltar, his delegation was pleased to note that there was apparent agreement between the parties concerned to negotiate the differences. There appeared to be sufficient legal basis under operative paragraph 6 of General Assembly resolution 1514 (XV) for substantiating the claims of Argentina and Spain to those Territories. His delegation would vote in favour of draft resolution A/C.4/L.802. His delegation regarded Gibraltar as an integral part of the territory of Spain and thought that that factor should be taken into account in seeking a solution to the problem.

47. With regard to Territories which had freely expressed their preference for a particular type of political status in the exercise of their right to self-determination, he pointed out that the purpose of the plebiscite held in Fernando Póo and Río Muni had been to determine whether or not the people accepted the Basic Law establishing a system of self-government for the Territories. The returns had shown that the population had accepted the Basic Law by an overwhelming majority. A large delegation had gone to Madrid to discuss the form of self-government with the Spanish authorities and had unanimously opted for a unified Equatorial Guinea and for the self-government which they now enjoyed. It was thus not correct to say that the Spanish Government had not yet taken steps to implement the Declaration on the Granting of Independence to Colonial Countries and Peoples in those Territories.

48. With regard to Guam, he noted that in 1962 the Sixth Guam Legislature had declared that Guam was an integral part of the United States, that its citizens were citizens of the United States and that it had no further desire than for continued association with the United States (A/5800/Rev.1, chap. XVII, para. 35). Those were views expressed by representatives who had been elected by universal suffrage.

49. The Territories of British Guiana and Fiji were large enough and sufficiently populated to enable them to lead an independent political existence. They had the economic means to support their political institutions and could provide their people with a moderately high level of living. His delegation therefore hoped that the administering Power would take steps to implement as soon as possible the General Assembly resolutions calling for the granting of independence to the people of those Territories.

50. With regard to those Territories which were small islands or groups of small islands without favourable economic potentialities, he welcomed the Italian representative's suggestion that the United Nations should propose guidelines for the implementation of General Assembly resolution 1514 (XV) with respect to such Territories. Classic independence might not necessarily be the best solution for them and it might be to their advantage to be associated with another State. For the time being, however, the important thing was that the administering Power should allow the people to participate to an increasing degree in the administration of the Territories and provide them with a higher level of living, better education and greater economic security.

51. Mr. ABDEL-WAHAB (United Arab Republic) said that his delegation fully supported the recommendations and conclusions of the Special Committee and hoped that the administering Powers would implement the recommendations faithfully in order to enable the people of the Territories to exercise their right to self-determination. It was the considered view of his delegation that all dependent peoples were entitled to exercise their right to self-determination and that all colonial Territories, large and small, should attain independence in conformity with the United Nations Charter and General Assembly resolution 1514 (XV). The difficulties facing some of the Territories were not insurmountable and the

Special Committee should examine ways and means by which the people of those Territories could achieve freedom and independence.

52. He noted with regret that in most of the Territories the pace of political advance and constitutional progress was too slow, that the steps taken by the administering Powers fell short of the provisions of resolution 1514 (XV), and that in most cases the policy of the administering Powers was designed to serve their own strategic and economic interests rather than the well-being of the inhabitants of the Territories. The United Nations should protect the people of those Territories against abuses by the administering Powers and the Special Committee should dispatch visiting missions to the various Territories to investigate conditions and to ascertain the wishes of the people.

53. On the question of the Falkland or Malvinas Islands, his delegation had listened with sympathy to the statements made by the representatives of Argentina, Venezuela, Peru and others on a problem which had arisen as a result of military action by the United Kingdom. In its recommendations the Special Committee had invited the Governments of the United Kingdom and Argentina to enter into negotiations in order to find a peaceful solution. His delegation fully supported the draft resolution to that effect now before the Committee (A/C.4/L.802).

54. Gibraltar had been the subject of a similar recommendation by the Special Committee, which had invited the Governments of the United Kingdom and Spain to begin talks in order to reach a negotiated solution (A/5800/Rev.1, chap. X, para. 209). His delegation fully supported that recommendation.

55. His delegation was deeply concerned about the situation in British Guiana and felt that every effort should be made to ensure that the Territory achieved independence in an atmosphere of harmony and peace. He supported the Liberian representative's proposal at the 1553rd meeting that a United Nations commission should be established to assist the people of the Territory in solving the problems facing them on the eve of independence.

56. Mr. BOZOVIC (Yugoslavia) said that, from the number of Territories with which the Committee was dealing at the present session, it was clear that the desired progress in decolonization had not been achieved. It had often been said by the colonial Powers that the fact that there were still so many colonial Territories was the result of specific conditions, such as their small size and population, their under-development and low economic potential. That naturally made the process of decolonization more complex, but he had no doubt that the Declaration on the Granting of Independence to Colonial Countries and Peoples applied to all colonial Territories.

57. There were other factors, too, that determined the action of the colonial Powers in slowing down the process of decolonization. The problem was one of a conflict between the just aspirations of the people of the Territories and the interests of the colonial Powers. Many of the remaining colonies were situated in the vicinity of areas from which foreign domination had been eliminated and it was logical that the

colonial Powers and other countries interested in the continued exploitation of the wealth and labour of others should endeavour to preserve for as long as possible positions from which they could undermine the independence and obstruct the development of the newly independent countries. There was a surprising lack of willingness on the part of some countries to understand the extent and significance of the changes which were taking place in the world.

58. The colonial Powers appeared to be determined to make the granting of independence to colonies dependent upon the adoption of a given political system or the removal from power of a political party or government elected by the population. Those more directly involved with decolonization might have wondered who was responsible for postponing independence in British Guiana. The administering Power had acted in complete disregard of the self-governing status of the Territory and of the fact that the Government had been elected three times by the majority of the population. Racial considerations had not been the source of the conflict. As the United Kingdom Secretary of State for the Colonies had said, the cause of the difficulties was basically political, not social, and it required a political solution. Yet the solution found was racial in character and had given rise to the present difficulties in the Territory.

59. The fact that there were still so many colonial Territories was primarily the result of the lack of readiness of the colonial Powers to adjust their policies and actions to the changes in the world and to the requirements of present-day development. As was clear from the reports of the Special Committee, the administering Powers had done nothing to implement the recommendations of the Special Committee and the General Assembly. It was difficult for any State openly to oppose rapid decolonization but the absence of measures to promote it amounted to the same thing.

60. Specific conditions, such as size and small population, far from justifying slow progress, called for greater efforts and for the United Nations to play a greater role in ensuring the adoption of measures designed to enable the inhabitants of colonial Territories freely to express their wishes regarding their future. It was not sufficient to ensure the presence of the United Nations during the elections and for a few days before or after them; it was imperative that the United Nations should play an active part in the whole process. The Special Committee should consider sending small missions to various Territories not only to ascertain the situation but to assess the possibilities for progress. It was hard to understand the arguments that Non-Self-Governing Territories were an internal matter for the colonial Powers; Chapter XI of the Charter made it clear that the colonial question had ceased to be an internal one.

61. He had been surprised at the report published in the New York Herald Tribune on 11 October 1965 to the effect that the United Kingdom was acquiring four Indian Ocean atolls from two of its colonies, Mauritius and the Seychelles, and would develop them jointly with the United States as defence bases. The United Kingdom was not entitled to part with

part of its colonies and should be asked not to proceed with the transaction until it had been considered.

62. His delegation would support draft resolution A/C.4/L.802 of the Falkland Islands (Malvinas).

63. Mr. SANGHO (Mali) said that his delegation fully supported draft resolution A/C.4/L.802 and welcomed the spirit which had inspired it. The geographical, historical and legal considerations involved in the dispute between the United Kingdom and Argentina had already been stated in the Committee. The Territory was geographically a part of Latin America and before the United Kingdom had taken it by force it had been inhabited by the people of Argentina. The Governments of the United Kingdom and Argentina should be invited to open negotiations without delay.

64. Mr. RAMIN (Israel) said that his delegation had been glad to note the atmosphere of mutual friendship and respect which had prevailed between the two main parties to the debate of the question of the Falkland or Malvinas Islands. Such an atmosphere was the most desirable point of departure in any sincere attempt to settle a dispute. His delegation supported draft resolution A/C.4/L.802, which invoked the use of direct negotiations between the main parties concerned in order to find a peaceful solution, in accordance with the United Nations Charter and General Assembly resolution 1514 (XV). The principle of direct negotiation was one of the most important principles on which the United Nations was founded and it must be encouraged as the most fruitful approach in the present as well as in the future. The Latin American countries which had sponsored the draft resolution had been eloquent exponents of that principle in relation to countries or disputes in regions other than their own and their sincerity should be recognized when they sought its application in their own hemisphere.

65. Mr. SICLAFF (Haiti) said that his delegation had joined the sponsors of draft resolution A/C.4/L.802, on the Falkland Islands (Malvinas), because it considered it essential that General Assembly resolution 1514 (XV) should be implemented in those islands. The emancipation of the people of his hemisphere would never be complete as long as any vestiges of colonialism remained. His delegation had welcomed the recommendation of the Special Committee on the subject and felt that, if the Governments of the United Kingdom and Argentina agreed to negotiate in a spirit of understanding and goodwill, the right solution would undoubtedly be found. The interests of the inhabitants must, of course, be safeguarded and the Government of Argentina had made it clear that it would do so. The draft resolution was worded in moderate terms and should receive almost unanimous support.

66. Mr. ELDEM (Turkey) said that the question of the Falkland or Malvinas Islands, to which General Assembly resolution 1514 (XV) was applicable, presented special features which distinguished the Territory from other Non-Self-Governing Territories. Those features should be borne in mind in deciding how resolution 1514 (XV) should be implemented in the Territory. The islands constituted a small Territory with a limited economic potential and it was hard

to envisage it ever becoming an independent State. The population was small and not indigenous and did not demand independent political status. The guiding principles, such as self-determination, which were valid in the majority of Non-Self-Governing Territories were not valid in the present case. New criteria that would be applicable to such special cases should be found.

67. The problem was not one of decolonization alone, but one of sovereignty. The population appeared to be in favour of a link with the United Kingdom, but Argentina had put forward strong historical and geographical arguments on its side and had, moreover, never recognized United Kingdom sovereignty over the islands. The Committee was not competent to decide on a question of sovereignty, but resolution 1514 (XV) could only be implemented in the Territory once the dispute over sovereignty had been settled. He was happy to hear that the United Kingdom Government had accepted the invitation of the Argentine Government to begin negotiations. If those discussions took place, the two countries would have given the world an example of fruitful co-operation with a view to obtaining a peaceful settlement of their differences, while safeguarding their own interests.

68. Draft resolution A/C.4/L.802, which reflected the spirit of conciliation of the Latin American countries, was purely procedural and did not prejudice the outcome of the dispute. His delegation would vote in favour of it.

69. Mr. GBEHO (Ghana) said that he wished to record both his delegation's appreciation of the work and reports of the Special Committee and its regret that the information in those reports did not give a correct picture of the situation in the colonial Territories. That was not the fault of individual members of the Special Committee but was the result of the strict censorship of information imposed by the administering Powers.

70. His country proclaimed its views on decolonization so frequently because it could not be silent as long as one square foot of the earth remained under colonial domination. The principles of self-determination and social justice were indivisible and inviolable. The history of colonialism had been a sordid one. It had originally been inspired by a spirit of greed and adventure, which had been intensified in the days of the slave trade. The rise of the industrial revolution in Europe had created a need for more raw materials, which had led to greater emphasis on colonialism based on the subjugation of the peoples. The peak had been reached in 1885, at the Congress of Berlin, when European nations had divided Africa at the stroke of a pen without any consideration for geographical, ethnic or social factors. The mind of man did not rest, however, and finally in the present century the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration on the Granting of Independence to Colonial Countries and Peoples had been proclaimed.

71. The number of colonies still to be liberated was immense and many were under United Kingdom domination. From the reports of the Special Committee it was obvious that economic conditions and

social, health and educational facilities in many of the Territories were far from adequate. In the case of Barbados, Mauritius and the Seychelles, for example, it was clear that the administering Power had not been administering the Territories in a progressive manner. The administering Powers should be made aware that colonialism imposed obligations. It appeared from the reports of the Special Committee that some of the administering Powers tried to give the impression that the people of the Territories wanted integration with them. If there was any geographical reason for that, he could understand, and in any case would respect, the wishes of the inhabitants of those Territories, but as a member of a newly liberated country he would advise those Territories to be cautious. Integration in practice might leave them dissatisfied.

72. It had been stated that the maintenance of military bases in colonial Territories was morally indefensible when it was not agreeable to the population. He would like to reiterate that that was so, especially when it was at the expense of the independence of the Territory.

73. He regretted the existence of racial disharmony in British Guiana and the administering Power's delay in granting the Territory independence. The people of the Territory had lived in racial harmony until they had asked for independence, and he hoped that the administering Power would see fit to grant it without delay, in an atmosphere of racial harmony and political progress.

74. At the Committee's 1550th meeting, the President of the Governing Council of Equatorial Guinea had explained the situation in Fernando Póo and Río Muni and had congratulated Spain on the good work it had done. If the people of the Territory had indeed found liberty and spiritual guidance under Spain, then he could only support them. The Committee had not been told, however, when Spain would grant independence to the Territory and he wondered whether Spain would give the Committee that information.

75. Mr. BROWN (United Kingdom) said that of the forty or so Territories with which the Committee was concerned under agenda item 23, about twenty were under United Kingdom administration.

76. As the reports of the Special Committee for 1964 and 1965 demonstrated, the past two years had been marked by steady advance in those Territories. A number had become fully independent and were now Members of the United Nations. There had been a series of constitutional conferences concerning certain of the Territories; the constitutional progress of other Territories had been the subject of less formal consultations between local leaders and the United Kingdom Government; and in some Territories purely local consultations had taken place with a view to reaching agreement on proposals for discussion with the United Kingdom Government. In a number of Territories there had been important constitutional changes, the details of which were included in the reports of the Special Committee. Major elections had taken place in several more.

77. Thus, in a substantial number of the Territories there had been continued progress towards self-government and self-determination—and in each case the direction and pace of that progress had been determined in close and continuous consultation with local opinion, as expressed through political parties and the other normal organs of opinion available in a free democratic society.

78. The Territories on which the Fourth Committee's interest had been concentrated fell into two groups. Firstly, there were the Territories which had given rise to comments on constitutional questions and where there had been recent important developments about which the Committee might wish to be further informed, namely Mauritius, Fiji and British Guiana. Secondly, there was a group of Territories—Gibraltar and the Falkland Islands—where the interest did not centre on the normal questions of constitutional advance with which the Fourth Committee and the Special Committee were generally concerned, but where the point at issue was a claim to sovereignty over a British Territory by another country.

79. He would deal first with the constitutional aspects of Mauritius, Fiji and British Guiana. The report of the Special Committee on Mauritius (A/6000/Rev.1, chap. XIII) had been completed before the end of the Mauritius constitutional conference, held in London in September. All the parties represented in the Mauritius legislature had been represented. At the end of the conference, the Colonial Secretary had announced that the United Kingdom Government considered it right that Mauritius should move towards full independence. The procedures were to be as follows. As the conference had not been able to reach full agreement on a new electoral system, the Colonial Secretary was to appoint a commission to make recommendations on the new system and on electoral boundaries with a view to safeguarding the interests of all communities. Once the commission had reported, the Colonial Secretary would decide upon the new electoral system, a general election would be held and a new government would be formed. Independence would follow after a period of six months of full internal self-government if the new Legislative Assembly passed a resolution, by a simple majority, asking for independence. Those processes could be completed before the end of 1966. The new constitution, agreed upon at the conference, would include safeguards for minority interests, a chapter on human rights, the appointment of an ombudsman, and provisions to ensure that the main features of the constitution could not be amended unless at least three quarters of the members of the Legislative Assembly agreed.

80. Questions had been raised about the United Kingdom Government's plans for certain islands in the Indian Ocean. The facts were as follows. The islands in question were small in area, were widely scattered in the Indian Ocean and had a population of under 1,500 who, apart from a few officials and estate managers, consisted of labourers from Mauritius and Seychelles employed on copra estates, guano extraction and the turtle industry, together with their dependents. The islands had been uninhabited when the United Kingdom Government had first acquired them. They

had been attached to the Mauritius and Seychelles Administrations purely as a matter of administrative convenience. After discussions with the Mauritius and Seychelles Governments—including their elected members—and with their agreement, new arrangements for the administration of the islands had been introduced on 8 November. The islands would no longer be administered by those Governments but by a Commissioner. Appropriate compensation would be paid not only to the Governments of Mauritius and Seychelles but also to any commercial or private interests affected. Great care would be taken to look after the welfare of the few local inhabitants, and suitable arrangements for them would be discussed with the Mauritius and Seychelles Governments. There was thus no question of splitting up natural territorial units. All that was involved was an administrative re-adjustment freely worked out with the Governments and elected representatives of the people concerned.

81. Fiji was another Territory on whose future a major constitutional conference had been held since the completion of the report of the Special Committee. The conference, held in London in July and August, had been attended by all eighteen of the non-official members of the Fiji Legislative Council. The agreed object of the conference had been to work out a constitutional framework within which further progress could be made towards internal self-government and which would preserve a continuing link with the United Kingdom. The conference had agreed that there should be for the first time an elected majority in the Legislative Council. There would be no nominated non-official members and a maximum of four nominated officials. The conference had also agreed that all the minority groups which had hitherto not had the vote should be enabled to vote and stand for election: that concerned the Rotuman Islanders, certain other Pacific Islanders, and the Chinese community. Fiji would thus attain full universal adult suffrage, thereby meeting one of the main points made in the Special Committee during the discussion of Fiji in 1964. The Rotuman Islanders and the other Pacific Islanders would vote on the same rolls as the Fijians, and the others with the European group. Because of the enfranchisement of those groups and the consequent effects on the representation of the three main communities, it had been decided that the proportion of European members would be reduced from one of parity with the other two communities to ten. The Fijians would now have fourteen seats, a small increase—at the expense of the European group—taking account of the fact that the Rotuman and other Pacific Islanders were now to vote with them. The Indian representation remained proportionately unchanged, both overall and as a proportion of those elected on the communal rolls. It had also been decided that in future there would be nine members of the Legislative Council elected by a cross-voting system, under which each member would be elected by persons of all communities. Finally, there would be provision in the constitution for development from the present "membership" system, whereby members of the Executive Council spoke for various departments of government in the Executive Council and the legislature without being in administrative control of those

departments, into a full ministerial system whereby the non-official members would be ministers.

82. The Fijian Indian representatives at the conference had been unable to agree with some of the above measures—in particular, the new representation of the communities in the legislature and the retention of the system of communal voting for some of the members of the Legislative Council. They had also felt that full internal self-government could be introduced forthwith. After considerable discussion, however, it had become clear that the Indian proposals were not acceptable to some of the other representatives at the conference and the decisions described above had therefore been designed to produce a situation which would be as far as possible acceptable to all the main Fiji communities. In particular, it was hoped that the introduction for the first time of a cross-voting system for some of the seats in the legislature would be an effective first step in breaking down the political divisions between the different communities in Fiji. To have moved straight to a single common roll and the abolition of all communal voting in one stage could well have led to the opposite result—a widening of political divisions among the communities. It would also have been totally unacceptable to the Fijian community.

83. The United Kingdom Government hoped that the new system would encourage political co-operation and thus make it possible to move further towards a national rather than a communal attitude in the future. That was of course fully in line with the aims of the resolutions of the General Assembly and the Special Committee on Fiji and represented an important move in the right direction. There was no justification whatever for any suggestion that the United Kingdom Government was encouraging or exploiting communal divisions or special protection for the Europeans, whose position was hardly at issue. Its policy was steady progress towards non-racial consciousness and unity. It must be recognized, however, that excessive haste in changing deep-rooted attitudes might well interrupt rather than help the process of building up trust and political co-operation between the communities in Fiji.

84. Turning to British Guiana, he pointed out that there was a constitutional conference on that Territory now taking place in London, its object being to settle outstanding constitutional questions and to fix a date for independence. It was hoped that the conference would complete its work shortly. The United Kingdom Government had expressed publicly its regret that one of the two main parties in British Guiana, the People's Progressive Party, had not felt able to attend. Many of the points made by the petitioner representing the People's Progressive Party who had recently appeared before the Committee (1549th meeting) would surely have been more appropriately and effectively made in the course of the London conference.

85. The petitioner and some speakers in the debate had referred to the state of emergency in British Guiana and to the dozen or so detainees who were still in custody. He wished to make it clear that the responsibility for those internal security matters rested with British Guiana Ministers and not with the

United Kingdom Government. It was surely for the people of British Guiana to settle those problems among themselves and to establish a basis of common trust and understanding.

86. It had been suggested that some form of United Nations mediation in British Guiana to help reconcile the two main political parties might be timely and appropriate. His delegation appreciated the spirit in which those suggestions had been made. There were, however, a number of considerations which seemed to point in a contrary direction. British Guiana had enjoyed more stability over the past year than for some time. A conference to fix an independence date was in progress. Intervention from outside—and that was how a proposal of United Nations mediation would be regarded—might have the most unfortunate consequences and even increase racial and political divisions. A comprehensive survey of racial tension in British Guiana had just been carried out by the International Commission of Jurists, and the British Guiana Government was now working to give effect to the Commission's recommendations. Any external attempt to mediate now, with British Guiana's independence so near, would certainly appear in the Territory to be unwarranted. British Guiana Ministers had been consulted and their views were generally in accordance with what he had just said. Moreover, it was the intention of Mr. Burnham, the Premier, to visit New York after the London conference, where he would doubtless welcome the opportunity to talk informally with interested delegations about the current situation.

87. The suggestions for a United Nations role would thus be more of an obstruction than a help for the peaceful and rapid progress of British Guiana to independence. As the British Colonial Secretary had said at the opening of the London conference, it was in the hands of the Guianese people that the future of Guiana would soon lie and it was by their efforts that the country's problems would be solved.

88. He turned next to the second group of Territories, where the question before the Committee was not so much one of constitutional progress to independence and self-determination, but rather the situation arising from claims to sovereignty over the Territories by other countries: the Falkland Islands and Gibraltar.

89. His delegation had listened carefully to the Argentine representative's arguments in support of his country's claim to sovereignty over the Falkland Islands. It did not intend to enter into detailed arguments since the Committee would not wish to attempt to judge on the merits of the question, except to say that the United Kingdom Government did not accept the Argentine representative's arguments and continued to have no doubts as to its sovereignty over the Territory. The question of disrupting Argentina's territorial integrity therefore did not arise. There was, however, one important point to which the Argentine representative had given inadequate attention: the interests and wishes—the two being inseparable—of the inhabitants. As his delegation had shown in its statements to the Special Committee, the Falkland Islanders were genuine, permanent inhabitants who had no other home but those islands. They had shown, in their mes-

sages to the Special Committee and in the formal declaration by their elected representatives, that they did not wish for anything other than normal, friendly relations with Argentina, but that they did not wish to sever their connexions with the United Kingdom. There were no grounds whatever for suggesting that their wishes should simply be set aside; yet that was the tenor of some of the speeches in the present debate

90. It had been suggested that the population was somehow irrelevant on the grounds that the people were transient, that there were no births or deaths in the islands, that the people had been planted there by the United Kingdom rather than being of indigenous stock and that many of them were employed by the Falkland Islands Company. There should be no misunderstanding about their status. The population numbered slightly over 2,000, of whom 80 per cent had been born in the islands. Many could trace their roots back for more than a century in the islands. Of course they stemmed from an immigrant community; so did much of the population of North and South America and indeed of Europe and Africa. It would surely be fantastic to limit the principle of self-determination to the handful of peoples who could truthfully claim to be the descendants of indigenous inhabitants. There was nothing in the Charter or in resolution 1514 (XV) to warrant such a major restriction. In any case, it was quite wrong to suggest that the people were transients or that there were no births or deaths in the islands. The birth and death rates were published for all to see; they were somewhat higher than the rates in the United Kingdom and that alone completely refuted the picture of a garrison, regularly replaced and "rotated", with no settled roots in the Territory.

91. The Venezuelan and Italian representatives had suggested that it was a question not of a colonial people but of a colonial Territory—not human beings, but land. That was surely not an attitude which should commend itself to the Fourth Committee. As Woodrow Wilson had said, people were not chattels or pawns to be bartered about from sovereignty to sovereignty. It had been suggested that operative paragraph 6 of resolution 1514 (XV) should be interpreted as denying the principle of self-determination to the inhabitants of Territories which were the subject of a territorial claim by another country. His delegation and others had already produced conclusive evidence in the Special Committee that the paragraph in question had not been intended to limit the application of the principle of self-determination in any way; in that connexion he referred to paragraphs 94-98 and 146-151 of chapter X of document A/5800/Rev.1, and to paragraph 109 of the annex to chapter XXIII of the same document. Those arguments had in no way been refuted by anything said in the present debate.

92. It was the interests and wishes of the Falkland Islanders which were the central feature in his Government's attitude to the Territory. The Argentine representative had argued that the people's interests would be best served if they were transferred to Argentine sovereignty. It might be so, or it might not; the point was that the Argentine Government could not decide that for them, nor could the United Kingdom,

nor could the United Nations. It was for the people themselves to judge where their interests lay.

93. The Argentine representative had referred to the recommendations of the Special Committee and to the communication from his Government to the United Kingdom Government suggesting that talks should be held in accordance with those recommendations. The United Kingdom Government's position in regard to the recommendations was fully set out in the Special Committee's report for 1964 (A/5800/Rev.1, chap. XXIII, paras. 29-30). Because the future of the Falkland Islanders could not be settled over their heads, it followed that the question of sovereignty was not negotiable. His Government was, however, always ready to discuss with the Argentine Government ways in which damage to their good relations could be avoided. His Government had accordingly replied to the Argentine invitation, expressing willingness to enter into discussions through diplomatic channels, and had asked the Argentine Government to suggest suitable topics, bearing in mind the United Kingdom's reservations about sovereignty and respect for the wishes and interests of the Islanders. His delegation hoped that the discussions would take place and that they would lead to an improvement in the already cordial relations between the two countries.

94. The draft resolution on the Falkland Islands (A/C.4/L.802) seemed to imply that the question of sovereignty should be the subject of negotiations. Furthermore, it ignored the wishes of the Falkland Islanders themselves. His delegation therefore had reservations on those grounds. In addition, the resolution seemed unnecessary. The best course was to allow the proposals for talks to be pursued between the United Kingdom and Argentine Governments. The draft resolution had no essential or valuable part to play in that process and his delegation would abstain if it was put to the vote. Meanwhile, he drew attention to the erroneous use, in the draft resolution, of the term "Malvinas". It was neither recognized by the administering Power—the United Kingdom—nor consistent with United Nations usage, and he accordingly repeated his request that the English text of the draft resolution should be corrected. The use of "Malvinas" could not in any case affect United Kingdom sovereignty over the islands.

95. Much of what he had said applied also to Gibraltar. As his delegation had already made clear, the United Kingdom was in no doubt about its sovereignty over Gibraltar. The Spanish representative, in his statement at the 1556th meeting, had asserted that the United Kingdom Government was unwilling to engage in talks and was attempting to conceal that unwillingness behind the pretext that the frontier restrictions, whose importance and detrimental consequences both for the people of Gibraltar and for their Spanish friends and neighbours he had sought to minimize, constituted duress. In order to demonstrate the real nature of the obstacle to the talks asked for by the consensus, he drew the Committee's attention to a letter from the Spanish Minister for Foreign Affairs addressed to the United Kingdom Ambassador in Madrid on 18 November 1964. In that letter, repro-

duced as annex I to document A/AC.109/L.235, the Minister had stated the following:

"Failing this negotiated solution, which is recommended by the consensus of the 'Special Committee' [A/5800/Rev.1, chap. X, para.209], the Spanish Government, having no other alternative, would find itself compelled, in defence of its interests, to revise its policy in regard to Gibraltar."

In the light of the restrictions which had begun to be imposed a month earlier, on the day following the consensus, the terms of the letter could be clearly seen to constitute a threat to which no State could be expected to yield. It was that threat and its implementation against Gibraltar which constituted the real obstacle to the talks.

96. On 16 October 1964 the Special Committee had adopted a consensus on Gibraltar, inviting the United Kingdom and Spain to undertake conversations. Within twenty-four hours of its adoption, the Spanish Government had begun to impose a series of restrictions at the frontier between Spain and Gibraltar which were clearly designed to influence the situation in the Territory. Firstly, excessive delays had been imposed on all vehicles entering or leaving Gibraltar; as a result, the number of tourist cars entering Gibraltar in the first nine months of 1965 had been 5,153, as compared with 75,041 in the corresponding period in 1964. Secondly, tourists were not allowed to import goods into Spain from Gibraltar without paying excessively high rates of duty. Thirdly, all exports from Spain to Gibraltar, except fish, fruit and vegetables, had been banned. Both the delays to tourists and the excessive rates of duty on imports were a breach of obligations entered into by members of the International Union of Official Travel Organisations, of which the Spanish Ministry of Information and Tourism was a member.

97. Since the proposal for conversations made by Spain on 18 November 1964, those restrictions and interferences with the *status quo* had been intensified in the following ways. Firstly, about 1,000 persons, most of them British subjects living in the towns adjoining Gibraltar, had been compelled to leave their homes at extremely short notice; some of them had not known any other homes. Secondly, Spanish workers had been forbidden by their Government to spend any part of their wages earned in Gibraltar for the purchase of groceries etc. in Gibraltar for their use in Spain. Thirdly, certain passports issued in Gibraltar had been rejected by Spain as unacceptable. The hostility of the Spanish Government to the people of Gibraltar had been further demonstrated by refusing entry into Spain of a particular class of persons. That class included those who had appeared as petitioners before the Special Committee and all other elected members of the Gibraltar Legislative Council, certain journalists and others. Yet in his statement before the Committee the Spanish representative had minimized the extent and effect of the restrictions and had suggested that the responsibility for not complying with the consensus rested with the United Kingdom. That was clearly not so.

98. There was an important principle involved. If two parties to a dispute were called on to try to reach

a peaceful solution by means of talks, it was surely inadmissible that either party should attempt to influence the results of those talks by applying political or economic pressures in advance of them. The pressures applied by Spain had been instituted after the consensus had been adopted by the Committee; in other words, the consensus had been reached in one particular set of circumstances, which had been unilaterally altered by Spain within twenty-four hours of its adoption. To expect his Government to entertain proposals for conversations under those new conditions would be tantamount to accepting the principle that it was legitimate to attempt to influence, by political or economic duress, the situation in a Territory which was the subject of a consensus—a principle which neither the United Nations nor any of its Members would be prepared to subscribe to.

99. Consideration must also be given to the practical effects of the restrictions imposed by the Spanish Government. The economic effects on Gibraltar and on the neighbouring Spanish towns were grave. The restrictions amounted to an economic blockade which, accompanied by a campaign of vilification by the Spanish Press and radio, was designed to hurt the people of Gibraltar and hence to influence the situation in what Spain believed to be its own interests. The Spanish Government had asserted that those measures were a mere reflection of the exercise of Spain's sovereignty in its own territory, but that was beside the point. His Government had not said that the Spanish Government was acting illegally in imposing the restrictions. What it had said was that the restrictions constituted an attempt to influence the situation and that they were abnormal.

100. The Spanish representative had also suggested that the measures were designed as a check on smuggling. In the past, Spanish representatives had gone so far as to allege that the whole life of Gibraltar was based on smuggling. The economy of Gibraltar was, of course, based principally on expenditure by United Kingdom Government departments, on the tourist industry and on the entrepot trade. His Government had given the Spanish Government ample opportunity to take up the question of smuggling and had invited it to produce evidence; if Spain had a genuine grievance, the United Kingdom was always ready to discuss it. But the hollowness of the charge was most clearly exposed by the fact that in none of the communications addressed to the United Kingdom Government by the Spanish Government since the adoption of the consensus had smuggling even been mentioned.

101. For all those reasons, his Government could not agree to entertain any proposals for discussions until the situation was restored to normal. That did not mean that the United Kingdom Government did not mean to agree to talks, as its positive response to the Argentine suggestion had demonstrated. If the Spanish Government was sincere in its desire to hold talks, it must restore the situation to what it had been when the United Nations had suggested such talks. Meanwhile, he reaffirmed that the United Kingdom Government accepted its obligation to protect the interests of the people of Gibraltar and would discharge that obligation in whatever way was neces-

sary. The people of Gibraltar were the true and permanent community inhabiting the area, with the same rights as any other colonial people anywhere. The principle of self-determination applied as much to them as to any other people. They did not wish to be transferred to Spanish sovereignty, for they did not believe that would be in their best interest, and they would not let anyone else decide for them what was in their best interest.

102. In conclusion, he again rejected the inference that it was the United Kingdom that had been unwilling to negotiate and restated his Government's readiness to entertain proposals for conversations as soon as the abnormal situation no longer existed at the frontier. The sooner that obstacle to talks was removed, the better for all concerned.

The meeting rose at 7.30 p.m.

## **ANNEX 14**

Telegram from Governor of Mauritius of 5 November 1965 and response of 8 November  
1965

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

CONFIDENTIAL

FROM MAURITIUS (Sir J. Rennie)

NOV 1965  
 11 12 1  
 10 2  
 9 3  
 8 4  
 7 6 5

Cypher

D. 5th November, 1965

R. 5th " "

15.30 hrs.

EMERGENCY

SECRET

No. 247

(278) (279)

Your Secret Despatch No. 423 of 6th October.

United Kingdom/U.S. Defence Interests.

Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

(278)  
(279)

- (1) statement in paragraph 6 of your despatch "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them.
- (2) As regards (vii) undertaking to Legislative Assembly excludes
  - (a) sale or transfer by H.M.G. to third party or
  - (b) any payment or financial obligation by Mauritius as condition of return.
- (3) In (viii) "on or near" means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.

2. PMSD Ministers dissented and (are now) considering their position in the government. They understand that no disclosure of the matter may be made at this stage and they also understand that if they feel obliged to withdraw from the government they must let me have (resignations) in writing and consult with me about timing of the publication (which they accepted should not be before Friday 12th November).

3. (Within this) Ministers said they were not opposed in principle to the establishment of facilities and detachment of Chagos but considered compensation inadequate, especially the absence of additional (sugar) quota and negotiations should have been pursued and pressed more strongly. They were also dissatisfied with mere assurances about (v) and (vi). They also raised points (1), (2) and (3) in paragraph 1 above.

Copies sent to:-

Cabinet Office  
 " "  
 Treasury  
 Foreign Office  
 " "

- F.A.K. Harrison  
 - Mr. T.W. Hall  
 - Mr. P. Nicholls  
 - Mr. G.G. Arthur  
 - Mr. Moreland

OUTWARD TELEGRAMFROM THE SECRETARY OF STATE FOR THE COLONIESTO MAURITIUS (Sir J. Rennie)

Cypher

PAC. 93/892/01

Sent 8th November, 1965

15.47 hrs.

IMMEDIATE  
SECRET  
NO. 298

(344) Your telegram No. 247.

U.K./U.S. Defence Interests.

I am glad Council of Ministers have confirmed agreement to detachment of Chagos Archipelago.

2. As already stated in paragraph 6 of my despatch No. 423, the Chagos Archipelago will remain under British sovereignty. The islands are required for defence facilities and there is no intention of permitting prospecting for minerals or oils on or near them. The points set out in your paragraph 1 should not therefore arise but I shall nevertheless give them further consideration in view of your request.

3. I note PMSD Ministers are not opposed in principle to detachment but consider compensation inadequate. For islands some 1,200 miles from Mauritius from which the Mauritius Government has never derived much if any revenue, the payment of £3 million as development aid to Mauritius in addition to direct compensation to landowners and to costs of resettling others cannot, I consider, be regarded as inadequate. With regard to the other points mentioned in your paragraph 3, the U.S. Government has been warned that they will be raised with them and as you are aware some discussions have already been held with officials in London. No firm plans have yet been made for the construction of any defence facilities on these islands and these are matters which can only be decided in detail when such plans are drawn up.

4. I trust that PMSD Ministers will agree that in all the circumstances the present proposals are in the long term interest of Mauritius and that on reconsideration they will feel able to support them. I am disturbed to see from press reports today that despite the undertaking referred to in your paragraph 2 that no disclosures would be made at this stage, PMSD Ministers have given publicity to these proposals.

5. A meeting of the Privy Council was held this morning, 8th November, and an Order in Council entitled the British Indian Ocean Territory Order 1965 (S.I. 1965 No. (to follow)), has been made constituting the "British Indian Ocean Territory" consisting of the Chagos Archipelago and Aldabra, Farquhar and Desroches islands. Copies will be sent to you as soon as prints are available. Because Parliament was prorogued today I cannot inform it until Wednesday, 10th November of the making of this Order.

shall be grateful therefore if no publicity is given to this until 15.30 hours G.M.T. on Wednesday. I am sending you separately text of my statement.

(Encyphered groups passed to Ministry of Defence (Navy)  
for transmission to Mauritius)

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Copies sent to:-

Cabinet Office	-	Mr. F. A. K. Harrison
" "	-	Mr. T. W. Hall
Treasury	-	Mr. P. Nicholls
" "	-	Mr. J. A. Patterson
Foreign Office	-	Mr. G. G. Arthur
" "	-	Mr. Moreland
Commonwealth Relations Office	-	Mr. J. G. Doubleday
Ministry of Overseas Development	-	Mr. I. H. Harris
Ministry of Defence	-	Mr. M. Holton
" " "	-	Mr. P. H. Moberly

## **ANNEX 15**

Debate in Mauritius' Legislative Assembly of 21 December 1965

Extract Debates of the Legislative Assembly  
(Mauritius)

21st December, 1965

Excision of the Chagos Archipelago from Mauritius

(No. B/266) Mr. G.G. Duval (Curepipe) asked the Premier and Minister of Finance:

Whether, in exchange for the agreement of this Government to the excision of the Chagos Archipelago from Mauritius, the following obligations have definitely been undertaken by the British Government:-

- (a) the British Government will ensure the defence of Mauritius against external aggression and British troops would intervene in case of a 'coup d'etat' against the legal Government of Mauritius, if so requested by the Government;
- (b) all fishing facilities around Diego will be safeguarded;
- (c) all the meteorological data collected in Diego Garcia will be at the expense of Great Britain and made available to Mauritius free of charge;
- (d) an aerodrome will be constructed in Diego Garcia, which could be made use of by planes coming to and going from Mauritius, in case Plaisance Aerodrome is out of use, for one reason or another;
- (e) in case America and England do not for any reason make use of the Chagos Archipelago, the Archipelago will be returned to Mauritius with such installations as can be made use of by this country;
- (f) all the Mauritians now living in Diego will be resettled in Mauritius. The costs of repatriation will be met from the British Exchequer and all costs of rehousing them will be met by the British, and that work would be found for them by the British Government;
- (g) that Great Britain will buy all building materials required and use Mauritian labour for the construction of the base;
- (h) Mauritians trained at H.M.S. Mauritius will be employed at the telecommunications centre in Diego Garcia;
- (i) that if mines of bauxite and uranium were to be found in the Chagos Archipelago, Mauritius would be the only country entitled to exploit them, and

University and one million one hundred and fifty rupees annually for ten years.

If so, whether in view of the contradictory statement made by the Secretary of State for the Colonies on Wednesday the 10th November, circulated at the last sitting, Government will publish the correspondence between the British Government and the Mauritian Government in that connection?

If not, whether he will state which of the items have not been definitely agreed to by the British Government?

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

- (1) (a) I would refer the Hon. Member to the penultimate paragraph of the closing speech by the Secretary of State for the Colonies at the end of the Mauritius Constitutional Conference in September, the Report of which was subsequently published in Mauritius as Sessional Paper No. 6 of 1965.
- (b) I am not clear what the Hon. Member means by the word "safeguarded". So far as I am aware the only fishing that now takes place in the territorial waters of Diego Garcia is casual fishing by those employed there and as the Hon. Member is aware, they will be resettled elsewhere.
- (c) The question of responsibility for the collection of meteorological data in Diego Garcia has not been discussed in detail, but the British Government is alive to the great importance of such data to Mauritius and no difficulty is foreseen. It may be of interest to the Hon. Member to know that members of the World Meteorological Organisation are required to supply each other with weather data and that the Director of the Meteorological Services has never heard of a charge being made.
- (d) No decision has yet been taken to construct any facilities on Diego Garcia. Any airfield which might be constructed on Diego Garcia would be intended for purely defence purposes but if an aircraft were obliged to have recourse to it in such an emergency as is indicated in the question, I have no doubt that permission would be granted.
- (e) If the British Government decides that the Chagos Archipelago is no longer required for defence purposes, the islands will be returned to Mauritius. The question what would happen in such circumstances to any installations in the Chagos Archipelago is, of course, a hypothetical one, and would no doubt be discussed between the interested Governments in the light of practical requirements and considerations at the time.

- (f) The British Government has undertaken to meet the full cost of the resettlement of Mauritians at present living in the Chagos Archipelago.
- (g) The extent to which it would be practicable to use Mauritian labour and materials is a matter for further consideration when the respective requirements and responsibilities for construction of the British and American Governments have been defined. But the desire of the Mauritius Government that Mauritian labour and building materials should be used to the maximum extent has been brought to the notice of the British Government.
- (h) I refer the Honourable Member to the first sentence of my reply to question (d) above.
- (i) The Honourable Member's question is, again, a hypothetical one and I should make clear that there has never been any indication of minerals in the Chagos Archipelago, which is a string of coral atolls. The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes. For the position thereafter, I would refer the Honourable Member to the first sentence of of the reply to Question (e).
- (j) No Sir. I would refer the Honourable Member to the statement on the Chagos Archipelago already issued by the Government and to what my colleague the Minister of Education and Cultural Affairs said in the House on Tuesday the 7th December 1965 in relation to financial aid from Great Britain for the University of Mauritius.
- The aid for the University does not form part of the £5,000,000 of additional aid referred to in the former statement and, like the detachment of the Chagos Archipelago, is an illustration of the mutual association between Mauritius and Britain to which the Government attaches importance.

## **ANNEX 16**

Minute by Mr Fairclough of the Colonial Office, 15 March 1966

15th March, 1966

PAC 93/892/016

Will you please refer to correspondence ending with your savingram No. 644 of the 16th November about fishing in the Chagos Archipelago. Seychelles telegram No. 335 of the 29th November is also relevant.

2. The enquiry in our telegram No. 305 was related to the undertaking given to Mauritius Ministers in the course of discussions on the separation of Chagos from Mauritius, that we would use our good offices with the U.S. Government to ensure that fishing rights remained available to the Mauritius Government as far as practicable in the Chagos Archipelago. There must obviously be restrictions on the extent to which either our own or American defence authorities would agree to fishing rights being retained by the Mauritius Government once defence installations have been developed on any of the islands of the Chagos Archipelago but as we see it, these need not necessarily be such as to deny fishing rights altogether. The best way of dealing with the matter and at the same time fulfilling our Ministers' undertaking to Mauritius Ministers may well be that during the period before defence installations are introduced into any of the islands of the Chagos Archipelago, an attempt should be made to clarify with the Americans the arrangements which would govern access by fishing vessels once any of the islands of the Archipelago are actually taken for defence use.

3. As we see it a reasonable case to put to the Americans might contain the following elements:-

- A. That there should be unrestricted access throughout the Archipelago during the period before any of the islands are taken over for defence uses and cleared of population.
- B. Once one or more of the islands has been taken over and cleared of population, the following arrangements would apply -
  - (i) Mauritius fishing vessels would of course have unrestricted access to the high seas within the Archipelago (of which it seems from such maps as we have there must be a considerable amount).
  - (ii) They would likewise have unrestricted access to islands not specifically excluded for defence reasons and also to the territorial waters surrounding them.
  - (iii) The possibility of limited access for fishing in the waters surrounding those islands excluded for defence use would be considered as and when the situation arises by the British and U.S. governments, but would of course have to be subject to their overriding defence needs.

Would you think that a proposition on these lines (and we should clearly have to fill in the details in consultation with the Americans) would be acceptable to your Ministers and regarded by them as an adequate fulfilment of the undertaking given by British Ministers on this point?

MR JOHN RENNIE, KCMG, OBE,  
Government House, Mauritius

CONFIDENTIAL AND PERSONAL

/4.

4. Two matters to which more thought will have to be given before an approach is made to the Americans are the related questions of territorial waters and fishing limits. These two are not necessarily the same thing. If current U.K. law were extended to the B.I.O.T., the effect would be that the Territory would

- (a) adopt a twelve miles fishery limit drawn from base lines in accordance with the 1958 Territorial Sea Convention, granting "habitual fishing rights" between the six and twelve lines to Mauritius and to any other states whose vessels had fished in the area during the preceding ten years, and
- (b) retain a three mile territorial sea limit drawn from the same base lines.

5. Apart from the question of the general line, as discussed above, that we should take in approaching the Americans on this matter there is also the question of the extent to which the Chagos Archipelago is or is likely to be an important fishing ground from the point of view of Mauritius. Obviously the greater the importance of the Archipelago from the point of view of feeding the population of Mauritius, the stronger is the case that we can make to the Americans for an understanding approach on this matter.

6. We had understood that Chagos was an important source of supply in Mauritius for turtles and that a Mauritius Company had spent money on two ships to fish in Chagos waters. Your savingram under reference does not, however, bear this out and Peter Lloyd, who has recently been here from Seychelles, quoted Moulinié as saying that the only fishing in the Archipelago at present is for local consumption. If this is so and we cannot show that the industry is at present of considerable economic value to Mauritius, then clearly the Americans might be less inclined to be forthcoming. The point is important as any fishing limits which we accept with Mauritius primarily in mind would apply to other countries too. The Soviet Bloc, for example, have ocean-going fishing fleets whose range of operations is increasing through the use of modern techniques. Where it might seem harmless to allow local fishermen within so many miles of some defence installation, the presence of Russian trawlers might be quite another matter. It would thus be convenient to be able to base any undertaking to Mauritius on habitual or traditional fishing arrangements, provided that no other countries can claim similar use in the past. It is essential that, in helping to meet a special plea on the part of Mauritius, we can still keep other fishing fleets at a safe distance.

7. In these circumstances past and present performance is of considerable importance. We might also be able to argue that, with Mauritius' rapidly increasing population, fishing in the Chagos Archipelago is an important potential source of food. I hope, therefore, that when you let us have your views on the approach suggested above you will furnish us with whatever facts and figures you can let us have about fishing in the Chagos Archipelago at the present time by Mauritius companies and by fishing vessels of other countries (e.g. Japan) and about any plans that you may know of to increase fishing activities there. This will all affect our approach to the Americans and would also be of importance if we wished to protect vested Mauritian rights against foreign interlopers.

8. I am sending a copy of this letter to Julian Oxford and shall be grateful for any comments he may wish to make in so far as the islands which were formerly part of Seychelles are concerned.

**ANNEX 17**

Letter from Governor of Mauritius, 25 April 1966

CONFIDENTIAL

AND PERSONAL

R. D. 43/IV

25th April, 1966

(14)

Will you please refer to your confidential and personal letter No. PAC 93/892/016 of 15th March about fishing in the Chagos Archipelago? I think that a proposition on the lines suggested in paragraph 3 of your letter would be acceptable here provided access to islands were interpreted as permission to establish shore facilities. I should like, however, to consult Paturau before giving a definite opinion and I should be grateful for authority to do so.

There are three ventures now operating from Mauritius. (1) the St. Raphael Fishing Co. have two ships which they use to transport fish caught by fishermen, mainly Rodriguans, under contract on St. Brandon. (2) a Japanese Company which fishes for tuna in the deep sea by the long-line method and uses Mauritius as a base for storage and despatch of fish to overseas markets (some tuna is sold locally). (3) an experimental venture under-taken by a combination of the Japanese and local interests including Blyth Brothers, fishing for 'white fish' primarily for the local market but with some possibility of export of seasonal catches to Réunion. So far as I know, none of these ventures fishes in the waters of the Chagos Archipelago but the point will have to be checked. My own information agrees with Moulinie's statement to Lloyd that the only fishing in the Archipelago at present is casual fishing for local consumption.

I note the difficulty of excluding the vessels of other countries. I assume no "favoured nation" concession could be granted to Mauritius by Britain? On present information it seems doubtful if a case could be based on past and present performance, though it could certainly be argued that the increasing population of Mauritius and the restricted potential for the production of protein feeds in the island made the Chagos Archipelago of importance to Mauritius.

It would be easier for me to provide information and arguments if this correspondence could be down graded to the 'non-personal' series. I am sending copy of this letter to Oxford.

(J. S. RENNIE)

## **ANNEX 18**

Minute addressed to the BIOT Commissioner, 1967 (copy of the original plus a re-typed version for clarity)

Addressee Ref. ....

Mr. TODD N.S.  
Mr. ....  
Mr. ....  
Mr. ....  
HE .....

Telegrams

ORIGINATOR	P. S.
En Clair	Date
Code	Time
Cypher	En Clair
	G. T. C.
	C. O. Code
	Cypher

Priority Marking..... Security Marking.. ..

DRAFT

No.....\*

File Refs.

Thank you for the copy of your letter

OC.7/4 of 12th July, 1967 to Rennie on the control of fishing in Chagos.

The present position in Chagos is that fishing is regularly carried out by the Chagos Agalega Company but is limited to providing a fish ration for the company's employees. Most of the fish is caught by bottom fishing in the lagoons of the three occupied atolls (Diego Garcia, Perce Banhos and Salomon) but in good weather trips are made to fishing grounds on the Great Chagos Bank, mainly in the area of Nelson Island. There is also some fishing carried out in the area by Japanese and Formosan vessels engaged in long-lining for tunny.

**FURTHER ACTION AND DISTRIBUTION**

c.c. Sir John Rennie,  
K.G.U.G. O.B.F.

ota/...

\* Telegrams, Savingsgram, Despatch only

No detailed information on the area worked by these

vessels or of the frequency of their visits is available.

3. As you are aware from Mr. Sato's report on Chagos' fishing potential, copies of which were sent to you with Flova's letter FISH/1B of 15th

June, 1965, he considered that the area was sufficiently rich in fish to merit the setting up of a fishing base in Chagos to catch tunny for Japan and other fish for the Ceylon market.

During his visit to Seychelles earlier this year

Mr. Sato also talked of the possibility of establishing a cultured pearl industry on the

Great Chagos Bank. The Ross Group are of course

no longer interested in catching crawfish in the

area but an independent concern is at present

investigating the possibility of setting up a

crawfish industry and, although their plans are

not yet firm, they may wish to work in Chagos.

4. It is as yet too early to foresee how the

fishing potential of Chagos will be developed or

is evident that the area is potentially rich and that we should safeguard the future interests of Mauritius and Seychelles in whatever development takes place, both to provide opportunities for local companies and to ensure our future fish supply. I should therefore like to see an exclusive fishing zone up to a 12 mile limit as described in para 5 of your letter, in which RIOT would grant rights to Mauritius' and Seychelles' fishermen and fishing companies.

5. The arrangements suggested in paragraph 3 of your letter are, I agree, the best that can be expected at present. I hope that when the plans for the development of RIOT are more advanced it will be possible to give a guarantee of longer tenancies on islands for which no defence need can be foreseen, subject of course to termination in an emergency, as without such guarantee it will be impossible to encourage the erection of the shore installations which

1. Thank you for the copy of your letter OG7/4 of 12 July, 1967 to Rennie on the control of fishing in Greece.
2. The present petition in Chagos is that fishing is regularly carried out by the Chagos Agalega Company but is limited to providing a fish ration for the company's employees. Most of the fish is caught by bottom fishing in the lagoons of the three occupied islands (Diego, Geroie, Peros and Salomon) but in good weather trips are made to fishing grounds on the Great Chagos Bank, mainly in the area of Nelson Talend. There is also some fishing carried out in the area by Japanese and Formosa vessels engaged in long-lining for tunny.
3. As you are aware from Mr Sato's report on Chagos fishing potential, copies of which were sent to you with Lloyd's letter FISH/18 15<sup>th</sup> June 1965, he considered that the area was sufficiently rich in fish to merit the setting up of a fishing base in Chagos to catch tunny for Japan and other fish for the Ceylon market. During his visit to Seychelles earlier this year Mr Sato also talked of the possibility of establishing a cultured pearl industry on the Great Chagos Bank. The Ross Group are of course no longer interested in catching crawfish in the area but an independent concern is at present investigating the possibility of setting up a crawfish industry and although their plans are not yet firm, they may wish to work in Chagos.
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5. The arrangements suggested in paragraph 3 of your letter are, I agree, the best that can be expected at present. I hope that when the plans for the development of BTOT are more advanced it will be possible to give a guarantee of longer tenancies on islands for which no defence need can be foreseen, subject of course to termination in an emergency, as without such guarantee it will be impossible to encourage the erection of the shore installation which

## **ANNEX 19**

Mauritius Independence Act 1968

To be returned to  
H.M.S.O. (P.D.)  
for Controller's Library  
Bundle No.



# Mauritius Independence Act 1968

## CHAPTER 8

### ARRANGEMENT OF SECTIONS

#### Section

1. Fully responsible status of Mauritius.
2. Consequential modifications of British Nationality Acts.
3. Retention of citizenship of United Kingdom and Colonies by certain citizens of Mauritius.
4. Consequential modification of other enactments.
5. Interpretation.
6. Short title.

#### SCHEDULES:

Schedule 1—Legislative powers of Mauritius.

Schedule 2—Amendments not affecting the law of Mauritius.

## ELIZABETH II



## 1968 CHAPTER 8

An Act to make provision for, and in connection with, the attainment by Mauritius of fully responsible status within the Commonwealth. [29th February 1968]

**B**E 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:—

1.—(1) On and after 12th March 1968 (in this Act referred to as “the appointed day”) Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Mauritius. Fully responsible status of Mauritius.

(2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Mauritius as part of its law; and on and after that day the provisions of Schedule 1 to this Act shall have effect with respect to the legislative powers of Mauritius.

2.—(1) On and after the appointed day the British Nationality Acts 1948 to 1965 shall have effect as if in section 1(3) of the British Nationality Act 1948 (Commonwealth countries having separate citizenship) there were added at the end the words “and Mauritius”. Consequential modifications of British Nationality Acts. 1948 c. 56.

(2) Except as provided by section 3 of this Act, any person who immediately before the appointed day is a citizen of the United Kingdom and Colonies shall on that day cease to be such a citizen if he becomes on that day a citizen of Mauritius.

(3) Section 6(2) of the British Nationality Act 1948 (registration as citizens of the United Kingdom and Colonies of women who have been married to such citizens) shall not apply

to a woman by virtue of her marriage to a person who on the appointed day ceases to be such a citizen under subsection (2) of this section, or who would have done so if living on the appointed day.

1967 c. 4.

(4) In accordance with section 3(3) of the West Indies Act 1967, it is hereby declared that this and the next following section extend to all associated states.

Retention of citizenship of United Kingdom and Colonies by certain citizens of Mauritius.

3.—(1) Subject to subsection (5) of this section, a person shall not cease to be a citizen of the United Kingdom and Colonies under section 2(2) of this Act if he, his father or his father's father—

- (a) was born in the United Kingdom or in a colony or an associated state ; or
- (b) is or was a person naturalised in the United Kingdom and Colonies ; or
- (c) was registered as a citizen of the United Kingdom and Colonies ; or
- (d) became a British subject by reason of the annexation of any territory included in a colony.

(2) A person shall not cease to be a citizen of the United Kingdom and Colonies under the said section 2(2) if either—

- (a) he was born in a protectorate or protected state, or
- (b) his father or his father's father was so born and is or at any time was a British subject.

(3) A woman who is the wife of a citizen of the United Kingdom and Colonies shall not cease to be such a citizen under the said section 2(2) unless her husband does so.

(4) Subject to subsection (5) of this section, the reference in subsection (1)(b) of this section to a person naturalised in the United Kingdom and Colonies shall include a person who would, if living immediately before the commencement of the British Nationality Act 1948, have become a person naturalised in the United Kingdom and Colonies by virtue of section 32(6) of that Act (persons given local naturalisation in a colony or protectorate before the commencement of that Act).

1948 c. 56.

(5) In this section—

- (a) references to a colony shall be construed as not including any territory which, on the appointed day, is not a colony for the purposes of the British Nationality Act 1948 as that Act has effect on that day, and accordingly do not include Mauritius, and

(b) references to a protectorate or protected state shall be construed as not including any territory which, on the appointed day, is not a protectorate or a protected state (as the case may be) for the purposes of that Act as it has effect on that day ;

and subsection (1) of this section shall not apply to a person by virtue of any certificate of naturalisation granted or registration effected by the Governor or Government of a territory which by virtue of this subsection is excluded from references in this section to a colony, protectorate or protected state.

(6) Part III of the British Nationality Act 1948 (supplemental provisions) as in force at the passing of this Act shall have effect for the purposes of this section as if this section were included in that Act. 1948 c. 56.

4.—(1) Notwithstanding anything in the Interpretation Act 1889, the expression “colony” in any Act of the Parliament of the United Kingdom passed on or after the appointed day shall not include Mauritius. Consequential modification of other enactments. 1889 c. 63.

(2) On and after the appointed day—

(a) the expression “colony” in the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957 shall not include Mauritius, and 1955 c. 18.  
1955 c. 19.  
1957 c. 53.

(b) in the definitions of “Commonwealth force” in section 225(1) and 223(1) respectively of the said Acts of 1955, and in the definition of “Commonwealth country” in section 135(1) of the said Act of 1957, at the end there shall be added the words “or Mauritius” ;

and no Order in Council made on or after the appointed day under section 1 of the Armed Forces Act 1966 which continues either of the said Acts of 1955 in force for a further period shall extend to Mauritius as part of its law. 1966 c. 45.

(3) On and after the appointed day the provisions specified in Schedule 2 to this Act shall have effect subject to the amendments specified respectively in that Schedule.

(4) Subsection (3) of this section, and Schedule 2 to this Act, shall not extend to Mauritius as part of its law.

5.—(1) In this Act, and in any amendment made by this Act in any other enactment, “Mauritius” means the territories which immediately before the appointed day constitute the Colony of Mauritius. Interpretation.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

6. This Act may be cited as the Mauritius Independence Act 1968. Short title. 1968.

## SCHEDULES

Section 1.

## SCHEDULE 1

## LEGISLATIVE POWERS OF MAURITIUS

1865 c. 63.

1. The Colonial Laws Validity Act 1865 shall not apply to any law made on or after the appointed day by the legislature of Mauritius.

2. No law and no provision of any law made on or after the appointed day by that legislature shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any Act of the Parliament of the United Kingdom, including this Act, or to any order, rule or regulation made under any such Act, and accordingly the powers of that legislature shall include the power to repeal or amend any such Act, order, rule or regulation in so far as it is part of the law of Mauritius.

3. The legislature of Mauritius shall have full power to make laws having extra-territorial operation.

4. Without prejudice to the generality of the preceding provisions of this Schedule—

1894 c. 60.

(a) sections 735 and 736 of the Merchant Shipping Act 1894 shall be construed as if references therein to the legislature of a British possession did not include references to the legislature of Mauritius ; and

1890 c. 27.

(b) section 4 of the Colonial Courts of Admiralty Act 1890 (which requires certain laws to be reserved for the signification of Her Majesty's pleasure or to contain a suspending clause) and so much of section 7 of that Act as requires the approval of Her Majesty in Council to any rules of court for regulating the practice and procedure of a Colonial Court of Admiralty shall cease to have effect in Mauritius.

Section 4.

## SCHEDULE 2

## AMENDMENTS NOT AFFECTING THE LAW OF MAURITIUS

*Diplomatic immunities*

1952 c. 10.

1. In section 461 of the Income Tax Act 1952 (which relates to exemption from income tax in the case of certain Commonwealth representatives and their staffs)—

(a) in subsection (2), before the words "for any state" there shall be inserted the words "or Mauritius";

(b) in subsection (3), before the words "and 'Agent-General'" there shall be inserted the words "or Mauritius".

1952 c. 18.

2. In section 1(6) of the Diplomatic Immunities (Commonwealth Countries and Republic of Ireland) Act 1952, before the word "and" in the last place where it occurs there shall be inserted the word "Mauritius".

3. In section 1(5) of the Diplomatic Immunities (Conferences with Commonwealth Countries and Republic of Ireland) Act 1961, before the word "and" in the last place where it occurs there shall be inserted the word "Mauritius".

SCH. 2

1961 c. 11.

#### *Financial*

4. In section 2(4) of the Import Duties Act 1958, before the words "together with" there shall be inserted the word "Mauritius".

#### *Visiting forces*

5. In the Visiting Forces (British Commonwealth) Act 1933, section 4 (attachment and mutual powers of command) shall apply in relation to forces raised in Mauritius as it applies to forces raised in Dominions within the meaning of the Statute of Westminster 1931.

1933 c. 6.  
1931 c. 4  
(22 & 23  
Geo. 5.).

6. In the Visiting Forces Act 1952—

1952 c. 67.

(a) in paragraph (a) of section 1(1) (countries to which that Act applies) at the end there shall be added the words "Mauritius or";

(b) in section 10(1)(a), the expression "colony" shall not include Mauritius;

and, until express provision with respect to Mauritius is made by an Order in Council under section 8 of that Act (application to visiting forces of law relating to home forces), any such Order for the time being in force shall be deemed to apply to visiting forces of Mauritius.

#### *Ships and aircraft*

7. In section 427(2) of the Merchant Shipping Act 1894, as set out in section 2 of the Merchant Shipping (Safety Convention) Act 1949, before the words "or in any" there shall be inserted the words "or Mauritius".

1894 c. 60.

1949 c. 43.

8. In section 6(2) of the Merchant Shipping Act 1948, at the end of the proviso there shall be added the words "or Mauritius".

1948 c. 44.

9. The Ships and Aircraft (Transfer Restriction) Act 1939 shall not apply to any ship by reason only of its being registered in, or licensed under the law of, Mauritius; and the penal provisions of that Act shall not apply to persons in Mauritius (but without prejudice to the operation with respect to any ship to which that Act does apply of the provisions thereof relating to the forfeiture of ships).

1939 c. 70.

10. In the Whaling Industry (Regulation) Act 1934, the expression "British ship to which this Act applies" shall not include a British ship registered in Mauritius.

1934 c. 49.

11. In section 2(7)(b) of the Civil Aviation (Licensing) Act 1960, the expression "colony" shall not include Mauritius.

1960 c. 38.

## SCH. 2

*Commonwealth Institute*

1925 ch. xvii.  
1958 c. 16.

12. In section 8(2) of the Imperial Institute Act 1925, as amended by the Commonwealth Institute Act 1958 (power to vary the provisions of the said Act of 1925 if an agreement for the purpose is made with the governments of certain territories which for the time being are contributing towards the expenses of the Commonwealth Institute) at the end there shall be added the words "and Mauritius".

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## **ANNEX 20**

The Mauritius Independence Order 1968

**THE MAURITIUS INDEPENDENCE ORDER, 1968**

**GN No. 54 of 1968**

His Excellency the Governor directs the publication, for general information, of the Mauritius Independence Order, 1968.

Le Reduit,  
6th March, 1968.

Tom VICKERS,  
Deputy Governor.

THE MAURITIUS INDEPENDENCE ORDER 1968

AT THE COURT AT BUCKINGHAM PALACE

The 4th day of March 1968

Present,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Her Majesty, by virtue and in exercise of the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows -

(1) This Order may be cited as the Mauritius Independence Order 1968.

(2) This Order shall be published in the Gazette and shall come into force on the day on which it is so published:

Provided that section 4(2) of this Order shall come into force forthwith.

2.-(1) In this Order-

"the Constitution" means the Constitution of Mauritius set out in the schedule to this Order;

"the appointed day" means 12th March 1968;

"the existing Assembly" means the Legislative Assembly established by the existing Orders;

"the existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty. in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Mauritius immediately before the appointed day but does not include any Order revoked by- this Order;

"the existing Orders" means the Orders revoked by section 3(i) of this Order.

(2) The provisions of sections 111, 112, 120 and 121 of the Constitution shall apply for the purposes of interpreting sections 1 to 17 of this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution. Revocations.

3.-(1) With effect from the appointed day, the Mauritius Constitution Order 1966(a), the Mauritius Constitution (Amendment) Order 1967(b) and the Mauritius Constitution (Amendment No. 2) Order 1967(c) and the Mauritius Constitution (Amendment No. 3) Order 1967(d) are revoked.

(2) The Emergency Powers Order in Council 1939(e), and any Order in Council amending that Order, shall cease to have effect as part of the law of Mauritius on the appointed day:

Provided that if Part 11 of the Emergency Powers Order in Council 1939 is in operation in Mauritius immediately before the appointed day a Proclamation such as is referred to in paragraph (b) of section 19(7) of the, Constitution shall be deemed to have been made on that day and to have been approved by the Assembly within seven days of that day under paragraph (a) of section 19(8) of the Constitution.

4.-(1) Subject to the provisions of this Order, the Constitution shall come into effect in Mauritius on the appointed day.

(2) The Governor (as defined for the purposes of the existing Orders) acting after consultation with the Prime Minister (as so defined) may at any time after the commencement of this subsection exercise any of the powers conferred upon the Governor-General by section 5 of this Order or by the Constitution to such extent as may in his opinion be necessary or expedient to enable the Constitution to function as from the appointed day.

5.-(1) The revocation of the existing Orders shall be without prejudice to the continued operation of any existing laws made, or having effect as if they had been made, under any of those Orders; and any such laws shall have effect on and after the appointee, day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Mauritius Independence Act 1968 (f) and this Order.

(2) Where any matter that falls to be prescribed or otherwise provided for under the Constitution by Parliament or by any other authority or person is prescribed or provided for by or under an existing law (including any amendment to any such law made under this section) or is otherwise prescribed or provided for immediately before the appointed day by or under the existing Orders that prescription or provision shall, as from that day, have effect (with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Mauritius Independence Act 1968 and this Order) as if it had been made under the Constitution by Parliament or, as the case may require, by the other authority or person.

(3) The Governor-General may, by order published in the Gazette, at any time before 6th September 1968 make such amendments to any existing law (other than the Mauritius Independence Act 1968 or this Order) as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Order or otherwise for giving effect or enabling effect to be given to those provisions.

(4) An order made under this section may be amended or revoked by Parliament or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(5) It is hereby declared, for the avoidance of doubt, that, save as otherwise provided either expressly or by necessary implication, nothing in this Order shall be construed as affecting the continued operation of any existing law.

(6) The provisions of this section shall be without prejudice to any powers conferred by this Order or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

6.-(1) Where any office has been established by or under the existing Orders or any existing law and the Constitution establishes a similar or an equivalent office any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed on the appointed day to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oaths under the Constitution and, in the case of a person who holds or is acting in the office of a judge of the Supreme Court, to have complied with the requirements of section 79 of the Constitution (which relates to oaths):

Provided that any person who under the existing Orders or any existing law would have been required to vacate his office at the expiration of any period or on the attainment of any age shall vacate his office under the Constitution at the expiration of that period or upon the attainment of that age.

(2) Section 113(1) of the Constitution shall have effect-

- (a) in relation to the person holding the office of Electoral Commissioner immediately before the appointed day as is it permitted him to be appointed to that office on the appointed day for a term expiring on .30th November 1969 or such later date as may be determined by the Judicial and Legal Service Commission; and
- (b) in relation to the person holding the office of Commissioner of Police immediately before the appointed day as if it permitted him to be appointed to that office on the appointed day for a term expiring on such date (not being, earlier than 31st March 1969 or later than 3m September 1969) as may be determined by the Police Service Commission; and those persons shall be deemed to have been appointed as aforesaid and, in relation to them, the reference in section 113 (1) to the specified term shall be construed accordingly.

(3) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.

7.-(1) Until such time as it is otherwise provided under section 39 of the Constitution, the respective boundaries of the twenty constituencies in the Island of Mauritius shall be the same as those prescribed by the Mauritius (Electoral Provisions) Regulation, 1966 (a) for the twenty electoral districts established by those Regulations in pursuance of the Mauritius (Electoral Provisions) Order 1966(b).

(2) If any election of a member of the Assembly is held in any constituency before 1st February 1969, and it is prescribed that any register of electors published before 1st February 1967 is to be used, then no person shall be entitled to vote in that constituency-

(a) in the case of a constituency in the Island of Mauritius, unless, in pursuance of the Mauritius (Electoral Provisions) Order 1966, he has been registered as an elector in the electoral district corresponding to that constituency;

(b) in the case of Rodrigues, unless, in Pursuance Of the Mauritius (Electoral Provisions) Order 11965(a)y he has been registered as an elector in Rodrigues as if Rodrigues had been established as an electoral district for the purposes of that Order.

8. (1) The persons who immediately before the appointed day were members of the existing Assembly shall as from the appointed day be members of the Assembly established by the Constitution as if elected as such in pursuance of section 31(2) of the Constitution and shall hold their seats in that Assembly in accordance with the provisions of the Constitution:

Provided that persons who immediately before the appointed day represented constituencies in the existing Assembly shall so hold their seats as if respectively elected to represent the corresponding constituencies under the Constitution.

(2) Any person who is a member of the Assembly established by the Constitution by virtue of the preceding provisions of this section and who, since he was last elected as a member of the existing Assembly before the appointed day, has taken the oath of allegiance in pursuance of section 49 of the Constitution established by the existing Orders shall be deemed to have complied with the requirements of section 55 of the Constitution (which relates to the oath of allegiance).

(3) The persons who immediately before the appointed day were unreturned candidates at the general election of members of the existing Assembly shall, until the dissolution of the Assembly next following the appointed day, be regarded as unreturned candidates for the purposes of paragraph 5 (7) of Schedule I to the Constitution; and for those purposes anything done in accordance with the provisions of Schedule I to the constitution established by the existing Orders shall be deemed to have been done in accordance with the corresponding provisions of Schedule 1 to the Constitution.

(4) For the purpose of section 57(2) of this Constitution, the Assembly shall be deemed to have had its first sitting after a general election on 22nd August 1967 (being the date on which the existing Assembly first sat after a general election).

9. The rules and orders of the existing Assembly, as those rules and orders were in force immediately before the appointed day, shall, except as may be otherwise provided under section 48 of the Constitution, have effect after the appointed day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

10. If by virtue of section 10(i) of the Mauritius (Constitution) Order 1966 the person referred to in section 9(i) of the Mauritius (Constitution) Order 1964(a) is immediately before the appointed day holding the office of Speaker of the existing Assembly, then, with effect from the appointed day-

- (a) that person shall be deemed to be a member of the Assembly and to have been elected Speaker of the Assembly under section 32 of the Constitution; and
- (b) the provisions of the Constitution (other than paragraphs (a), (b) and (e) of section 32(3)) shall apply to him accordingly,

until such time as he vacates the office of Speaker under paragraph (c) or (d) of section 32(,I) of the Constitution or under section 32(b) of the Constitution or becomes a candidate for election as a member of the Assembly.

11. All proceedings commenced or pending before the Supreme Court, the Court of Civil Appeal or the Court of Criminal Appeal of Mauritius immediately before the appointed day may be carried on before the Supreme Court, the Court of Civil Appeal or the Court of Criminal Appeal, as the case may be, established by the Constitution.

12.-(1) Unless it is otherwise prescribed by Parliament, the Court of Appeal in Court of Appeal may exercise on and after the appointed day such jurisdiction and powers in relation to appeals from the Supreme Court of Seychelles as may be conferred upon it by or in the pursuance of the Seychelles Civil Appeals Order 1967 (b) or of any other law in that behalf for the time being in force in Seychelles.

(2) The provisions of section 81 of the Constitution shall not apply in relation to decisions -of the Court of Appeal given in the exercise of any jurisdiction and powers conferred upon it in relation to appeals from the Supreme Court of Seychelles, and appeals shall lie to Her Majesty in Council from such decisions in accordance with the Seychelles (Appeals to Privy Council) Order 1967 (a) or any other law in that behalf for the time being in force in Seychelles.

(3) The Seychelles Civil Appeals Order 1967 and the Seychelles (Appeals to Privy Council) Order 1967 shall cease to form part of the law of Mauritius with effect from the appointed day.

13.-(1) Until such time as a salary and allowances are prescribed by Parliament, there shall be paid to the holder of any office to which section 108 of the Constitution applies a salary and allowances calculated at the same rate as the salary and allowances paid

immediately before the appointed day to the holder of the office corresponding thereto.

(2) If the person holding the office of Governor immediately before the appointed day becomes Governor-General his terms and conditions of service, other than salary and allowances, as Governor-General shall, until such time as other provisions are made in that behalf, be the same as those attaching to the office of Governor immediately before the appointed day.

14. Any power that, immediately before the appointed day, is vested in a Commission established by any of the existing Orders and that, under that Order, is then delegated to some other person or authority shall be deemed to have been delegated to that person or authority on the appointed day in accordance with the provisions of the Constitution; and any proceedings commenced or pending before any such Commission immediately before the appointed day may be carried on before the appropriate Commission established by the Constitution.

15.-(1) If the Prime Minister so requests, the authorities having power to make appointments in any branch of the public service shall consider whether there are more local candidates suitably qualified for appointment to, or promotion in that branch than there are vacancies in that branch that could appropriately be filled by such local candidates; and those authorities, if satisfied that such is the case, shall, if so requested by the Prime Minister, select officers in that branch to whom this section applies and whose retirement would in the opinion of those authorities cause vacancies that could appropriately be filled by such suitably qualified local candidates as are available and fit for appointment and inform the Prime Minister of the number of officers so selected; and if the Prime Minister specifies a number of officers to be called upon to retire (not exceeding the number of officers so selected), those authorities shall nominate that number of officers from among the officers so selected and by notice in writing require them to retire from the public service; and any officer who is so required to retire shall retire accordingly.

(2) A notice given under the preceding subsection requiring an officer to retire from the public service shall be not less than six months from the date he receives the notice, at the expiration of which he shall proceed on leave of absence pending retirement:

Provided that, with the agreement of the officer or if the Officer is on leave when it is given, a notice may specify a shorter period.

(3) This section applies to any officer who is the holder of a pensionable office in the public service and is @a, designated Officer for the purposes of the Overseas Service (Mauritius) Agreement 1961.

16.-(1) The provisions of this section shall have effect for the purpose of enabling an officer to whom this section applies or his personal representatives to appeal against any of the following decisions, that is to say:-

- (a) a decision of the appropriate Commission to give such concurrence as is required by subsection (1) or (2) of section 95 of the Constitution in relation to the refusal,

- withholding, reduction in amount or suspending of any pensions benefits in respect of such an officer's service as a public officer;
- (b) a decision of any authority to remove such an officer from office if the consequence of the removal is that any pensions benefits cannot be granted in respect of the officer's service as a public officer; or
  - (c) a decision of any authority to take some other disciplinary action in relation to such an officer if the consequence of the action is, or in the opinion of the authority might be, to reduce the amount of any pensions benefits that may be granted in respect of the officer's service as a public officer,

(2) Where any such decision as is referred to in the preceding subsection is taken by any authority, the authority shall cause to be delivered to the officer concerned, or to his personal representatives, a written notice of that decision stating the time, not being less than twenty-eight days from the date on which the notice is delivered, within which he, or his personal representatives, may apply to the authority for the case to be referred to an Appeals Board.

(3) If application is duly made within the time stated in the notice, the authority shall notify the Prime Minister in writing of that application and the Prime Minister shall thereupon appoint an Appeals Board consisting of-

- (a) one member selected by the Prime Minister;
- (b) one member selected by an association representative of public officers or a professional body, nominated in either case by the applicant; and
- (c) one member selected by the two other members jointly (or, in default of agreement between those members, by the judicial and Legal Service Commission) who shall be the chairman of the Board.

(4) The Appeals Board shall enquire into the facts of the case, and for that purpose-

- (a) shall, if the applicant so requests in writing, hear the applicant either in person or by a legal representative of his choice, according to the terms of the request, and shall consider any representations that he wishes to make in writing;
- (b) may hear any other person who, in the opinion of the Board, is able to give the Board information on the case, and
- (c) shall have access to, and shall consider, all documents that were available to the authority concerned and shall also consider any further document relating to the case that may be produced by or on behalf of the applicant or the authority.

(6) When the Appeals Board has completed its consideration of the case, then-

- (a) if the decision that is the subject of the reference to the Board is such a decision as is mentioned in paragraph (a) of

subsection (1) of this section, the Board shall advise the appropriate Commission whether the decision should be affirmed, reversed or modified and the Commission shall act in accordance with that advice; and

(b) if the decision that is the subject of the reference to the Board is such a decision as is referred to in paragraph (b) or paragraph (c) of subsection (1) of this section, the Board shall not have power to advise the authority concerned to affirm, reverse or modify the decision but-

(i) where the officer has been removed from office the Board may direct that there shall be granted all or any part of the pensions benefits that, under any law, might have been granted in respect of his service as a public officer if he had retired voluntarily at the date of his removal and may direct that any law with respect to pensions benefits shall in any other respect that the Board may specify have effect as if he had so retired; and

(ii) where some other disciplinary action has been taken in relation to the officer the Board may direct that, on the grant of any pensions benefits under any law in respect of the officer's service as a public officer, those benefits shall be increased by such amount or shall be calculated in such manner as the Board may specify in order to offset all or any part of the reduction in the amount of those benefits that, in the opinion of the Board, would or might otherwise be a consequence of the disciplinary action,

and any direction given by the Board under this paragraph shall be complied with notwithstanding the provisions of any other law.

(6) In this section-

"pensions benefits" has the meaning assigned to that expression in section 94 of the Constitution; and

"legal representative" means a person lawfully in or entitled to be in Mauritius and entitled to practise in Mauritius as a barrister or as an attorney-at-law;

(7) This section applies to an officer who is the holder of a pensionable office in the public service and-

(a) who is a member of Her Majesty's Overseas Civil Service or of Her Majesty's Overseas judiciary;

(b) who has been designated for the purposes of the Overseas Service (Mauritius) Agreement 1961; or

(c) who was selected for appointment to any office in the public service or whose appointment to any such office was approved by a Secretary of State,

17.-(1) Parliament may alter any of the provisions of this Order in the same manner as it may alter any of the provisions of this Constitution not specified in section 47(2) of the Constitution:

Provided that section 6 and section 8(4) and this section may be altered by Parliament only in the same manner as the provisions so specified.

(2) Section 47(4) of the Constitution shall apply for the purpose of construing references in this section to any provision of this Order and to the alteration of any such provision as it applies for the purpose of construing references in section 47 of the Constitution to any provision of the Constitution and to the alteration of any such provision.

W. G. AGNEW.

SCHEDULE TO THE ORDER

THE CONSTITUTION OF MAURITIUS

ARRANGEMENT OF SECTIONS

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THE STATE AND THE CONSTITUTION

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SCHEDULE 1 TO THE CONSTITUTION  
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CHAPTER I  
THE STATE AND THE CONSTITUTION

1. Mauritius shall be a sovereign democratic State.
2. This Constitution is the supreme law of Mauritius and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void.

CHAPTER II

PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
OF THE INDIVIDUAL

3. It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely-

- (a) the right of the individual to life, liberty, security of the person and the protection of the law;

- (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

4.-(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable-

- (a) for the defence of any person from violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

5.-(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say-

- (a) In consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Mauritius or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence;
- (f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare;

- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Mauritius, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Mauritius or the taking of proceedings relating thereto;
- (j) upon reasonable suspicion of his being likely to commit breaches of the peace; or
- (k) in execution of the order of the Commissioner of Police, upon reasonable suspicion of his having engaged in, or being about to engage in, activities likely to cause a serious threat to public safety or public order.

(2) Any person who is arrested or detained shall be informed soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention,

(3) Any person who is arrested or detained-

- (a) for the purpose of bringing him before a court in execution of the order of a court;
- (b) upon reasonable suspicion of his having committed, or being about to commit a criminal offence; or
- (c) upon reasonable suspicion of his being likely to commit breaches of the peace,

and who is not released, shall be afforded reasonable facilities to consult a legal representative of his own choice and shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) of this sub-section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial; and if any person arrested or detained as mentioned in paragraph (e) of this subsection is not brought before a court within a reasonable time in order that the court may decide whether to order him to give security for his good behaviour then, without prejudice to any further proceedings that may be brought against him he shall be released unconditionally.

(4) When a person is detained in pursuance of any such provision of law as is referred to in paragraph (k) of subsection (1) of this section, the following provisions shall apply, that is to say

- (a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention. be furnished with a statement in writing in a

- language that, he understand, specifying in detail the grounds upon which he is detained;
- (b) not more than seven days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
  - (c) not more than fourteen days after the commencement of his detention and thereafter during his detention at intervals of not more than thirty days, his case shall be reviewed by an independent and impartial tribunal and consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;
  - (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of his case;
  - (e) at the hearing of his case by the tribunal he shall be permitted to appear in person or by a legal representative of his own choice and, unless the tribunal otherwise directs, the hearing shall be held in public;
  - (f) at the conclusion of any review by a tribunal in pursuance of this subsection in any case, the tribunal shall announce its decision in public, stating whether or not there is, in its opinion, sufficient cause for the detention, and if, in its opinion, there is not sufficient cause, the detained person shall forthwith be released and if during the period of six months from his release he is again detained as aforesaid the tribunal established as aforesaid for the review of his case shall not decide that, in its opinion, there is sufficient cause for the further detention unless it is satisfied that new and reasonable grounds for the detention exist.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

(6) In the exercise of any functions conferred upon him for the purposes of subsection (1)1(k) of this section, the Commissioner of Police shall not be subject to the direction or control of any other person or authority.

6.-(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include-

- (a) any labour required in consequence of the sentence or order of a court;
- (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of

hygiene or for the maintenance of the place at which he is detained;

- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service; or
- (d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

7.-(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Mauritius on 11th March 1964 being the day before the day on which section 5 of the Constitution set out in Schedule 2 to the Mauritius (Constitution) Order 1964 came into force.

8.-(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say-

- (a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit;
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that taking of possession or acquisition-
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last preceding subsection to the extent that the law in question authorises-

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party;
- (b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted; or
- (c) the imposition of any deduction, charge or tax that is made or levied generally in respect of the remission of moneys from Mauritius and that is not discriminatory within the meaning of section 16(3) of this Constitution.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section-

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of property-
  - (i) in satisfaction of any tax, rate or due;
  - (ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law.
  - (iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract;
  - (iv) in the execution of judgments or orders of courts;
  - (v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
  - (vi) in consequence of any law with respect to the limitations of actions or acquisitive prescription;
  - (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon-
    - (A) of work of soil conservation or the conservation of other natural resources; or
    - (B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society; or

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of-

- (i) enemy property;
- (ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
- (iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body, corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
- (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides. for the vesting in the Crown of the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where, that property, interest or right is held by a body corporate established by law for public purpose-, in which no moneys have been invested other than moneys provided from public funds.

9.-(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilization of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;
- (b) for the purpose of protecting the rights or freedoms of other persons;
- (c) to enable an officer or agent of the Government or a Local Authority, or a body corporate established by law for a public purpose, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, the Local Authority or that body corporate, as the case may be; or
- (d) to authorise, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any

person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10.-(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense;
- (e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution; and
- (f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal one on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be

tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority-

- (a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the privacy of persons concerned in the proceedings; or
- (b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or, in contravention of-

- (a) subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;
- (b) subsection (2) (e) of this section, to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;
- (c) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any

punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section "criminal offence" means a crime, misdemeanour or contravention punishable under the law of Mauritius.

11. (1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention Of Persons Professing any other religion or belief,

except so far as that provision, or as the case may be, the thing done under the authority thereof 'is shown not to be reasonably justifiable in a democratic society.

12.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) in the interests of defence, public safety, public order, public morality or public health;

- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting television, public exhibitions or public entertainment; or
- (c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

13.-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the Purpose of protecting the rights or freedoms of Other persons; or
- (c) for the imposition Of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown -not to be reasonably justifiable in a democratic society.

14.-(1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question makes provision-

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for regulating such schools in the interests of persons receiving instruction therein,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending to any such school a child of whom that person is parent or guardian by reason only that the school is not a school established or maintained by the Government.

(4) In the preceding subsection "child" includes a stepchild and a child adopted in a manner recognised by law; and the word "parent" shall be construed accordingly.

15.-(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Mauritius, the right to reside in any part of Mauritius the right to enter Mauritius, the right to leave Mauritius and immunity from expulsion from Mauritius.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision-

- (a) for the imposition of restrictions on the movement or residence within Mauritius of any person in the interests of defence, public safety, public order, public morality or public health;
- (b) for the imposition of restrictions on the right of any person to leave Mauritius in the interests of defence, public safety, public order, public morality or public health or of securing compliance with any international obligation of the Government particulars of which have been laid before the Assembly;
- (c) for the imposition of restrictions, by order of a court, on the movement or residence within Mauritius of any person either in consequence of his having been found guilty of a criminal offence under the law of Mauritius or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Mauritius;
- (d) for the imposition of restrictions on the movement or residence within Mauritius of any person who is not a citizen of Mauritius or the exclusion or expulsion from Mauritius of any such person;
- (e) for the imposition of restrictions on the acquisition or use by any person of land or other property in Mauritius;
- (f) for the removal of a person from Mauritius to be tried outside Mauritius for a criminal offence or to undergo imprisonment outside Mauritius in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or
- (g) for the imposition of restrictions on the right of any person to leave Mauritius in order to secure the fulfilment of any obligations imposed upon that person by law,

except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(4) If any person whose freedom of movement has been restricted in pursuance of any such provision of law as is referred to in paragraph (a) or (b) of the preceding subsection so requests, the following provisions shall apply, that is to say-

- (a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the making of the request, be furnished with a statement in writing in a language that he understands specifying the grounds for the imposition of the restriction;
- (b) not more than fourteen days after the making of the request, and thereafter during the continuance of the restriction at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;
- (c) he or a legal representative of his own choice shall be permitted to make representations to the tribunal appointed for the review of his case;
- (d) on any review by a tribunal in pursuance of this subsection in any case, the tribunal may make recommendations concerning the necessity or expediency of continuing the restriction in question to the authority by which it was ordered and that, authority shall act in accordance with any recommendation for the removal or relaxation of the restriction:

Provided that a person whose freedom of movement has been restricted by virtue of a restriction that is applicable to persons generally or to general classes of persons shall not make a request under this subsection unless he has first obtained the consent of the Supreme Court.

16.-(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision-

- (a) for the appropriation of revenues or other funds of Mauritius;
- (b) with respect to persons who are not citizens of Mauritius; or
- (c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with

respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that it makes provision with respect to standards or qualifications (not being standards or qualifications specifically relating to race, caste, place of origin, political opinions, colour or creed) to be required of any person who is appointed to any office in the public service, any office in a disciplined force, any office in the service of a Local Authority or any office in a body corporate established directly by any law for public purposes.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 9, 11, 12, 13, 14 and 15 of this Constitution, being such a restriction as is authorised by section 9(2), 11(b), 12(2), 18(2), 14(2) or 15(8) of this Constitution, as the case may be.

(8) Subsection (2) of this section shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

17.-(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled:

Provided that the Supreme Court shall not exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.

(3) The Supreme Court shall have such powers in addition to those conferred by this section as may be prescribed for the purpose of enabling that Court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that court may be made).

18.-(1) Nothing contained in or done under the authority of a law shall be held to be inconsistent with or in contravention of section 5 or section 16 of this Constitution to the extent that the law authorises the taking during any period of public emergency of measures that are reasonably justifiable for dealing with the situation that exists in Mauritius during that period;

Provided that no law, to the extent that it authorises the taking during a period of public emergency other than a period during which Mauritius is at war of measures that would be inconsistent with or in contravention of section 5 or section 16 of this Constitution if taken otherwise than during a period of public emergency, shall have effect unless there is in force a Proclamation of the Governor General declaring that, because of the situation existing at the time, the measures authorised by the law are required in the interests of peace, order and good government.

(2) A Proclamation made by the Governor-General for the purposes of this section-

- (a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;
- (b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days, it meets and approves the Proclamation by resolution;
- (c) shall, if approved by resolution, remain in force for such period, not exceeding six months, as the Assembly may specify in the resolution;
- (d) may be extended in operation for further periods not exceeding six months at a time by resolution of the Assembly;
- (e) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a), (b), (c) or (d) of this subsection shall be passed unless it is supported by the votes of at least two-thirds of all the members of the Assembly-

(3) When a person is detained by virtue of any such law as is referred to in subsection (1), of this section of this Constitution (not being a person who is detained because he is a person who, not being a citizen of Mauritius, is a citizen of a country with which Mauritius is at war or has been engaged in hostilities against Mauritius in association with or on behalf of such a country or otherwise assisting or, adhering to such a country) the following provisions shall apply, that is to say: -

- (a) he shall, as soon as is reasonably practicable and in any case not more than seven days after the commencement of his detention, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is detained,
- (b) not more than fourteen days after the commencement of his detention, a notification shall be published in the Gazette stating that he has been detained and giving particulars of the provision of law under which his detention is authorised;
- (c) not more than one month after the commencement of his detention and thereafter during his detention at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal consisting of a chairman and two other members appointed by the judicial and Legal Service Commission, the chairman being appointed from among persons who are entitled to practise as a barrister or as an attorney-at-law in Mauritius;
- (d) he shall be afforded reasonable facilities to consult a legal representative of his own choice who shall be permitted to make representations to the tribunal appointed for the review of the case of the detained person; and
- (e) at the hearing of his case by the tribunal appointed for the review of his case he shall be permitted to appear in person or by a legal representative of his own choice.

(4) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise provided by law, that authority shall not be obliged to act in accordance with any such recommendations.

19.-(1) In this Chapter, unless the context otherwise requires-

"contravention", in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

"court" means any court of law having jurisdiction in Mauritius, including Her Majesty in Council but excepting, save in sections 4 and 6 of this Constitution and this section, a court established by a disciplinary law;

"legal representative" means a person lawfully in or entitled to be in Mauritius and entitled to practise in Mauritius as a barrister or, except in relation to proceedings before a court in which an attorney-at-law has no right of audience, as an attorney-at-law;

"member", in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) Nothing contained in section 5(4), 15(4) or 18(3) of this Constitution shall be construed as entitling a person to legal representation at public expense.

(3) Nothing contained in sections 12, 13 or 15 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(4) In relation to any person who is a member of a disciplined force of Mauritius, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 4, 6 and 7.

(5) In relation to any person who is a member of a disciplined force that is not a disciplined force of Mauritius and who is present in Mauritius in pursuance of arrangements made between the Government of Mauritius and another Government or an international Organisation, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) No measures taken in relation to a person who is a member of a disciplined force of a country with which Mauritius is at war and no law, to the extent that it authorises the taking of any such measures, shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(7) In this Chapter "period of public emergency" means any period during which-

- (a) Mauritius is engaged in any war; or
- (b) there is in force a Proclamation by the Governor-General declaring that a state of public emergency exists; or
- (c) there is in force a resolution of the Assembly supported by the votes of a majority of all the members of the Assembly declaring that democratic institutions in Mauritius are threatened by subversion.

(8) A Proclamation made by the Governor-General for the purposes of the preceding subsection-

- (a) shall, when the Assembly is sitting or when arrangements have already been made for it to meet within seven days of the date of the Proclamation, lapse unless within seven days the Assembly by resolution approves the Proclamation;
- (b) shall, when the Assembly is not sitting and no arrangements have been made for it to meet within seven days, lapse unless within twenty-one days it meets and approves the Proclamation by resolution;
- (c) may be revoked at any time by the Governor-General, or by resolution of the Assembly:

Provided that no resolution for the purposes of paragraphs (a) or (b) of this subsection shall be passed unless it is supported by the votes of a majority of all the members of the Assembly.

(9) A resolution passed by the Assembly for the purposes of subsection 7 (c) of this section-

- (a) shall remain in force for such period, not exceeding twelve months, as the Assembly may specify in the resolution;
- (b) may be extended in operation for further periods not ,exceeding twelve months at a time by a further resolution supported by the votes of a majority of all the members of the Assembly;
- (c) may be revoked at any time by resolution of the Assembly.

### CHAPTER III

#### **CITIZIENSHIP**

20.-(1) Every person who, having been born in Mauritius, is on 11th March 1968 a citizen of the United Kingdom and Colonies shall become a citizen of Mauritius on 12th March 1968.

(2) Every Person who on the 11th March 1968, is a citizen of the United Kingdom and Colonies-

- (a) having become such a citizen under the British Nationality Act 1948(a) by Virtue of his having been naturalized by the Governor of the former colony of Mauritius as a British subject before that Act came into force; or
- (b) having become such a citizen by virtue of his having been naturalized or registered by the Governor of the former colony of Mauritius under that Act,

shall become a citizen of Mauritius on 12th March 1968.

(3) Every person who, having been born outside Mauritius is on 11th March 1968 a citizen of the United Kingdom and Colonies shall, if his father becomes or would, but for his death have become a citizen of by virtue of subsection (1) or subsection (2) of this section, become a citizen of Mauritius on 12th March 1968.

(4) For the purposes of this section a person shall be regarded as having been born in Mauritius if he was born in the territories which were comprised in the former colony of Mauritius immediately before 8th November 1965 but were not so comprised immediately before 12th March 1968 unless his father was born in the territories which were comprised in the colony of Seychelles immediately before 8<sup>th</sup> November 1965.

21.-(1) Any woman who, on 12th March 1968 is or has been married to a person-

- (a) who becomes a citizen of Mauritius by virtue of the preceding section; or citizens.
- (b) who, having died before 12th March 1968 would, but for his death, have become a citizen of Mauritius by virtue of that section,

shall be entitled upon making application and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius.

Provided that, in the case of any woman who on the 12th March 1968 is not a citizen of the United Kingdom and Colonies, the right to be registered as a citizen of Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

(2) Any application for registration under this section shall be made in such manner as may be prescribed as respects that application.

22. Every person born in Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth:

Provided that a person shall not become a citizen of Mauritius by virtue of this section if at the time of his birth his father-

- (a) possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign power accredited to Mauritius and neither of his parents is a citizen of Mauritius;
- (b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

23. A person born outside Mauritius after 11th March 1968 shall become a citizen of Mauritius at the date of his birth if at that date his father is a citizen of Mauritius otherwise that by virtue of this section or section 20(3) of this Constitution.

24. Any woman who, after 11th March 1968 marries a person who is or becomes a citizen of Mauritius shall be entitled, upon making application in such manner as may be prescribed and, if she is a British protected person or an alien, upon taking the oath of allegiance, to be registered as a citizen of Mauritius:

Provided that the right to be registered as a citizen Mauritius under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy.

25.-(1) Every person who under this Constitution or any other law is a citizen of Mauritius or under any enactment for the time being in force in any country to which this section applies is a citizen of that country shall, by virtue of that citizenship, have the status of a Commonwealth citizen.

(2) Every person who is a British subject without citizenship under the British Nationality Act 1948, continues to be a British subject under section 2 of that Act or is a British subject under the British Nationality Act 1965(a) shall, by virtue of that status, have the status of a Commonwealth citizen.

(3) R & R - A.48/91

26. Parliament may make provision-

- (a) for the acquisition of citizenship of Mauritius by persons who are not eligible or who are no longer eligible to become

citizens of Mauritius by virtue of the provisions of this Chapter;

- (b) for depriving of his citizenship of Mauritius any person who is a citizen of Mauritius otherwise than by virtue of sections 20, 22 or 23 of the Constitution,
- (c)-(e) deleted - A. 23/95

27.-(1) In this Chapter "British protected person" means a person who is a British protected person for the purposes of the British Nationality Act 1948.

(2) Deleted-(A.23/95)

(3) For the purposes of this Chapter, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the government of any country. shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be in that country.

(4) Any reference in this Chapter to the national status of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the national status of the father at the time of the father's death; and where that death occurred before 12th March 1968 and the birth occurred after the 11th March 1968 the national status that the father would have had if he had died on 12th March 1968 shall be deemed to be his national status at the time of his death.

#### CHAPTER IV

##### THE GOVERNOR-GENERAL (R & R: A. 48/91)

#### CHAPTER IV

##### PARLIAMENT

31.-(1) There shall be a Parliament for Mauritius, which shall consist of Her Majesty and a Legislative Assembly.

(2) The Assembly shall consist of persons elected in accordance with schedule I to this Constitution, which makes provision for the election of seventy members.

32. (1-4) - R & R:A. 1/96

(5) A person holding the office of Speaker or Deputy Speaker may resign his office by writing under his hand addressed to the Assembly and the office shall become vacant when the writing is received by the Clerk to the Assembly.

(6) No business shall be transacted in the Assembly (other than the election of a Speaker) at any time when the office of Speaker is vacant.

33. Subject to the provisions of the next following section, a person shall be qualified to be elected as a member of the Assembly if, and shall not be so qualified unless, he-

(1) is a Commonwealth citizen of not less than twenty-one years of age;

(2) has resided in Mauritius for a period of, or periods amounting in the aggregate to, not less than two years before the date of his nomination for election;

(3) has resided in Mauritius for a period of not less than six months immediately before that date; and

(4) is able to speak and, unless incapacitated by blindness or other physical cause, to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly.

34.-(1) No person shall be qualified to be elected as a member of the Assembly who-

(a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a power or state outside the Commonwealth;

(b) is a public officer or a local government officer;

(c) is a party to, or a partner in a firm or a director or manager of a company which is a party to, any contract with the government for or on account of the public service, and has not, within fourteen days after his nomination as a candidate for election, published in the English language in the Gazette and in a newspaper circulating in the constituency for which he is a candidate a notice setting out the nature of such contract and his interest, or the interest of any such firm or company, therein;

(d) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged or has obtained the benefit of a cessio bonorum in Mauritius;

(e) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius;

(f) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;

(g) is disqualified for election by any law in force in Mauritius by reason of his holding, or acting in, an office the functions of which involve-

(i) any responsibility for, or in connection with, the conduct of any election; or

(ii) any responsibility for the compilation or revision of any electoral register; or

- (h) is disqualified for membership of the Assembly by any law in force in Mauritius relating to offences connected with elections.

(2) If it is prescribed by Parliament that any office in the public service or the service of a Local Authority is not to be regarded as such an office for the purposes of this section, a person shall not be regarded for the purposes of this section as a public officer or a local government officer, as the case may be, by reason only that he holds, or is acting in, that office

(3) For the purpose of this section-

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
- (b) imprisonment in default of payment of a fine shall be disregarded.

35.-(1) The seat in the Assembly of a member thereof shall become vacant-

- (a) upon a dissolution of Parliament;
- (b) if he ceases to be a Commonwealth citizen;
- (c) if he becomes a party to any contract with the Government for or on account of the public service, or if any firm in which he is a partner or any company of which he is a director or manager becomes a party to any such contract, or if he becomes a partner in a firm or a director or manager of a company which is a party to any such contract:

Provided that, if in the circumstances it appears to him to be just to do so, the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may exempt any member from vacating his seat under the provisions of this paragraph if such member, before becoming a party to such contract as aforesaid, or before or as soon as practicable after becoming otherwise interested in such contract (whether as a partner in a firm or as a director or manager of a company), discloses to the Speaker or, as the case may be, the Deputy Speaker the nature of such contract and his interest or the interest of any such firm or company therein;

- (d) if he ceases to be resident in Mauritius;
- (e) if, without leave of the Speaker (,or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) previously obtained, he is absent from the sittings of the Assembly for a continuous period of three months during any session thereof for any reason other than his being in lawful custody in Mauritius;
- (f) if any of the circumstances arise that, if he were not a member of the Assembly, would cause him to be disqualified for election thereto by virtue of paragraph (a), (b), (d), (e), (g) or (h) of the preceding section;

(2) A member of the Assembly may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by the Deputy Speaker or such other person as may be specified in the rules and orders of the Assembly.

36.-(1) Subject to the provisions of this section, if a member of the Assembly is sentenced by a court in any part of the Commonwealth to death or to imprisonment (by whatever name called) for a term exceeding twelve months, he shall forthwith cease to perform his functions as a member of the Assembly and his seat in the Assembly shall become vacant at the expiration of a period of thirty days thereafter:

Provided that the Speaker (or, if the office of Speaker is vacant or he is for any reason unable to perform the functions of his office, the Deputy Speaker) may, at the request of the member, from time to time extend that period of thirty days to enable the member to pursue any appeal in respect of his conviction or sentence, so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(2) If at any time before the member vacates his seat he is granted a free pardon or his conviction is set aside or his sentence is reduced to a term of imprisonment of less twelve months or a punishment other than imprisonment is substituted, his seat in the Assembly shall not become vacant under the preceding subsection and he may again perform his functions as a member of the Assembly.

(3) For the purpose of this section-

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms; and
- (b) imprisonment in default of payment of a fine shall be disregarded.

37.-(1) The Supreme Court shall have jurisdiction to hear and determine any question whether-

- (a) any person has been validly elected as a member of the Assembly;
- (b) any person who has been elected as Speaker or Deputy Speaker was qualified to be so elected or has vacated the office of Speaker or Deputy Speaker as the case may be; or
- (c) any member of the Assembly has vacated his seat or is required, under the provisions of section 36 of this Constitution, to cease to perform his functions as a member of the Assembly.

(2) An application to the Supreme Court for the determination of any question under subsection (1)(a) of this section may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, if it is made by a person other than the

Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(b) of this section may be made by any member of the Assembly or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1)(c) of this section may be made-

- (a) by any member of the Assembly or by the Attorney-General; or
- (b) by any person registered in some constituency as an elector, and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) Parliament may make provision with respect to-

- (a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and
- (b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) A determination by the Supreme Court in proceedings under this section shall not be subject to an appeal;

Provided that an appeal shall lie in such cases as may be prescribed by Parliament.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

38.-(1) There shall be an Electoral Boundaries Commission which shall consist of a chairman and not less than two nor more than four other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(2) There shall be an Electoral Supervisory Commission which shall consist of a chairman appointed by the Governor-General in accordance with the advice of the judicial and Legal Service Commission and not less than two nor more than four other members appointed by the Governor-General acting in accordance with the advice of the Prime Minister tendered after the Prime Minister has consulted the Leader of the Opposition.

(3) No person shall be qualified for appointment as a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission if he is a member of, or a candidate for election to, the Assembly or any Local Authority or a public officer or a local government officer.

(4) Subject to the provisions of this section, a member of the Electoral Boundaries Commission or the Electoral Supervisory Commission shall vacate his office-

- (a) at the expiration of five years from the date of his appointment; or
- (b) if any circumstances arise that, if he were not a member of the Commission, would cause him to be disqualified for appointment as such.

(5) The provisions of section 92(2) to (5) of this Constitution shall apply to a member of the Electoral Boundaries Commission or of the Electoral Supervisory Commission as they apply to a Commissioner within the meaning of that section.

39.-(1) There shall be twenty-one constituencies and accordingly-

- (a) the Island of Mauritius shall be divided into twenty constituencies;
- (b) Rodrigues shall form one constituency:

Provided that the Assembly may by resolution provide that any island forming part of Mauritius that is not comprised in the Island of Mauritius or Rodrigues shall be included in such one of the constituencies as the Electoral Boundaries Commission may determine and with effect from the next dissolution of Parliament after the passing of any such resolution the provisions of this section shall have effect accordingly.

(2) The Electoral Boundaries Commission shall review the boundaries of the constituencies at such times as will enable them to present a report to the Assembly ten years, as near as may be, after the 12th August 1966 and, thereafter, ten years after presentation of their last report:

Provided that the Commission may at any time carry out a review and present a report if it considers it desirable to do so by reason of the holding of an official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly in pursuance of the preceding subsection.

(3) The report of the Electoral Boundaries Commission shall make recommendations for such alterations (if any) to the boundaries of the constituencies as appear to the Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota;

Provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and the boundaries of administrative areas.

(4) The Assembly may, by resolution, approve or reject the recommendations of the Electoral Boundaries Commission, but may not vary them; and, if so approved, the recommendations shall have effect as from the next dissolution of Parliament.

(5) In this section "population quota" means the number obtained by dividing the number of inhabitants of the Island of Mauritius (including any island included in any constituency in the Island of Mauritius by virtue of any resolution under subsection (1) of this section) according to the latest official census of the population of Mauritius by twenty.

40.-(1) There shall be an Electoral Commissioner, whose office shall be a public office and who shall be appointed by the Judicial and Legal Service Commission.

(2) No person shall be qualified to hold or act in the office of Electoral Commissioner unless he is qualified to practise as a barrister in Mauritius.

(3) Without prejudice to the provisions of the next following section, in the exercise of his functions under this Constitution the Electoral Commissioner shall not be subject to the direction or control of any other person or authority.

41.-(1) The Electoral Supervisory Commission shall have general responsibility for, and shall supervise, the registration of electors for the election of members of the Assembly and the conduct of elections of such members and the Commission shall have such powers and other functions relating to such registration and such elections as may be prescribed.

(2) The Electoral Commissioner shall have such powers and other functions relating to such registration and elections as may be prescribed; and he shall keep the Electoral Supervisory Commission fully informed concerning the exercise of his functions and shall have the right to attend meetings of the Commission and to refer to the Commission for their advice or decision any question relating to his functions.

(3) Every proposed Bill and every proposed regulation or other instrument having the force of law relating to the registration of electors for the election of members of the Assembly or to the election of such members shall be referred to the Electoral Supervisory Commission and to the Electoral Commissioner at such time as shall give them sufficient opportunity to make comments thereon before the Bill is introduced in the Assembly or, as the case may be, the regulation or other instrument is made.

(4) The Electoral Supervisory Commission may make such reports to the Governor-General their supervision, or any draft Bill or instrument that is referred to them, as they may think fit and if the Commission so requests in any such report other than a report on a draft Bill or instrument that report shall be laid before the Assembly.

(5) The question whether the Electoral Commissioner has acted in accordance with the advice of or a decision of the Electoral Supervisory Commission shall not be enquired into in any court of law.

42.-(1) Subject to the provisions of the next following section, a person shall be entitled to be registered as an elector if, and shall not be so entitled unless-

- (a) he is a Commonwealth citizen of not less than twenty-one years of age; and
- (b) either he has resided in Mauritius for a period of not less than two years immediately before such date as may be prescribed by Parliament or he is domiciled in Mauritius and is resident therein on the prescribed date.

(2) No person shall be entitled to be registered as an elector-

- (a) in more than one constituency; or
- (b) in any constituency in which he is not resident on the prescribed date.

43. No person shall be entitled to be registered as an elector who-

- (a) is under sentence of death imposed on him by a court in any part of the Commonwealth, or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended;
- (b) is a person adjudged to be of unsound mind or detained as a criminal lunatic under any law in force in Mauritius; or
- (c) is disqualified for registration as an elector by any law in force in Mauritius relating to offences connected with elections.

44.-(1) Any person who is registered as an elector in a constituency shall be entitled to vote in such manner as may be prescribed at any election for that constituency unless he is prohibited from so voting by any law in force in Mauritius because-

- (a) he is a returning officer; or
- (b) he has been concerned in any offence connected with elections:

Provided that no such person shall be entitled so to vote if on the date prescribed for polling he is in lawful custody or (except in so far as may otherwise be prescribed) he is for any other reason unable to attend in person at the place and time prescribed for polling.

(2) No person shall vote at any election for any constituency who is not registered as an elector in that constituency.

45.-(1) Subject to the provisions of this Constitution, Parliament may make laws for the peace, order and good government of Mauritius.

(2) Without prejudice to the generality of subsection (1) of this section, Parliament may by law determine the privileges, immunities and powers of the Assembly and the members thereof.

46.-(1) The power of Parliament to make laws shall be exercisable by bills passed by the Assembly and assented to by the Governor-General on behalf of Her Majesty.

(2) R & R: A. 48/91

(3) When the Governor-General assents to a bill that has been submitted to him in accordance with the provisions of this Constitution the bill shall become law and the Governor-General shall thereupon cause it to be published in the Gazette as a law.

(4) No law made by Parliament shall come into operation until it has been published in the Gazette but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by Parliament shall be styled "Acts of Parliament" and the words of enactment shall be "Enacted by the Parliament of Mauritius".

47.-(1) Subject to the provisions of this section, Parliament may alter this Constitution.

(2) A bill for an Act of Parliament to alter any of the following provisions of this Constitution, that is to say -

- (a) this section;
- (b) Chapters II, VII, VIII and IX;
- (c) schedule 1; and
- (d) Chapter XI, to the extent that it relates to any of the provisions specified in the preceding paragraphs,

shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than three-quarters of all the members of the Assembly.

(3) A bill for an Act of parliament to alter any provision of this Constitution (but which does not alter any of the provisions of this Constitution as specified in subsection (2) of this section) shall not be passed by the Assembly unless it is supported at the final voting in the Assembly by the votes of not less than two-thirds of all the members of the Assembly-

shall not be passe this section references to altering this Constitution or de references-

(4) In this section references to altering the Constitution or any part of this Constitution include references-

- (a) to revoking it, with or without reenactment thereof or the making of different provision in lieu thereof;
- (b) to modifying it, whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period, or terminating any such suspension.

48. Subject to the provisions of this Constitution, the Assembly may regulate its own procedure and may in particular make rules for the orderly conduct of its own proceedings.

49. The official language of the Assembly shall be English but any member may address the chair in French.

50. The Speaker or in his absence the Deputy Speaker or in their absence a member of the Assembly (not being a Minister elected by the Assembly for the sitting, shall preside at any sitting of the Assembly.

51. The Assembly may act notwithstanding any vacancy in the membership (including any vacancy not filled when the Assembly first meets after any general election) and the presence or participation of any person not entitled to be present at or to participate in the proceedings of the Assembly shall not invalidate those proceedings.

52.-(1) If at any sitting of the Assembly a quorum is not present and any member of the Assembly who is present objects on that account to the transaction of business and, after such interval as may be prescribed by the Assembly, the person presiding at the sitting ascertains that a quorum is still not present, he shall adjourn the Assembly.

(2) For the purposes of this section the quorum shall consist of seventeen members of the Assembly in addition to the person presiding.

53.-(1) Save as otherwise provided in this Constitution, all questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting; and a member of the Assembly shall not be precluded from so voting by reason only that he holds the office of Speaker or Deputy Speaker or is presiding in the Assembly.

(2) If, upon any question before the Assembly that falls to be determined by a majority of the members present and voting, the votes cast are equally divided, the Speaker or other person presiding shall have and shall exercise a casting vote.

54. Except upon the recommendation of a Minister, the Assembly shall not-

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes-

- (i) for the imposition of taxation or the alteration of, taxation otherwise than by reduction;
- (ii) for the imposition of any charge upon the Consolidated Fund or other public funds of Mauritius or the alteration of any such charge otherwise than by reduction;
- (iii) for the payment, issue or withdrawal from the Consolidated Fund or other public funds of Mauritius of any monies not charged thereon or any increase in the amount of such payment, issue or withdrawal; or
- (iv) for the composition or remission of any debt to the Government;

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person

presiding, would be to make provision for any of those purposes; or

- (c) receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

55. No member of the Assembly shall take part in the proceedings of the Assembly (other than proceedings necessary for the purposes of this section) until he has made and subscribed before the Assembly the oath of allegiance prescribed in schedule 3 to this Constitution.

56.-(1) The sessions of the Assembly shall be held in such place and begin at such time as the Governor-General by Proclamation may appoint:

Provided the place at, which any session of the Assembly is to be held may be altered from time to time during the course of the session by a further proclamation made by the Governor-General.

(2) A session of the Assembly shall be held from time to time so that a period of twelve months shall not intervene between the last sitting of the Assembly in one session and its first sitting in the next session.

(3) Writs for a general election of members of the Assembly shall be issued within sixty days of the date of any dissolution of Parliament and a session of the Assembly shall be appointed to commence within thirty days of the date prescribed for polling at any general election.

57.-(1) The Governor-General acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament:

Provided that-

- (a) if the Assembly passes a resolution that it has no confidence in the Government and the Prime Minister does not within three days either resign from his office or advise the Governor-General to dissolve Parliament within seven days or at such later time as the Governor-General, acting in his own deliberate judgment, may consider reasonable, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament;
- (b) if the office of Prime Minister is vacant and the Governor-General considers that there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly, the Governor-General, acting in his own deliberate judgment, may dissolve Parliament.

(2) Parliament unless sooner dissolved, shall continue for five years from the date of the first sitting of the Assembly after any general election and shall then stand dissolved.

At any time when Mauritius is at war Parliament may from time to time extend the period of five years specified in the preceding subsection not more than twelve months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than five years.

(4) At any time when there is in force a Proclamation by the Governor-General declaring, for the purposes of section 19 (7) (b) of this Constitution, that a state of public emergency exists Parliament may from time to time extend the period of five years specified in subsection (2) of this section by not more than six months at a time:

Provided that the life of Parliament shall not be extended under this subsection for more than one year.

(5) If, after a dissolution and before the holding of the election of members of the Assembly, the Prime Minister advises the Governor-General that, owing to the existence of a state of war or of a state of emergency in Mauritius or any part thereof, it is necessary to recall Parliament, the Governor-General shall summon the Parliament that has been dissolved to meet.

(6) Unless the life of Parliament is extended under subsection (3) or subsection (4) this section, the election of members of the Assembly shall proceed notwithstanding the summoning of Parliament under the preceding subsection and the Parliament that has been recalled shall, if not sooner dissolved, again stand dissolved on the day before the day prescribed for polling at that election.

#### CHAPTER VI THE EXECUTIVE

58.-(1) The executive authority of Mauritius is vested in Her Majesty.

(2) Save as otherwise provided in this Constitution, that authority may be exercised on behalf of Her Majesty by the Governor-General either directly or through officers subordinate to him.

(3) Nothing in this section shall preclude persons or authorises other than the Governor-General from exercising such functions as may be conferred upon them by any law.

59.-(1) There shall be a Prime Minister, who shall be appointed by the Governor-General.

(2) There shall be, in addition to the offices of Prime Minister and of Attorney-General, such other offices of Minister of the Government as may be prescribed by Parliament or, subject to the provisions of any law, established by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the number of offices of Minister other than the Prime Minister shall not be more than fourteen.

(3) The Governor-General acting in his own deliberate judgment, shall appoint as Prime Minister the member of the Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime

Minister, appoint the Attorney General and the other Ministers from among the members of the Assembly:

Provided that-

- (a) if occasion arises for making an appointment while Parliament is dissolved a person who was a member of the Assembly immediately before the dissolution may be appointed; and
- (b) a person may be appointed Attorney-General notwithstanding that he is not, (or, as the case may be, was not) a member of the Assembly.

60.- (1) If a resolution of no confidence in the Government is passed by the Assembly and the Prime Minister does not within three days resign from his office the Governor-General shall remove the Prime Minister from office unless, in pursuance of section 57(1) of this Constitution, Parliament has been or is to be dissolved in consequence of such resolution.

(2) If at any time between the holding of a general election and the first sitting of the Assembly thereafter the Governor-General, acting in his own deliberate judgment, considers that, in consequence of changes in the membership of the Assembly resulting from that general election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly the Governor-General may remove the Prime Minister from Office:

Provided that the Governor-General shall not remove the Prime Minister from office within the period of ten days immediately following the date prescribed for polling at that general election unless he is satisfied that a party or party alliance in opposition to the Government and registered for the purposes of that general election under paragraph 2 of schedule I to this Constitution has at that general election gained a majority of all the seats in the Assembly.

(3) The office of Prime Minister or any other Minister shall become vacant-

- (a) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament; or
- (b) if, at the first sitting of the Assembly after any general election, he is not a member of the Assembly:

Provided that paragraph (b) of this subsection shall not apply to the office of Attorney-General if the holder thereof was not a member of the Assembly in the preceding dissolution of Parliament.

(4) The office of a Minister (other than the Prime Minister) shall become vacant-

- (a) if the Governor-General acting in accordance with the advice of the Prime Minister, so directs;
- (b) if the Prime Minister resigns from office within three days after the passage by the Assembly of a resolution of no confidence in the Government or is removed from office under subsection (1) or subsection (9) of this section; or
- (c) upon the appointment of any person to the office of Prime Minister.

(5) If for any period the Prime Minister or any other Minister is unable by reason of the provisions of section 36(1) of this Constitution to perform his functions as a member of the Assembly he shall not during that period perform any of his functions as Prime Minister or Minister, as the case may be,

61.-(1) There shall be a Cabinet for Mauritius, consisting of the Prime Minister and the other Ministers.

(2) The functions of the Cabinet shall be to advise the Governor-General in the government of Mauritius and the Cabinet shall be collectively responsible to the Assembly for any advice given to the Governor-General by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

(3) The provisions of the last preceding subsection shall not apply in relation to-

- (a) the appointment and removal from office of Ministers, the assigning of responsibility to any Minister under the next following section or the authorisation of another Minister to perform the functions of the Prime Minister during absence or illness;
- (b) the dissolution of Parliament; or
- (c) the matters referred to in section 75 of this Constitution (which relate to the prerogative of mercy).

62. The Governor-General acting in accordance with the advice of the Prime Minister, may, by directions in writing assign to the Prime Minister or any other Minister responsibility for the conduct (subject to the provisions of this Constitution and any other law) of any business of the Government, including responsibility for the administration of any department government.

63.-(1) Whenever the Prime Minister is absent from Mauritius or is by reason of illness or of the provisions of section 60 (5) of this Constitution unable to perform the functions conferred on him by this Constitution, the Governor-General may, by directions in writing, authorise some other Minister to perform those functions (other than the functions conferred by this section) and that Minister may perform those functions until his authority is revoked by the Governor-General.

(2) The powers of the Governor-General under this section shall be exercised by him in accordance with the advice of the Prime Minister:

Provided that if the Governor-General, acting in his own deliberate judgment, considers that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's absence or illness, or if the Prime Minister is unable to tender advice by reason of the provisions of section 60(5) of this Constitution, the Governor-General may exercise those powers without that advice and in his own deliberate judgment.

64.-(1) In the exercise of his functions under this Constitution or any other law, the Governor-General shall act in accordance with the advice

of the Cabinet or of a Minister acting under the general authority of the Cabinet except in cases where he is required by this Constitution to act in accordance with the advice of, or after consultation with, any person or authority other than the Cabinet or in his own deliberate judgment.

(2) Where the Governor-General is directed by this Constitution to exercise any function after consultation with any person or authority other than the Cabinet, he shall not be obliged to exercise that function in accordance with the advice of that person or authority.

(3) Where the Governor-General is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be called in question in any court of law.

(4) During any period in which the office of Leader of Opposition is vacant by reason that there is no such opposition party as is referred to in subsection (2)(a) of section 73 of this Constitution and the Governor-General, acting in his own deliberate judgment, is of the opinion that no member of the Assembly would be acceptable to the leaders of the opposition parties for the purposes of subsection (2)(b) of that section or by reason that there are no opposition parties for the purposes of that section, the operation of any provision of this Constitution shall, to the extent that it requires the Prime Minister or the Public Service Commission to consult the Leader of the Opposition, be suspended.

65. The Prime Minister shall keep the Governor-General fully informed concerning the general conduct of the government of Mauritius and shall furnish the Governor-General with such information as he may request with respect to any particular matter relating to the government of Mauritius..

66. Act 3/96

67. A Minister shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his office as is prescribed by schedule 3 to this Constitution.

68. Where any Minister has been charged with responsibility for the administration of any department of government he shall exercise general direction and control over that department and, subject to such direction and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Minister) shall be under the supervision of a Permanent Secretary or some other supervising officer whose office shall be a public office:

Provided that-

- (a) any such department may be under the joint supervision of two or more supervising officers; and
- (b) different parts of any such department may respectively be under the supervision of different supervising officers.

69.-(1) There shall be an Attorney-General who shall be principal legal adviser to the Government of Mauritius.

(2) The office of Attorney-General shall be the office of a Minister.

(3-5) Republished: GN 60/68

70.-(1) There shall be a Secretary to the Cabinet, whose office shall be a public office.

(2) The Secretary to the Cabinet shall be responsible, in accordance with such instructions as may be given to him by the Prime Minister, for arranging the business for, and keeping the minutes of, the Cabinet or any committee thereof and for conveying the decisions of the Cabinet or any committee thereof to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct.

71.-(1) There shall be a Commissioner of Police, whose office shall be a public office.

(2) The Police Force shall be under the command of the Commissioner of Police.

(3) The Prime Minister, or such other Minister as may be authorised in that behalf by the Prime Minister, may give to the Commissioner of Police such general directions of policy with respect to the maintenance of public safety and public order as he may consider necessary and the Commissioner shall comply with such directions or cause them to be complied with.

(4) Nothing in this section shall be construed as precluding the assignment to a Minister of responsibility under section 69, of this Constitution for the Organisation, maintenance and administration of the Police Force, but the Commissioner of Police shall be responsible for determining the use and controlling the operations of the Force and, except as provided in the preceding subsection, the Commissioner shall not, in the exercise of his responsibilities and powers with respect to the use and operational control of the Force, be subject to the direction or control of any person or authority.

72.-(1) There shall be a Director of Public Prosecutions whose office shall be a public office and who shall be appointed by the judicial and Legal Commission.

(2) No person shall be qualified to hold or act in the office of Director of Public Prosecutions unless he is qualified for appointment as a judge of the Supreme Court.

(3) The Director of Public Prosecutions shall have power in any case in which he considers it desirable so to do-

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(4) The powers of the Director of Public Prosecutions under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or specific instructions.

(5) The powers conferred upon the Director of Public Prosecutions by paragraphs (b) and (c) of subsection (3) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(6) In the exercise of the powers conferred upon him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.

(7) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court, shall be deemed to be part of those proceedings: Provided that the power conferred on the Director of Public Prosecutions by subsection 3(c) of this section shall not be exercised in relation to any appeal by a person convicted in any criminal proceedings or to any case stated or question of law reserved except at the instance of such a person.

73.- (1) There shall be a Leader of the Opposition who shall of be appointed by the Governor-General

(2) Whenever the Governor-General has occasion to appoint a Leader of the Opposition he shall in his own deliberate judgment appoint-

(a) if there is one opposition party whose numerical strength in the Assembly is greater than the strength of any other opposition party, the member of the Assembly who is the leader in the Assembly of that party; or

(b) if there is no such party, the member of the Assembly whose appointment would, in the judgment of the Governor-General, be most acceptable to the leaders in the Assembly of the opposition parties:

Provided that, if occasion arises for making an appointment while Parliament is dissolved, a person who was a member of the Assembly immediately before the dissolution may be appointed Leader of the Opposition.

(3) The office of the Leader of the Opposition shall become vacant-

- (a) if, after any general election, he is informed by the Governor-General that the Governor-General is about to appoint another person as Leader of the Opposition;
- (b) if, under the provisions of section 36(i) of this Constitution, he is required to cease to perform his functions as a member of the Assembly;
- (c) if he ceases to be a member of the Assembly otherwise than by reason of a dissolution of Parliament;
- (d) if, at the first sitting of the Assembly after any general election, he is not a member of the Assembly; or
- (e) if his appointment is revoked under the next following subsection.

(4) If the Governor-General, acting in his own deliberate judgment, considers that a member of the Assembly other than the Leader of the Opposition has become the leader in the Assembly of the opposition party having the greatest numerical strength in the Assembly or, as the case may be, the Leader of the Opposition is no longer acceptable as such to the leaders of the opposition parties in the Assembly, the Governor-General may revoke the appointment of the Leader of the Opposition.

(5) For the purposes of this section "opposition party" means a group of members of the Assembly whose number includes a leader who commands their support in opposition to the Government.

74. Subject to the provisions of this Constitution and of any other law, the Governor-General may constitute offices for Mauritius, make appointments to any such office and terminate any such appointment.

75. The Governor-General may, in Her Majesty's name and on Her behalf-

- (a) grant to any person convicted of any offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for any punishment imposed on any person for any offence; or
- (d) remit the whole or part of any punishment imposed on any person for an offence or of any penalty or forfeiture otherwise due to the State on account of any offence.

(2) There shall be a Commission on the Prerogative of Mercy (hereinafter in this section referred to as "the Commission") consisting of a chairman and not less than two other members appointed by the Governor-General acting in his own deliberate judgment.

(3) A member of the Commission shall vacate his seat on the Commission-

- (a) at the expiration of the term of his appointment (if any) specified in the instrument of his appointment; or
- (b) if his appointment is revoked by the Governor-General acting in his own deliberate judgment.

(4) In the exercise of the powers conferred upon him by sub-section (1) of this section, the Governor-General shall act in accordance with the advice of the Commission.

(5) The validity of the transaction of business by the Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(6) Whenever any person has been sentenced to death (otherwise than by a court martial) for an offence, a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Commission shall be taken into consideration at a meeting of the Commission which shall then advise the Governor-General whether or not to exercise his powers under subsection (1) of this section in that case.

(7) The provisions of this section shall not apply in relation to any conviction by a court established under the law of a country other than Mauritius that has jurisdiction in Mauritius in pursuance of arrangements made between the government of Mauritius and another Government or an international organisation relating to the presence in Mauritius of members of the armed forces of that other country or in relation to any punishment imposed in respect of any such conviction or any penalty or forfeiture resulting from any such conviction.

#### CHAPTER VII THE JUDICATURE

76.-(1) There shall be a Supreme Court for Mauritius which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law other than a disciplinary law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) Subject to the provisions of the next following section, the judges of the Supreme Court shall be the Chief justice, the Senior Puisne judge and such number of Puisne judges as may be prescribed by Parliament:

Provided that the office of a judge shall not be abolished while any person is holding that office unless he consents to its abolition.

77.-(1) The Chief Justice shall be appointed by the Governor-General acting after consultation with the Prime Minister.

(2) The Senior Puisne judge shall be appointed by the Governor-General acting in, accordance with the advice of the Chief justice.

(3) The Puisne judges shall be appointed by the Governor-General, acting in accordance with the advice of the Judicial and Legal Service Commission.

(4) No person shall be qualified for appointment as a judge of the Supreme Court unless he is, and has been for at least five years, a barrister entitled to practise before the Supreme Court.

(5) Whenever the office of Chief Justice is vacant or the person holding that office is for any reason unable to perform the functions of the office, those functions shall be discharged by such one of the other judges of the Supreme Court as may from time to time be designated in that behalf by the Governor-General acting in accordance with the advice of the person holding the office of Chief Justice:

Provided that if the office of Chief Justice is vacant or if the person holding that office is on leave of absence, pending retirement, or if the Governor-General acting on his own deliberate judgment, considers that it is impracticable to obtain the advice of that person owing to that person's absence or illness, the Governor-General shall act after consultation with the Prime Minister.

(6) Whenever the office of Senior Puisne Judge is vacant or the person holding that office is acting as Chief Justice or is for any reason unable to perform the functions of the office, such one of the judges of the Supreme Court as the Governor-General acting in accordance with the advice of the Chief Justice, may appoint shall act in the office of Senior Puisne Judge.

(7) If the office at any Puisne judge is vacant or if a person holding the office of Puisne judge is acting as Chief justice or as Senior Puisne Judge or is for any reason unable to perform the functions of his office or if the Prime Minister, having been informed by the Chief justice that the state of business in the Supreme Court requires that the number of judges of the Court should be temporarily increased and having consulted with the Chief justice, request the Governor-General to appoint an additional judge, the Governor-General acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a judge of the Supreme Court to act as a Puisne judge of that court:

Provided that a person may act as a Puisne judge notwithstanding that he has attained the age, prescribed for the purposes of section 78(1) of this Constitution.

(8) Any person appointed -under this section to act as a Puisne Judge shall, unless he is removed from office under section 78 of this Constitution continue to act for the period of his appointment or, if no such period is specified, until his appointment is revoked by the in accordance with the advice of the Chief Justice:

Provided that a person whose appointment to act as a Puisne judge has expired or been revoked may, with the permission of the Governor-General acting in accordance with the advice of the Chief Justice, continue to act as such for such a period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him previously thereto.

78.-(1) Subject to the provisions of this section, a person holding the office of a judge of the Supreme Court shall vacate that office on attaining the retiring age:

Provided that he may, with the permission of the Governor-General, acting in his own deliberate judgment in the case of the Chief Justice

or in any other case in accordance with the advice of the Chief Justice, continue in office for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age.

(2) A judge of the Supreme Court may be removed from office only for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of the next following subsection.

(3) R & R: A 48/91

(4) If the Chief justice or, in relation to the person holding the office of Chief justice, the Governor-General considers that the question of removing a judge of the Supreme Court from office for inability as aforesaid or misbehaviour ought to be investigated, then-

- (a) the Governor-General shall appoint a tribunal, which shall consist of a chairman and not less than two other members, selected by the Governor-General from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court;
- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he should request that the question of removing the judge from office should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so recommends, the Governor-General shall request that the question should be referred accordingly

(5) If the question of removing a judge of the Supreme Court from office has been referred to a tribunal under subsection (4) of this section, the Governor-General may suspend the judge from performing the functions of his office; and any such suspension may at any time be revoked by the Governor-General and shall in any case cease to have effect-

(6) The functions of the Governor-General under this section shall be exercised by him in his own deliberate judgment.

(7) The retiring age for the purposes of subsection (1) of this section shall be the age of sixty-two years or such other age as may be prescribed by Parliament:

Provided that a provision of any Act of Parliament, to the extent that it alters the age at which judges of the Supreme Court shall vacate their offices, shall not have effect in relation to a judge after his appointment unless he consents to its having effect.

79. A Judge of the Supreme Court shall not enter upon the duties of his office unless he has taken and subscribed the oath of allegiance and such oath for the due execution of his Office as is prescribed by schedule 3 to this Constitution.

80.-(1) There shall be a Court of Civil Appeal and a Court of Criminal Appeal for Mauritius, each of which shall be a division of the Supreme Court.

(2) The Court of Civil Appeal shall have such jurisdiction and powers to hear and determine appeals in civil matters and the Court of Criminal Appeal shall have such jurisdiction and powers to hear and determine appeals in criminal matters as may be conferred upon them respectively by this Constitution or any other law.

(3) The judges of the Court Of Civil Appeal and the Court of Criminal Appeal shall be the judges for the time being of the Supreme Court.

81. An appeal shall lie from decisions of the Court of Appeal or the Supreme Court as of right in the following cases: -

- (a) final decisions, in any civil or criminal proceedings on questions as to the interpretation of this Constitution
- (b) where the matter in dispute on the appeal is of the value of Rupees 10,000 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of Rupees 10,000 or upwards, final decisions in any civil proceedings;
- (c) final decisions in proceedings under section 17 of this Constitution; and
- (d) in such other cases as may be prescribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies as of right from the Supreme Court to the Court of Appeal.

(2) An appeal shall lie from decisions of the Court of Appeal or the Supreme Court with the leave of the court in the following cases: -

- (a) (a) where in the opinion of the court the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to final decisions in any civil proceedings; and
- (b) in such other cases as may be pre-scribed by Parliament:

Provided that no such appeal shall lie from decisions of the Supreme Court in any case in which an appeal lies to the Court of Appeal, either as of right or by the leave of the Court of Appeal.

(3) The foregoing provisions of this section shall be subject to the provisions of section 37(6) of this Constitution and paragraphs 2(5), 3(2) and 4(4) of schedule I to this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(5) R & R: A 48/91

82.-(1) The Supreme Court shall have jurisdiction to supervise any civil or criminal proceedings before any subordinate court and may make

such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by any such court.

(2) An appeal shall lie to the Supreme Court from decisions of subordinate courts in the following cases: -

- (a) as of right from any final decision in any civil proceedings;
- (b) as of right from any final decision in criminal proceedings whereby any person is adjudged to pay a fine of or exceeding such amount as may be prescribed or to be imprisoned with or without the option of a fine;
- (c) by way of case stated, from any final decision in criminal proceedings on the ground that it is erroneous in point of law or in excess of jurisdiction; and
- (d) in such other cases as may be prescribed:

Provided that an appeal shall not lie to the Supreme Court from the decision given by a subordinate court in any case if, under any law-

(i) an appeal lies as of right from that decision to the Court of Appeal;

(ii) an appeal lies from that decision to the Court of Appeal with the leave of the court that gave the decision or of some other court and that leave has not been withheld;

(iii) an appeal lies as of right from that decision to another subordinate court; or

(iv) an appeal lies from that decision to another subordinate court with the leave of the court that gave the decision or of some other court and that leave has not been withheld.

83.-(1) Subject to the provisions of sections 41, 64(3) and 101(1) of this Constitution, if any person alleges that any of provision of this Constitution (other than Chapter II) has been contravened and that his interests are being or are likely to be affected by such contravention, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for a declaration and for relief under this section.

(2) The Supreme Court shall have jurisdiction, in any application made by any person in pursuance of the preceding sub-section or in any other proceedings lawfully brought before the Court, to determine whether any provision of this Constitution (other than Chapter II) has been contravened and to make a declaration accordingly:

Provided that the Supreme Court shall not make a declaration in pursuance of the jurisdiction conferred by this sub-section unless it is satisfied that the interests of the person by whom the application under the preceding subsection is made or, in the case of other proceedings before the Court, a party to these proceedings, are being or are likely to be affected.

(3) Where the Supreme Court makes a declaration in pursuance of the preceding subsection that any provision of the Constitution has been contravened and the person by whom the application under subsection (1) of this section was made or, in the case of other proceedings before the Court, the party in those proceedings in respect of whom the declaration is made, seeks relief, the Supreme Court may grant to that person such remedy, being a remedy available against any person in any proceedings in the Supreme Court under any law for the time being in force in Mauritius, as the Court considers appropriate.

(4) The Chief justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred on it by this section (including rules with respect to the time within which applications shall be made under subsection (1) of this section).

(5) Nothing in this section shall confer jurisdiction on the Supreme Court to hear or determine any such question as is referred to in section 37 of this Constitution or paragraph 2(5), 3(2) or 4(4) of schedule I thereto otherwise than upon an application made in accordance with the provisions of that section or that paragraph, as the case may be.

Where any question as to the interpretation of this Constitution arises in any court of law established for Mauritius (other than the Court of Appeal, the Supreme Court or a court martial) and the court is of opinion that the question involves a substantial question of law, the court shall refer the question to the Supreme Court.

(2) Where any question is referred to the Supreme Court in pursuance of this section, the Supreme Court shall give its decision upon the question and the court in which the question arose shall dispose of the case in accordance with that decision or, if the decision is the subject of an appeal to the Court of Appeal in accordance with the decision of the Court of Appeal or, as the case may be to Her Majesty in Council.

#### CHAPTER VIII SERVICE COMMISSIONS AND THE PUBLIC SERVICE

85.-(1) There shall be a judicial and Legal Service Commission which shall consist of the Chief justice, who shall be chairman, and the following members-

- (a) the Senior Puisne judge;
- (b) the chairman of the Public Service Commission, and
- (c) one other member (in this section referred to as "the appointed member") appointed by the Governor-General, acting in accordance with the advice of the Chief Justice.

(2) The appointed member shall be a person who is or has been a judge of a court having unlimited jurisdiction in civil or criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court.

(3) If the office of the appointed member is vacant or the appointed member is for any reason unable to perform the functions of his office,

the Governor-General acting in accordance with the advice of the Chief Justice, may appoint a person qualified for appointment as such a member to act as a member of the Commission and any person so appointed shall continue to act until his appointment is revoked by the Governor-General acting in accordance with the advice of the Chief Justice.

86.-(1) Power to appoint persons to hold or act in offices to which this section applies (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in which offices and to remove such persons from office shall vest in the Judicial and Legal Service

(2) The offices to which this section applies are the offices specified in schedule 2 to this Constitution and such other offices as may be prescribed:

Provided that-

- (a) if the name of any such office is changed, or any such office is abolished, the provisions of this section and that schedule shall have effect accordingly;
- (b) this section shall also apply to such other offices, being offices that in the opinion of the judicial and Legal Service Commission are offices similar to those specified in schedule 2 to this Constitution, as may be prescribed by the Commission, acting with the concurrence of the Prime Minister.

87. The power to appoint persons to hold the offices of Ambassador, High Commissioner or other principal representative of Mauritius in any other country or accredited to any international Organisation and to remove such persons from office shall vest in the Governor-General acting in accordance with the advice of the Prime Minister:

Provided that before advising the Governor-General to appoint to any such office a person who holds or is acting in some other public office the Prime Minister shall consult the Public Service Commission.

88.-(1) There shall be a Public Service Commission, which shall consist of a chairman appointed by the Governor-General

(2) No person shall be qualified for appointment as a member of the Public Service Commission if he is a member of, a candidate for election to, the Assembly or any Local Authority a public officer or a local government officer.

(3) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is for any reason unable to perform the functions of his office, those functions shall be performed by such one of the officers of the Commission as the Governor-General appoint.

(4) If at any time there are less than three members of Public Service Commission besides the chairman or if an such member is acting as chairman or is for any reason unable to perform the functions of his Office, the Governor-General may appoint a person qualified for appointment as a member of the Commission to act as a member, and any

person so appointed shall continue to act until his appointment is revoked by the Governor-General

(5) The functions of the Governor-General under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

89.-(1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

(2) R & R: A 19/90

(3) The provisions of this section shall not apply in relation to any of the following offices-

- (a) the office of Chief Justice or Senior Puisne judge;
- (b) except for the purpose of making appointments thereto or to act therein, the office of Director of Audit;
- (c) the office of Ombudsman;
- (d) any office, appointments to which are within the functions of the Judicial and Legal Service Commission or the Police Service Commission;
- (e) any office to which section 87 of this Constitution applies;
- (f) any ecclesiastical office;
- (g) R: A 51/97
- (h) any office of a temporary nature, the duties attaching to which are mainly advisory and which is to be filled by a person serving under a contract on non-pensionable terms.

(4) Before any appointment is made to the office of Secretary to the Cabinet, of Financial Secretary, of a Permanent Secretary or of any supervising officer within the meaning of section 68 of this Constitution, the Public Service Commission shall consult the Prime Minister and no appointment to the office of Secretary to the Cabinet, of Financial Secretary or of a Permanent Secretary, shall be made unless the Prime Minister concurs therein.

(5) Notwithstanding the preceding provisions of this section, the power to transfer any person holding any such office as is mentioned in the preceding subsection to any other such office, being an office carrying the same emoluments, shall vest in the Governor-General, acting in accordance with the advice of the Prime Minister.

(6) Before the Public Service Commission appoints to or to act in any public office any person holding or acting in any office the power to make appointments to which is vested in the judicial and Legal Service Commission or the Police Service Commission, the Public Service Commission shall consult that Commission.

(7) Before making any appointment to any office on the staff of the Ombudsman, the Public Service Commission shall consult the Ombudsman.

(8) The Public Service Commission shall not exercise any of its powers in relation to any office on the personal staff of the or in relation

to any person holding or acting in any such office, without the concurrence of the acting in his own deliberate judgment.

(9) References in this section to the office of Financial Secretary or of a Permanent Secretary are references to that office established on 11th March 1968 and include references to any similar office established after that date that carries the same or higher emoluments.

90.-(1) R & R: A 5/97

(2) No person shall be qualified for appointment as a member of the Police Service Commission if he is a member of, or a candidate for election to, the Assembly or any Local Authority, a public officer or a local government officer

(3) If at any time there are less than three members of the Police Service Commission besides the chairman or if any such member is for any reason unable to perform the functions of his office, the Governor General may appoint a person who is qualified for appointment as a member of the Commission to act as a member and any person so appointed shall continue to act until his appointment to act is revoked by the Governor General

(4) The functions of the Governor General under this section shall be exercised by him after consultation with the Prime Minister and the Leader of the Opposition.

91.-(1) Subject to the provisions of section 93 of this Constitution, power to appoint persons to hold or act in any office in the Police Force (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Police Service Commission.

Provided that appointments to the office of Commissioner of Police shall be made after consultation with the Prime Minister.

(2) The Police Service Commission may, subject to such conditions as it thinks fit, by directions in writing delegate any of its powers of discipline or removal from office to the Commissioner of Police or to any other officer of the Police Force, but no person shall be removed from office except with the confirmation of the Commission.

92. (1) R & R: A. 2/82

(2) A Commissioner may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) A Commissioner shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has recommended to the Governor-General that he ought to be removed from office for inability as aforesaid or for misbehaviour.

(4) If the Governor-General acting in his own deliberate judgment, considers that the question of removing a Commissioner ought to be investigated then-

- (a) the Governor-General acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a chairman and not less than two other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from such a court;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether the Commissioner ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the Governor-General, acting in his own deliberate judgment, may suspend the Commissioner from performing the functions of his office and any such suspension may at any time be revoked by the Governor-General, acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the that the Commissioner should not be removed.

(6) The offices to which this section applies are those of appointed member of the judicial and Legal Service Commission, chairman or other member of the Police Service Commission.

Provided that, in its application to the appointed member of the judicial and Legal Service Commission, subsection (4) of this section shall have effect as if for the words "acting in his own deliberate judgment" there were substituted the words "acting in accordance with the advice of the Chief Justice".

(7) The provisions of this section shall apply to the office of Ombudsman as they apply to a person specified in subsection 6) of this section:

Provided that subsection (1) shall have effect as if the words "four years" were substituted for the words "three years"

93.-(1) Subject to the provisions of this section, a person holding an office to which this section applies shall vacate the office on attaining the retiring age.

(2) Any such person may be removed from office only for inability to discharge the f-4nctions of his office (whether arising from infirmity of body -or mind or any other cause) or for misbehaviour and shall not be so removed except in accordance with the provisions of this section.

(3) Any such person shall be removed from office by the Governor-General if the question of his removal from that office has been referred to a tribunal appointed under the next following subsection and the tribunal has recommended to the Governor-General that he ought

to be removed from office for inability as aforesaid or for misbehaviour.

(4) if the appropriate Commission considers that the question of removing any such person ought to be investigated, then-

- (a) the Governor-General acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a chairman and not less than two other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from such a court;
- (b) that tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and recommend to the Governor-General whether he ought to be removed under this section.

(5) If the question of removing any such person has been referred to a tribunal under this section, the Governor-General acting in his own deliberate judgment, may suspend him from performing the functions of his office and any such suspension may at any time be revoked by the acting in his own deliberate judgment, and shall in any case cease to have effect if the tribunal recommends to the Governor-General that he should not be removed.

(6) The offices to which this section applies are those of Electoral Commissioner, Director of Public Prosecutions, Commissioner of Police and Director of Audit.

(7) In this section "the appropriate Commission" means-

- (a) in relation to a person holding the office of Electoral Commissioner or Director of Public Prosecutions the Judicial and Legal Service Commission;
- (b) in relation to a person holding the office of Commissioner of Police, the Police Service Commission
- (c) in relation to a person holding office of Director of Audit, the Public Service Commission.

(8) The retiring age for holders of the offices mentioned in subsection (6) of this section shall be the age of sixty years or such other age as may be prescribed:

Provided that a provision of any law, to the extent that it alters the age at which persons holding such offices shall vacate their offices, shall not have effect in relation to any such person after his appointment unless he consents to its having effect.

94.-(1) The law to be applied with respect to any pensions benefits that were granted to any person before 12th March 1968, shall be the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to that person.

(2) The law to be applied with respect to any pensions benefits (not being benefits to which the preceding subsection applies) shall-

- (a) in so far as those benefits are wholly in respect of a period of service as a public officer that commenced before 12th March 1968, be the law that was in force immediately before that date; and
- (b) in so far as those benefits are wholly or partly in respect of a period of service as a public officer that commenced after 11th March 1968, be the law in force on the date on which that period of service commenced,

or any law in force at a later date that is not less favourable, to that person.

(3) Where a person is entitled to exercise an option as to which of two or more laws shall apply in his case, the law for which he opts shall, for the purposes of this section, be deemed to be more favourable to him than the other law or laws.

(4) All pensions benefits (except so far as they are a charge on some other fund and have been duly paid out of that fund, to the person or authority to whom payment is due) shall be a charge on the Consolidated Fund.

(5) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or for the widows, children, dependents or personal representatives of such persons in respect of such service.

(6) References in this section to the law with respect to pensions benefits include (without prejudice to their generality) references to the law regulating the circumstances in which such benefits may, be granted or in which the grant of such benefits may be refused, the law regulating the circumstances in which any such benefits that have been granted may be withheld, reduced in amount or suspended and the law regulating the amount of any such benefits.

95.-(1) Where under any law any person or authority has a discretion-

- (a) to decide whether or not any pensions benefit shall be granted; or
- (b) to withhold, reduce in amount or suspend any such benefits that have been granted,

those benefits shall be granted and may not be withheld, reduced in amount or suspended unless the appropriate Commission concurs in the refusal to grant the benefits or, as the case may be, in the decision to withhold them, reduce them in amount or suspend them.

(2) Where the amount of any pensions benefits that may be granted to any person is not fixed by law, the amount of the benefits to be granted to him shall be the greatest amount for which he is eligible unless the appropriate Commission concurs in his being granted benefits of a smaller amount.

(3) The appropriate Commission shall not concur under sub-section (1) or subsection (2) of this section in action taken on the ground that any person who holds or has held the office of Electoral Commissioner, Director of Public Prosecutions, judge of the Supreme Court, Commissioner of Police, Ombudsman or Director of Audit has been guilty of misbehaviour unless he has been removed from office by reason of such misbehaviour.

(4) In this section "the appropriate Commission means—

- (a) in the case of benefits for which any person may be eligible in respect of the service in the public service of a person who, immediately before he ceased to be a public officer, was subject to the disciplinary control of the judicial and Legal Service Commission or that have been granted in respect of such service, the Judicial and Legal Service Commission;
- (b) in the case of benefits for which any person may be eligible in respect of the service in the public service of before he ceased to be a public officer, was a member of the Police Force.
- (c) in any other case, the Public Service Commission.

(5) Any person who is entitled to the payment of any pensions benefits and who is ordinarily resident outside Mauritius may, within a reasonable time after he has received that payment, remit the whole of it (free from any deduction, charge or tax made or levied in respect of its remission) to any country of his choice outside Mauritius:

Provided that nothing in this subsection shall be construed as preventing---

- (a) the attachment, by order of a court, of any payment or part of any payment to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party to the extent to which such attachment is permitted by the law with respect to pensions benefits that applies in the case of that person; or
- (b) the imposition of reasonable restrictions as to the manner in which any payment is to be remitted.

(6) In this section "pensions benefits" means any pensions, compensation, gratuities or other like allowances for persons in respect of their service as public officers or of the widows, children, dependents or personal representatives of such persons in respect of such service.

#### CHAPTER IX THE OMBUDSMAN

96.-(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the Governor-General, acting after consultation with the Prime Minister, the Leader of the opposition and such other persons, if any, as appear to the Governor-

General acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any Local Authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other offices as may be prescribed by the Governor-General acting after consultation with the Prime Minister.

97.-(1) Subject to the provisions of this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of mal-administration in connection with the action so taken and in which-

- (a) a complaint under this section is made;
- (b) he is invited to do so by any Minister or other member of the Assembly; or
- (c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities-

- (a) any department of the Government;
- (b) the Police Force or any member thereof;
- (c) the Mauritius Prison Service or any other service maintained and controlled by the Government or any officer or authority of any such service;
- (d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities-

- (i) the Governor-General or his personal staff;
- (ii) the Chief justice;
- (iii) any Commission established by this Constitution or their staff;
- (iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;
- (v) any person exercising powers delegated to him by the Public Service Commission or the Police Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by any individual, or by any body of persons whether incorporated or not, not being-

- (a) an authority of the Government or a Local Authority or other authority or body constituted for purposes of the public service or local government; or
- (b) any other authority or body whose members are appointed by the Governor-General or by a Minister or whose revenues consist wholly or mainly of moneys provided from public funds.

(4) Where any person by whom a complaint might have been made under the last preceding subsection has died or is for any reason unable to act for himself, the complaint may be made by his personal representatives or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to any of the following matters, that is to say-

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that-

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to avail himself or to have availed himself of that right remedy; and

(ii) nothing in this subsection shall preclude the Ombudsman from conducting any investigation as to whether any of the provisions of Chapter II of this Constitution has contravened.

(7) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section in respect of any action if he is given notice in writing by the Prime Minister that the action was taken by a Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect of any complaint made under this section where it appears to him-

- (a) that the complaint is merely frivolous or vexatious;
- (b) that the subject-matter of the complaint is trivial;

- (c) that the person aggrieved has no sufficient interest in the subject-matter of the complaint; or
- (d) that the making of the complaint has, without reasonable cause, been delayed for more than twelve months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter if he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section "action" includes failure to act.

98.-(1) Where the Ombudsman proposes to conduct an investigation under the preceding section, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect thereof.

(2) Every such investigation shall be conducted in private but except as provided in this Constitution or as prescribed under section 102 of this Constitution the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney-at-law or otherwise, in the investigation.

99.-(1) For the purposes of an investigation under section 97 of this Constitution the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee thereof; and for the purposes of this sub-section a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister

and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under section 97 of this Constitution to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

100.-(1) The provisions of this section shall apply in every case where, after making an investigation, the Ombudsman is of opinion that the action that was the subject-matter of investigation was-

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) If any case to which this section applies the Ombudsman is of opinion-

- (a) that the matter should be given further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;
- (e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;
- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken, the Ombudsman shall report his opinion, and his reasons therefor, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of the steps (if any) that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) If within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering the comments (if any) made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the

Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

101.- (1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, continue or discontinue an investigation under section 97 of this Constitution the Ombudsman shall act in accordance with his own discretion; and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the Governor-General concerning the discharge of his functions, which shall be laid before the Assembly.

102. There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision-

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints under section 97 of this Constitution may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);
- (c) for the payment of fees in respect of any complaint or investigation;
- (d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and
- (e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

#### CHAPTER X FINANCE

103. All revenues or other moneys raised or received for the purposes of the Government (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

104.- (1) No moneys shall be withdrawn from the Consolidated Fund except-

- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Mauritius; or

(b) where the issue of those moneys has been authorised by an Appropriation law or by a supplementary estimate approved by resolution of the Assembly or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 106 of this Constitution.

(2) No moneys shall be withdrawn from any public fund of Mauritius other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in the manner prescribed.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Oversea Governments and Administration or the investment of any such moneys in such securities as may be prescribed shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

105.-(1) The Minister responsible for finance shall cause to be prepared and laid before the Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Mauritius for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an Appropriation bill, introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found-

- (a) that the amount appropriated by the Appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Appropriation law; or
- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the Appropriation law or for a purpose for which no amount has been appropriated by the Appropriation law,

a supplementary estimate showing the sums required or spent shall be laid before the Assembly and the heads of expenditure shall be included in a supplementary Appropriation bill introduced in the Assembly to provide for the appropriation of those sums, or in a motion or motions introduced into the Assembly for the approval of such expenditure.

(4) Where any supplementary expenditure has been approved in a financial year by a resolution of the Assembly in accordance with the provisions of the preceding subsection, a supplementary Appropriation bill shall be introduced in the Assembly, not later than the end of the

financial year next following, providing for the appropriation of the sums so approved.

106. If the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister responsible for finance may, to such extent and subject to such conditions as may be prescribed, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of six months from the beginning of that financial year or the coming into operation of the Appropriation law, whichever is the earlier.

107.-(1) There shall be such provision as may be prescribed by Parliament for the establishment of a Contingencies Fund and for authorising the Minister responsible for finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Assembly, and a bill or motion shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

108.-(1) There shall be paid to the holders of the offices to which this section applies such salaries and such allowances as may be prescribed.

(2) The salaries and any allowances payable to the holders of the offices to which this section applies shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary payable to any person holding any office to which this section applies or to his terms of office, other than allowances, that is to his disadvantage shall not have effect in relation to that person after his appointment unless he consents to its having effect.

(4) Where a person's salary or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of the last preceding subsection, be deemed to be more advantageous to him than any others for which he might have opted.

(5) This section applies to the office of Governor-General, chairman or other members of the Electoral Boundaries Commission or of the Electoral Supervisory Commission, Electoral Commissioner, Director of Public Prosecutions, Chief Justice, Senior Puisne judge, Puisne judge, appointed member of the judicial and Legal Service Commission, chairman or other member of the Public Service Commission, appointed member of the Police Service Commission, Commissioner of Police, Ombudsman or Director of Audit.

109.-(1) All debt charges for which Mauritius is liable shall be a charge on the Consolidated Fund.

(2) For the purpose of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Mauritius or the Consolidated Fund and the service and redemption of debt thereby created.

110.-(1) There shall be a Director of Audit, whose office shall be a public office and who shall be appointed by the public Service Commission, acting after consultation with the Prime Minister and the Leader of the Opposition.

(2) The public, accounts of Mauritius and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Director of Audit and for that purpose the Director of Audit or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be prescribed.

(3) The Director of Audit shall submit his reports to the Minister responsible for finance, who shall cause them to be laid before the Assembly.

(4) In the exercise of his functions under this Constitution the Director of Audit shall not be subject to the direction or control of any other person or authority.

#### CHAPTER XI MISCELLANEOUS

111.-(1) In this Constitution, unless the context otherwise requires-

"the Assembly" means the Legislative Assembly established by this Constitution;

"the Commonwealth" means Mauritius and any country to which section 25 of this Constitution for the time being applies, and includes the dependencies of any such country;

"the Court of Appeal" means the Court of Civil Appeal or the Court of Criminal Appeal;

"disciplined force" means-

- (a) a naval, military or air force;
- (b) the Police Force;
- (c) a fire service established by any law in force in Mauritius;  
or
- (d) the Mauritius Prison Service;

"disciplinary law" means a law regulating the discipline-

- (a) of any disciplined force; or

(b) of persons serving prison sentences;

"financial year" means the period of twelve months ending on the thirtieth day of June in any year or such other day as may be prescribed by Parliament;

"the Gazette" means the Government Gazette of Mauritius;

"the Island of Mauritius" includes the small islands, adjacent thereto;

"Local Authority" means the Council of a town, district or village in Mauritius;

"local government officer" means a person holding or acting in any office of emolument in the service of a Local Authority but does not include a person holding or acting in the office of Mayor, Chairman or other member of a Local Authority or Standing Counsel or Attorney Local Authority;

"Mauritius" means the territories which immediately before 12th March 1968 constituted the colony of Mauritius;

"oath" includes affirmation;

"oath of allegiance" means such oath of allegiance as prescribed in schedule 3 to this Constitution;

"Parliament" means the Parliament established by this Constitution;

"the Police Force" means the Mauritius Police Force and includes any other police force established in accordance with such provision as may be prescribed by Parliament;

"prescribed" means prescribed in a law:

Provided that-

(a) in relation to anything that may be prescribed only by Parliament, it means prescribed in any Act of Parliament; and

(b) in relation to anything that may be prescribed only by some other specified person or authority, it means prescribed in an order made by that other person or authority;

"public office" means, subject to the provisions of the next following section, an office of emolument in the public service;

"public officer" means the holder of any public office and includes a person appointed to act in any public office;

"the public service" means the service of the State in a civil capacity in respect of the government of Mauritius;

"Rodrigues" means the Island of Rodrigues.

"session" means the sittings of the Assembly commencing when Parliament first meets after any general election or its prorogation at any time and terminating when Parliament is prorogued or is dissolved without having been prorogued;

"sitting" means a period during which the Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

"subordinate court" means any court of law subordinate to the Supreme Court but does not include a court-martial.

(2) Save as otherwise provided in this Constitution, the Interpretation Act 1889(a) shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to Acts of the Parliament of the United Kingdom.

112.-(1) In this Constitution, unless the context otherwise requires, the expression "public office"-

(a) shall be construed as including the offices of judges of the Supreme Court, the offices of members of all other courts of law in Mauritius (other than courts-martial), the offices of members of the Police Force and the offices on the Governor-General's personal staff; and

(b) R: A 48/91

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office or a local government office, as the case may be, by reason only that he is in receipt of a pension or other like allowance in respect of service under the Crown or under a Local Authority.

(3) For the purposes of sections 38(3), 88(2) and 90(2) of this Constitution, a person shall not be considered as holding public office or a local government office, as the case may be, by reason only that he is in receipt of fees and allowances by virtue of his membership of a board, council, committee, tribunal or other similar authority (whether incorporated or not).

113.- (R& R: Act 2/82)

114.-(1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable, to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

115. (1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

116.-(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed:

Provided that-

(a) nothing in this subsection shall be construed as conferring on any person or authority power to require any person, to whom the provisions of section 78(2) to (6) or section 92(2) to (5) apply to retire from the public service; and

(b) any power conferred by any law to permit a person to retire from the public service shall in the case of any public officer who may be removed from office by some person or authority other than a Commission established by this Constitution, vest in the Public Service Commission.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

117. Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant-

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

118. (1) Any Commission established by this Constitution may by regulations make provision for regulating and facilitating the performance by the Commission of its functions under this Constitution.

(2) Any decision of any such Commission shall require the concurrence of a majority of all the members thereof and subject as aforesaid, the Commission may act notwithstanding the absence of any member:

Provided that if in any particular case a vote of all the members is taken to decide the question and the votes cast are equally divided the chairman shall have and shall exercise a casting vote

(3) Subject to the provisions of this section, any such Commission may regulate its own procedure.

(4) In the exercise of their functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority.

(5) In addition to the functions conferred upon it by or under this Constitution any such Commission shall have such power and other functions (if any) as may be prescribed.

(6) The validity of the transaction of business of any such Commission shall not be affected by the fact that some person who was not entitled to do so took part in the proceedings.

(7) The provisions of subsections (1), (2), (3) and (4) of the section shall apply in relation to a tribunal established for the purposes of section 5(4), 15(4), 18(3), 78(4), 92(4), or 93(4) of this Constitution as they apply in relation to a Commission established by this Constitution, and any such tribunal shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

119. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

120. Where any power is conferred by this Constitution to make any order, regulation or rule, or to give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such order, regulation, etc. rule or direction.

121. Where any person or authority other than the President is directed by this Constitution to exercise any function after consultation with

any other person or authority, that person or authority shall not be obliged to exercise that function in accordance with the advice of that other person or authority.

122. All laws other than Acts of Parliament that make any such provision as is mentioned in section 5 (1) or section 15 (3) of this Constitution or that establish new criminal offences or impose new penalties shall be laid before the Assembly as soon as is practicable after they are made and (without prejudice to any other power than may be vested in the Assembly in relation to any such law) any such law may be revoked by the Assembly by resolution passed within thirty days after it is laid before the Assembly:

Provided that-

- (a) if it is so prescribed by Parliament in relation to any such law, that law shall not be laid before the Assembly during a period of public emergency within the meaning of Chapter 11 of this Constitution;
- (b) in reckoning the period of thirty days after any such law is laid before the Assembly no account shall be taken of any period during which Parliament is dissolved or prorogued or is adjourned for more than four days.

#### SCHEDULE I TO THE CONSTITUTION

##### ELECTION OF MEMBERS OF LEGISLATIVE ASSEMBLY

1. -(1) There shall be sixty-two seats in the Assembly for members representing constituencies and accordingly each constituency shall return three members to the Assembly in such manner as may be prescribed, except Rodrigues, which shall so return two members.

(2) Every member returned by a constituency shall be directly elected in accordance with the provisions of this Constitution at a general election held in such manner as may be prescribed.

(3) Every vote cast by an elector at any election shall be given by means of a ballot which, except in so far as may be otherwise prescribed in relation to the casting of votes by electors who are incapacitated by blindness or other physical cause or unable to read or understand any symbols on the ballot paper, shall be taken so as not to disclose how any vote is cast; and no vote cast by any elector at any general election shall be counted unless he cast valid votes for three candidates in the constituency in which he is registered or, in the case of an elector registered in Rodrigues, for two candidates in that constituency.

2.-(1) Every political party in Mauritius, being a lawful association, may, within fourteen days before the day appointed for the nomination of candidates for election at any general election of members of the Assembly, be registered as a party for the purposes of that election and paragraph 5(7) of this schedule by the Electoral Supervisory Commission upon making application in such manner as may be prescribed:

Provided that any two or more political parties may be registered as a party alliance for those purposes, in which case they shall be

regarded as a single party for those purposes; and the provisions of the schedule shall be construed accordingly.

(2) Every candidate for election at any general election may at his nomination declare in such manner as may be prescribed that he belongs to a party that is registered as such for the purpose of that election, and, if he does so, he shall be regarded as a member of that party for those purposes, while if he does not do so, he shall not be regarded as a member of any party for those purposes; and where any candidate is regarded as a member of a party for those purposes, the name of that party shall be stated on any ballot paper prepared for the purposes upon which his name appears.  
for those purposes up

(3) Where any party is registered under this paragraph, the Electoral Supervisory Commission shall from time to time be furnished in such manner as may be prescribed with the names of at least two persons, any one of whom is authorised to discharge the functions of leader of that party for the purposes of the proviso to paragraph 5(7) of the Schedule.

(4) There shall be such provision as may be prescribed requiring persons who make applications or declarations for the purposes of this paragraph to furnish evidence with respect to the matters stated in such applications or declarations and to their authority to make such applications or declarations.

(5) There shall be such provision as may be prescribed for the determination, by a single judge of the Supreme Court before the day appointed for the nomination of candidates at a general election, of any question incidental to any such application or declaration made in relation to that general election; and the determination of the judge therein shall not be subject to appeal.

3.-(1) Every candidate at any general election of members of the Assembly shall declare in such manner as may be prescribed which community he belongs to and that community shall be stated in a published notice of his nomination.

(2) Within seven days of the nomination of any candidate for election at any general election an application may be made by any elector in such manner as may be prescribed to the Supreme Court to resolve any question as to the correctness of the declaration relating to his community made by that candidate in connection with his nomination, in which case the application shall (unless withdrawn) be heard and determined by a single judge of the Supreme Court, in such manner as may be prescribed, within fourteen days of the nomination; and the determination of the judge therein shall not be subject to appeal.

(3) For the purposes of this schedule, each candidate for election at any general election shall be regarded as belonging to the community to which he declared he belonged at his nomination as such or, if the Supreme Court has held in proceedings questioning the correctness of his declaration that he belongs to another community, to that other community; but the community to which any candidate belongs for those purposes shall not be stated upon any ballot paper prepared for those purposes.

(4) For the purposes of this schedule, the population of Mauritius shall be regarded as including a Hindu community, a Muslim community and a Sino-Mauritian community; and every person who does not appear, from his way of life, to belong to one or other of those three communities shall be regarded as belonging to the General Population, which shall itself be regarded as a fourth community.

4.-(1) If it is so prescribed, every candidate for election as a member of the Assembly shall in connection with his nomination make a declaration in such manner as may be prescribed concerning his qualifications for election as such.

(2) There shall be such provision as may be prescribed for the determination by a returning officer of questions concerning the validity of any nomination of a candidate for election as a member of the Assembly.

(3) If a returning officer decides that a nomination is valid, his decision shall not be questioned in any proceedings other than proceedings under section 37 of this Constitution.

(4) If a returning officer decides that a nomination is invalid, his decision may be questioned upon an application to a single judge of the Supreme Court made within such time and in such manner as may be prescribed, and the determination of the judge therein shall not be subject to appeal.

5.-(1) In order to ensure a fair and adequate representation of each community, there shall be eight seats in the Assembly, additional to the sixty-two seats for members representing constituencies which shall so far as is possible be allocated to persons if any, belonging to parties who have stood as candidates for election as members at the general election but have not been returned as members to represent constituencies.

(2) As soon as is practicable after all the returns have been made of persons elected at any general election as members to represent constituencies, the eight additional seats shall be allocated in accordance with the following provisions of this paragraph by the Electoral Supervisory Commission which shall so far as is possible make a separate determination in respect of each seat to ascertain the appropriate unreturned candidate (if any) to fill that seat.

(3) The first four of the eight seats shall so far as is possible each be allocated to the most successful unreturned candidate if any who is a member of a party and who belongs to the appropriate community, regardless of which party he belongs to.

(4) When the first four seats (or as many as possible of those seats) have been allocated, the number of such seats that have been allocated to persons who belong to parties other than the most successful party, shall be ascertained and so far as is possible that number of seats out of the second four seats shall one by one be allocated to the most successful unreturned candidates (if any) belonging both to the second most successful of those parties and to the appropriate

community, and so on as respects any remaining seats and any remaining parties that have not received any of the eight seats.

(5) In the event that any of the eight seats remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the eight seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate, if any belonging both to the most successful of the parties that have not received any of the eight seats and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful of those parties and to the appropriate community, and so on as respects any remaining seats, and any remaining parties that have not received any of the eight seats.

(6) In the event that any of the eight seats still remains unfilled, then the following procedure shall so far as is possible be followed (and, if necessary, repeated) until all (or as many as possible) of the eight seats are filled, that is to say, one seat shall be allocated to the most successful unreturned candidate (if any) belonging both to the second most successful party and to the appropriate community, the next seat (if any) shall be allocated to the most successful unreturned candidate (if any) belonging both to the third most successful party (if any) and to the appropriate community, and so on as respects any remaining seats and parties.

(7) If at any time before the next dissolution of Parliament one of the eight seats falls vacant, the seat shall as soon as is reasonably practicable after the occurrence of the vacancy be allocated by the Electoral Supervisory Commission to the most successful unreturned candidate (if any) available who belongs to the appropriate community and to the party to whom the person to whom the seat was allocated at the last general election belonged:

Provided that, if no candidate of the appropriate community who belongs to that party is available, the seat shall be allocated to the most successful unreturned candidate available who belongs to the appropriate community and who belongs to such other party as is designated by the leader of the party with no available candidate.

(8) The appropriate community means, in relation to the allocation of any of the eight seats, the community that has an unreturned candidate available (being a person of the appropriate party, if the seat is one of the second four seats) and that would have the highest number of persons (as determined by reference to the results of the latest published overall census of the whole population of Mauritius) in relation to the number of seats in the Assembly held immediately before the allocation of the seat by persons belonging to that community (whether as members elected to represent constituencies or otherwise), if the seat were also held by a person belonging to that community:

Provided that, if, in relation to the allocation of any seat, two or more communities have the same number of persons as aforesaid preference shall be given to the community with an unreturned candidate who was more successful than the unreturned candidates of the other community or communities (that candidate and those other candidates

being persons of the appropriate party, if the seat is one of the second four seats).

(9) The degree of success of a party shall for the purposes of allocating any of the eight seats at any general election of members of the Assembly, be assessed by reference to the number of candidates belonging to that party returned as members to represent constituencies at that election as compared with the respective numbers of candidates of other parties so returned, no account being taken of a party that had no candidates so returned or of any change in the membership of the Assembly occurring because the seat of a member so returned becomes vacant for any cause,, and the degree of success of an unreturned candidate of a particular community (or of a particular party and community) at any general election shall be assessed by comparing the percentage of all the valid votes cast in the constituency in which he stood for election secured by him at that election with the percentages of all the valid votes cast in the respective constituencies in which they stood for election so secured by other unreturned candidates of that particular community (or, as the case may be, of that particular party and that particular community), no account being taken of the percentage of votes secured by any unreturned candidate who has already been allocated one of the eight seats at that election or by any unreturned candidate who is not a member of a party:

Provided that if, in relation to the allocation of any seat, any two or more parties have the same number of candidates returned as members elected to represent constituencies, preference shall be given to the party with an appropriate unreturned candidate who was more successful than the appropriate unreturned candidate or candidates of the other party or parties.

(10) Any number required for the purpose of sub-paragraph (8) this paragraph or any percentage required for the purposes of sub-paragraph (9) of this paragraph shall be calculated to not more than three places of decimals if it cannot be expressed as a whole number.

SCHEDULE 2 TO THE CONSTITUTION  
( R & R: A. 48/91)

EXPLANATORY NOTE  
(This Note is not Part of the Order)

By virtue of the Mauritius Independence Act 1968 Mauritius will attain fully responsible status within the Commonwealth on 12th March 1968. This Order makes provision for a Constitution for Mauritius to come into effect on that day, including provision for the legislature, executive government, the judicature and the public service. The Constitution also contains provisions relating to citizenship of Mauritius and fundamental rights and freedom of the individual.

## **ANNEX 21**

The British Indian Ocean Territory (Amendment) Order 1968 (S.I. 1968/111)

1968 No. 111

**BRITISH INDIAN OCEAN TERRITORY  
OVERSEAS TERRITORIES**

**The British Indian Ocean Territory (Amendment) Order 1968**

*Made - - - - - 26th January 1968*

At the Court at Sandringham, the 26th day of January 1968

Present,

The Queen's Most Excellent Majesty in Council

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

Citation and construction. 1.—(1) This Order may be cited as the British Indian Ocean Territory (Amendment) Order 1968 and shall be construed as one with the British Indian Ocean Territory Order 1965(b) (hereinafter called “the principal Order”).

(2) The principal Order and this Order may be cited together as the British Indian Ocean Territory Orders 1965 and 1968.

Amendment of principal Order.

2. The principal Order shall have effect as if—

(a) in the definition of “the Aldabra Group” in section 2(1) the words “as specified in the First Schedule to the Seychelles Letters Patent 1948 and” were omitted;

(b) in schedule 2 for the words—

“Trois Frères, including Danger Island and Eagle Island.”  
there were substituted the words—

“Three Brothers Islands  
Nelson or Legour Island  
Eagle Islands  
Danger Island.”; and

(c) in schedule 3 the words “Polymnie Island” were inserted immediately after the words “Cocoanut Island”.

*W. G. Agnew.*

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(a) 1895 c. 34.

(b) S.I. 1965/1920 (1965 III, p. 5767).

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**EXPLANATORY NOTE**

*(This Note is not part of the Order.)*

This Order corrects certain inaccuracies in the descriptions of the Chagos Archipelago and the Aldabra Group respectively in the British Indian Ocean Territory Order 1965.

**ANNEX 22**

S.A. de Smith, *Mauritius: Constitutionalism in a Plural Society*, 31 *Modern Law Review*  
(November 1968) pp. 601-622

# THE MODERN LAW REVIEW

Volume 31

November 1968

No. 6

## MAURITIUS: CONSTITUTIONALISM IN A PLURAL SOCIETY

"A daintie island of good refreshing . . . there is not under the sunne a more pleasant, healthy and fruitful piece of ground for an island uninhabited."  
(PETER MUNDY, navigator, c. 1638.)

MAURITIUS, *l'Île de France*, was ceded to the Crown in 1814. It became an independent member of the Commonwealth on March 12, 1968, and was elected to membership of the United Nations by acclamation on April 24. Between 1957 and 1966 eleven Commonwealth countries in Africa, peopled by less sophisticated inhabitants, had preceded Mauritius along the same road. Why did Mauritius lag behind? Only by outlining some of the special problems affecting Mauritius can this question be answered. Such an outline, albeit inadequate to portray a complex scene, will also help to explain the peculiar features of the independence constitution.

### I. BACKGROUND <sup>1</sup>

Mauritius is small, remote and overpopulated. Its economy is seriously vulnerable to fluctuations in world commodity prices. Intricate communal problems have stunted the growth of national consciousness and have too often dominated political controversy in modern times. In many developing countries some of these difficulties are present in a more acute form; but the Mauritian blend is unique.

Geography has been unkind to Mauritius. The island lies far out in the Indian Ocean, more than 500 miles to the east of Madagascar. Together with Rodrigues, a smaller island another 360 miles to the

<sup>1</sup> There is no standard work on Mauritius, and next to nothing has been published on the fascinating political contortions of the last few years; the writer is obliged to resist any temptation to fill this gap. General historical accounts can be found in P. J. Barnwell and A. Toussaint, *A Short History of Mauritius* (1949) and Auguste Toussaint, *History of the Indian Ocean* (1966). Detailed factual information is collected in the *Annual Reports* (H.M.S.O.); the latest is for 1966. Burton Benedict, *Mauritius: Problems of a Plural Society* (1965) is a good short survey of the main contemporary issues.

east,<sup>2</sup> it has an area of 760 square miles<sup>3</sup>; the islands are frequently smitten by cyclones.

Unfortunately, the population is now more than 800,000, an extraordinary figure for a tiny agricultural country, and despite a recent decline in the birth-rate it may well exceed two millions by the end of the century.<sup>4</sup> The soil is fertile, but no mineral resources have yet been discovered, and the economy is overwhelmingly dependent on sugar, which accounts for 97 per cent. of the country's exports. The sugar industry in Mauritius is highly efficient. But the present world market price of sugar does not even cover the cost of production. The standard of living, still significantly higher than in the large majority of African and Asian countries, has been maintained by virtue of the Commonwealth Sugar Agreement, under which two-thirds of the sugar crop is sold, largely to the United Kingdom, at a high price.<sup>5</sup> Unemployment and underemployment are rife; some progress has been made towards diversification of the economy by the development of light industry, tourism and tea production, but there are too few jobs to provide for the growing body of school-leavers.<sup>6</sup> Foreign investment and international aid are sorely needed; they are also sorely needed by a great number of competitors. Emigration is acting as a palliative to the problem of over-population; but the Mauritians who leave tend to be those with specialised skills whom the country can ill afford to lose. Shortly before independence Mauritius received from the United Kingdom a substantial grant of budgetary aid; this was the first occasion on which Mauritius had received direct aid for such a purpose.

Communal problems in Mauritius, though undoubtedly serious, are not necessarily desperate. Mauritius has no long history of bloody inter-communal disorders—the rioting between Muslims and Creoles early in 1968, resulting in twenty-seven deaths, was unprecedented—or residential segregation; nor is there an indigenous population outnumbered by immigrants of a different race or culture. The only important indigenous inhabitant was the dodo. The Dutch, fitful

<sup>2</sup> Rodrigues, little known to the outside world and difficult to reach (see Quentin Keynes, "Island of the Dodo" (1956) 100 *National Geographic Magazine* 77, 93, 99, 102-104), produces livestock and vegetables. Till independence it was administered as a dependency of Mauritius. For Rodriguan separatism, see pp. 612, 613, 622, *post*.

<sup>3</sup> Mauritius (with Rodrigues) also has two remote island dependencies, Agalega and Cargados Carajos. A former dependency, the Chagos Archipelago, was detached in 1965; see p. 609. *post*. See generally, Sir Robert Scott, *Limuria: the Lesser Dependencies of Mauritius* (1964); F. D. Ommaney, *The Shoals of Capricorn* (1952).

<sup>4</sup> Cf. Richard Titmuss and Brian Abel-Smith, *Social Policies and Population Growth in Mauritius* (1961), Chap. 3. The guess made in the text above is perhaps a conservative estimate.

<sup>5</sup> £47 10s. a ton in 1968, well over three times the world market price at the time of independence.

<sup>6</sup> For a comprehensive analysis of the basic problems, see J. E. Meade, *The Economic and Social Structure of Mauritius* (1961).

colonists, gave Mauritius its name; before they left in 1710 the dodo was dead. They were succeeded by the French, who established themselves in strength; they planted sugar, introduced French culture and African slaves, and begat many children of mixed blood. Although French rule was brought to an end during the Napoleonic Wars, the impact of France, and of the Franco-Mauritian settlers who still control the sugar industry, remains profound in Mauritius today. For example, among nearly all elements in the population French is spoken more fluently than English, and English is spoken with a French accent.<sup>7</sup> But British political institutions and ideas have prevailed—Franco-Mauritian political and social attitudes have tended to remain pre-revolutionary—and even French civil law has yielded some ground to English innovations.

In 1885 the slaves were emancipated. About this time, the first Indian indentured labourers were brought in to work on the sugar estates. Most of the labourers were prevailed upon or chose to make their homes in Mauritius, and by 1861 two-thirds of the population were of Indian origin.<sup>8</sup> Indian immigration had almost ceased by the end of the nineteenth century, and Indo-Mauritians can rightly claim to be as fully Mauritian as the "General Population"—the French and Creole<sup>9</sup> sections of the population.

At the 1962 Census, the population was broken down into four main groups. Approximately half the population described themselves as belonging to the Hindu section of the population, one-sixth as Muslims, 30 per cent. as members of the "General Population" and 3 per cent. as Chinese. The General Population is overwhelmingly Roman Catholic and varies in colour from white to black with numerous intermediate gradations of brown. Many Chinese are also Roman Catholics. The principal communal divisions in Mauritius are religious or cultural; they are not primarily ethnic, and today they have little to do with colour.

## II. CONSTITUTIONAL AND POLITICAL DEVELOPMENT TILL 1967

Till 1948 public affairs in Mauritius were dominated by British officials and Franco-Mauritian settlers. A few coloured men—Ollier, Newton, the Laurents, Rivet, and later Anquetil and Rozemont—

<sup>7</sup> The official language of the Legislative Assembly is still English (Independence Constitution, s. 49), though members may address the chair in French. For political reasons the Opposition has urged the adoption of French as a second official language; the Government has resisted this demand on the ground that it would lead to further demands for the instatement of Hindi, Urdu and other languages, with a consequential growth of linguistic communalism.

The nearest approach to a *lingua franca* in Mauritius is Creole, basically a French *patois*; the language has hardly any literature.

<sup>8</sup> See generally Burton Benedict, *Indians in a Plural Society* (1961).

<sup>9</sup> Originally the word "Creole" meant a French settler. Nowadays it usually denotes a non-white Mauritian who is not exclusively of Indian or Chinese origin, though sometimes persons of mixed race are called "coloured" and black Mauritians "Creoles." The term "Creole" also refers to a language (note 7, *supra*).

were to make their mark in politics,<sup>10</sup> but the shaping of local policy was essentially oligarchical. During the stormy Governorship of Sir John Pope-Hennessy, a dynamic Irish Catholic home ruler whose unorthodox concept of "Mauritius for the Mauritians" embraced a solicitude for the rights of Creoles and even Indo-Mauritians,<sup>11</sup> the Constitution of 1885 was adopted.<sup>12</sup> There was created a new Council of Government, consisting of the Governor, eight *ex-officio* members, nine nominated members (of whom at least three were to be non-officials), and ten other members elected on a narrow franchise. The Governor retained wide executive powers exercisable in his personal discretion. Nevertheless, the constitution was a liberal one for a Crown colony.

For more than sixty years Mauritius was governed under the 1885 Constitution; the only significant amendment was made in 1933, when the proportion of nominated non-officials was increased from one-third to two-thirds. But immediately after the Second World War came a major reform. Under the Constitution of 1947 the unofficial majority in the Legislature became an elected majority; and the franchise was broadened so that the electorate increased sixfold.<sup>13</sup> The consequences were dramatic. For the first time the Indo-Mauritians emerged as a real political force; eleven out of the nineteen elected seats were won by Hindus, seven by Creoles and one by a Franco-Mauritian. The results produced alarm and despondency not only among Franco-Mauritians but also among many Creoles who, having been effectively excluded for so long from the political influence to which their numbers had entitled them, now found themselves outnumbered by Hindu voters. The radical Mauritius Labour Party had been founded by Creoles; now it had become a predominantly Hindu party, and there began that alienation of Creoles from Hindus which has been the most regrettable feature of modern Mauritian politics.

But it was still a far cry from representative government to responsible government. Of the elected members of the Legislative Council, none was directly appointed to the Executive Council, though four of them were indirectly elected to membership of the Executive Council by proportional representation. Of the eleven nominated non-official members of the Legislative Council—there were also three *ex-officio* members as well as the Governor—seven were white and none was a Hindu.<sup>14</sup> At this time the Labour Party held a clear majority of the nineteen elective seats and had been

<sup>10</sup> See Jay Narain Roy, *Mauritius in Transition* (1960), Chap. 8.

<sup>11</sup> James Pope-Hennessy, *Verandah* (1964), pp. 231-302.

<sup>12</sup> D. Napal, *Les Constitutions de l'Île Maurice* (1962), p. 93. It is understood that a more detailed factual account of some of the constitutional developments set out in this section will appear in Chapter 3 of the *Annual Report for 1967*.

<sup>13</sup> See S.R. & O. and S.I. Revised 1948, xiii, pp. 271, 277. For the *travaux préparatoires*, see Cmd. 7228 (1947).

<sup>14</sup> Roy, *op.cit.*, pp. 365-366.

allocated none of the nominated seats.<sup>15</sup> Possibly the Governor was alive to the "Hindu menace." However, "Liaison Officers," without executive responsibilities, were appointed in 1951, and there were elected members among them.

Clearly such a situation could not endure. There followed the first round of those excruciatingly protracted but highly sophisticated controversies over constitutional reform in which Mauritius has excelled. (The local predilection for devious manoeuvre, political defamation and general disputation has earned the stern censure of some<sup>16</sup> and provided innocent entertainment for others.) In December 1958 the Legislative Council, by a small majority, passed a resolution calling for a greater measure of self-government. The Secretary of State for the Colonies temporised, asking the Governor to hold local consultations. An array of multifarious schemes soon proliferated. The Labour Party called for universal suffrage, a reduction in the number of nominated members and the introduction of a ministerial system. Others put forward proposals including communal representation with separate electoral rolls, multi-member constituencies with a limited vote, and an increase in the number of nominated members. Eventually the Secretary of State accepted the principles of universal suffrage and an unofficial majority in the Executive Council with a ministerial system, but proposed that the elected members of the Legislative Council and the non-official members of the Executive Council should all be elected by the single transferable vote system of proportional representation.<sup>17</sup>

The Mauritius Labour Party would have nothing to do with the proportional representation scheme, and a further series of meetings was convened in London. The outcome was the London Agreement of 1957.<sup>18</sup> Under this Agreement, a ministerial system of government was introduced. An independent Boundary Commission would be appointed to see whether Mauritius could be divided into forty single-member constituencies, which would give "each main section of the population . . . adequate opportunity to secure representation corresponding to its own number in the community as a whole." Failing this, elections would be held according to the party list system of proportional representation. In addition, the Governor

<sup>15</sup> H. V. Wiseman, *The Cabinet and the Commonwealth* (1958), pp. 63-64, 131-132.

<sup>16</sup> Cf. Sir Robert Scott, a former Governor: ". . . the most daunting obstacle in the way of healthy political development in Mauritius is the manner in which the political and social structure is pervaded through and through by fear and suspicions, jealousies and dislikes. Combined with this is that flavour of final purposeless, inner irresponsibility which Lord Keynes attributed to a distinguished statesman now dead" (Despatch No. 11 of January 7, 1955, para. 11 (Mauritius Legislative Council, Sess.Pap. No. 3 of 1956)). This judgment may have been too severe.

<sup>17</sup> Despatches of February 10, 1956, and March 10, 1956 (published in Sess.Pap. No. 3 of 1956).

<sup>18</sup> H.C.Deb., Vol. 566, cols. 115-117 (Written Answers); Mauritius Legislative Council, Sess.Pap. No. 1 of 1958, Appendix C.

would be enabled to nominate, in his personal discretion after consultation with members of the Legislative Council, up to twelve other members. Nomination was not to be used to frustrate the results of the elections—the 1948 precedent was not to be followed—but would be used “to ensure representation of special interests or those who had no chance of obtaining representation through election.” The proposal for the election of members of the Executive Council by proportional representation was dropped; instead, the Governor was to invite nine members of all elements in the Legislative Council, to be represented as nearly as possible in relation to party strengths.

The Trustram Eve Boundary Commission succeeded in devising forty single-member constituencies<sup>19</sup> by what may be described as “honest gerrymandering”<sup>20</sup>; its proposals were accepted<sup>21</sup> and implemented. At the General Election of 1959, held under a new constitution<sup>22</sup> and on the basis of universal suffrage, the Labour Party won a large majority of seats, campaigning in harness with its new ally, the overtly communal Muslim Committee of Action; the Independent Forward Bloc, then a Hindu party of the *sans-culottes*, made headway; the Parti Mauricien, a conservative party representing Franco-Mauritians and middle-class Creoles, fared poorly. Under-represented minorities were allocated nominated seats. The new Government, formed in accordance with the principles laid down in the London Agreement, was a coalition, and not a majority party Government.<sup>23</sup>

A somewhat uneasy equilibrium was thus established, and the way ahead was obscure. The United Kingdom Government was anxious not to exacerbate communal tensions or to imperil a vulnerable economy by forcing the pace towards full internal self-government. At a Constitutional Review Conference held in 1961 the only significant change proposed was the creation of the office of Chief Minister; further changes, still falling short of internal self-government, would be deferred till after the next General Election; after that, Mauritius might move forward to full internal self-government, “if all goes well and it seems generally desirable.” A visit by the Constitutional Commissioner might be arranged in due course.<sup>24</sup>

At the General Election of 1963 the Mauritius Labour Party lost

<sup>19</sup> Sess.Pap. No. 1 of 1958.

<sup>20</sup> Cf. W. J. M. Mackenzie, *Free Elections* (1958), pp. 110–112; T. E. Smith, *Elections in Developing Countries* (1960), pp. 13–14, 143.

<sup>21</sup> Sess.Pap. No. 5 of 1958.

<sup>22</sup> S.I. 1958, p. 2914. The constitutions of Mauritius up to independence were made by prerogative instruments. See further, on the 1958 Constitution, S.I. 1959, pp. 3501, 3505, 3506, 3510.

<sup>23</sup> Two Independents were appointed. The Independent Forward Bloc refused the Governor's invitation to join the Government.

<sup>24</sup> Sess.Pap. No. 5 of 1961; reproduced in the Report of the Mauritius Constitutional Conference 1965 (Cmd. 2797 (1965), at pp. 12–15). See also S.I. 1961, pp. 4631, 4632; S.I. 1962, p. 4083.

its absolute majority, winning nineteen out of the forty elected seats; the Parti Mauricien, having attracted a larger body of Creole support in the urban belt, improved to eight seats; the Independent Forward Bloc won seven, the Muslim Committee of Action four, and Independents two. The nomination of the twelve additional members proved burdensome both to the Governor and to some of the party leaders; the outcome left the balance of political forces much as it had been, but gave the General Population a slightly stronger representation than before. A complicating factor in the process of nomination had been the assurance previously given to the leaders of the Muslim Committee of Action that prior consideration would be given to Muslim "best losers"—candidates who had been narrowly defeated at the General Election. Apart from the embarrassing problems created between and within the parties over the selection of candidates for nomination, there were differences in interpretation over the meaning of a Muslim "best loser."<sup>25</sup> But the idea that best losers had special claims to membership—an idea that would be unacceptable in most countries—was to take root in Mauritius.

I visited Mauritius in July and August 1964. By this time the modest "second stage" of the 1961 conference decisions had been introduced<sup>26</sup> and an all-party coalition had been formed; there were no fewer than fourteen non-official Ministers, and the Chief Minister, Dr. (now Sir Seewoosagur) Ramgoolam had been elevated to the rank of Premier, but the Governor still presided in the Executive Council.

My main purpose was to explore the foundations of a constitutional scheme appropriate for full internal self-government, and in particular to reconsider the system of electoral representation and to examine new safeguards for minorities. It was clear that the existing rules and practices relating to the nomination of members would have to be discontinued. There was no consensus on what should replace it. My own suggestions stimulated discussion but offered no final answer. I reviewed a number of other possible constitutional safeguards for group and individual interests—a constitutional Bill of Rights had already been introduced—and came down in favour of an Ombudsman with wide terms of reference.<sup>27</sup>

The decisive Constitutional Conference on Mauritius took place in London in September 1965. Although the island had yet to achieve full internal self-government, the central issues facing the conference were the determination of ultimate status and the constitutional framework to be adopted for self-government and the next

<sup>25</sup> See Sess.Pap. No. 2 of 1965, paras. 14, 15.

<sup>26</sup> Mauritius (Constitution) Order 1964 (S.I. 1964, p. 1163). For the new Royal Instructions see S.I. 1964, p. 1206.

<sup>27</sup> Report of the Constitutional Commissioner, November 1964 (Sess.Pap. No. 2 of 1965).

and final step forward. The Mauritius Labour Party and the Independent Forward Bloc advocated independence. The Muslim Committee of Action was not opposed in principle to independence but strongly urged the introduction of better constitutional safeguards for Muslim interests. The Parti Mauricien Social Démocrate—the party had acquired a less conservative image as a result of the efforts of Gaëtan Duval, a young coloured lawyer who was the most stirring public speaker in Mauritius—opposed independence and supported the principle of free association with the United Kingdom<sup>28</sup>; it demanded a referendum on the question of independence or association. In the event, Mr. Anthony Greenwood, the Secretary of State, announced on the last day of the conference his view that it was right that Mauritius should be independent. If a referendum on independence were to be held, this would prolong uncertainty and “harden and deepen communal divisions and rivalries.” Instead, a General Election would be held under a new electoral system which would be introduced after an independent Electoral Commission had reported. If the newly elected Legislative Assembly then so resolved, Her Majesty’s Government would, in consultation with the Government of Mauritius, fix a date for independence after six months of internal self-government.<sup>29</sup> By the time the Secretary of State’s announcement was made, the members of the Parti Mauricien delegation had walked out of the conference. After the announcement they were joined by the two Independents.

At the conference a constitutional framework for self-government and independence had been devised.<sup>30</sup> One important element was missing—the system for elections and legislative representation. In view of the disagreements about ultimate status and the manner of self-determination, it was felt to be particularly important to reach agreement between the parties on this crucial matter, especially as the Parti Mauricien was known to be heavily supported by the General Population and was thought to be making headway among other communities. But although many ingenious compromise solutions were canvassed, none was generally acceptable. The Secretary of State therefore decided that, instead of imposing a solution, he should appoint a Commission to make recommendations on an electoral system, constituency boundaries and the best method of allocating seats in the Legislature. There were to be no more nominated members, and provision should be made for the representation of Rodrigues. For the rest, the electoral system was to be based primarily on multi-member constituencies—the small size of the existing constituencies had led to parochial pressures being exerted on members—and there were to be no communal electoral

<sup>28</sup> The party was (and is) markedly Francophile and has tendencies towards Anglophobia. Its enemies claimed that its true preference was for union with France. The neighbouring island of Réunion is an overseas department of France.

<sup>29</sup> Cmnd. 2797 (1967) p. 7.

<sup>30</sup> *Ibid.* at pp. 22–30. See further, pp. 614–621, *post.*

rolls; the system "should give the main sections of the population an opportunity of securing *fair* representation of their interests, if necessary by the reservation of seats,"<sup>31</sup> but no encouragement should be given to the multiplication of small parties.

Shortly after the conference the Chagos Archipelago was detached from Mauritius, and together with some islands in the Seychelles group was constituted as a new colony, the British Indian Ocean Territory.<sup>32</sup> It was contemplated that this territory might be used for strategic purposes. The Government of Mauritius received £3 million by way of compensation. The Ministers belonging to the Parti Mauricien then went into opposition, ostensibly on the ground that the compensation was inadequate.

The Banwell Commission, which reported early in 1966,<sup>33</sup> showed that the resources of human ingenuity had not yet been exhausted. The basic structure of the Commission's proposals was simple enough: twenty constituencies in Mauritius formed by amalgamating the existing constituencies in pairs, each returning three members, with block voting under the first-past-the-post system; and two members with full voting rights for Rodrigues. There were to be no communally reserved seats. In order to safeguard under-represented minorities, two "correctives" were proposed. In the first place, if a party obtained more than 25 per cent. of the votes cast but less than 25 per cent. of the seats, additional seats should be allocated to that party's "best losers" to bring its representation just above the 25 per cent. level; this device was conceived mainly for the purpose of giving the Opposition a "blocking quarter" in the process of constitutional amendment under a new constitution. In the second place, there would in any case be five extra seats to be allocated to "best losers" from under-represented parties and communities by means of a complex formula introducing an element of proportional representation; no party would be entitled to such a seat unless it had obtained at least 10 per cent. of the total vote and at least one directly elected member and unless it had a defeated candidate belonging to the community entitled to the seat to be allocated.

The United Kingdom Government, having accepted these proposals, executed an abrupt side-step when the parties represented in the Government of Mauritius flatly rejected the principles underlying the correctives. The Banwell recommendations would have left the Muslim Committee of Action with a choice between the fate of the dodo and the embraces of the Mauritius Labour Party. To its

<sup>31</sup> Cmnd. 2797 (1967), p. 5 (*italics provided*). These words were carefully chosen, and were intended to indicate that the Commission was not obliged to attempt to ensure that all sections of the population should be afforded representation in proportion to their numbers. To this extent the London Agreement of 1957 was superseded.

<sup>32</sup> S.I. 1965 No. 1920. See also S.I. 1965, p. 6440; H.C.Deb. Vol. 720, col. 2 (Written Answers) (November 10, 1965).

<sup>33</sup> Colonial No. 362 (1966).

leaders neither alternative seemed attractive. The Labour Party was also in a difficult position. As the major partner in the Government coalition, it felt itself to be losing popular support as a result of the deteriorating financial and employment situation. Partly because of the conflicts between India and Pakistan, many Muslims had gravitated to the Parti Mauricien. The Labour Party needed all the Muslim support it could retain. At the same time, it was threatened by the emergence of a new political body, the narrowly sectarian Hindu Congress, which was a by-product of the anti-Hindu campaign waged by some elements in the Opposition. And it had a deep suspicion of the divisive potential inherent in any scheme of proportional representation. In short, it could see itself falling at the last hurdle before independence.

Mr. John Stonehouse, the Parliamentary Under-Secretary for the Colonies, was dispatched to Mauritius, and within a few days brought off the remarkable feat of securing the agreement of all parties on a modified version of the Banwell scheme. Briefly, the Banwell "correctives" were dropped; instead, there were to be eight seats allocated to best losers from under-represented communities, but the allocation was to be made in such a way as to retain the numerical balance between the party or party alliance having the largest number of victories in the sixty-two constituency seats on the one hand, and the minority party or party alliance on the other; the requirement that a party had to obtain 10 per cent. of the total vote and one directly elected member to qualify for a best loser seat was also eliminated.<sup>34</sup> Thus was Mauritius to move forward into the society of nations.

All that remained was to draw up new electoral registers, dissolve the Legislative Assembly and conduct the fateful General Election. The pace of events, however, was far from lively.<sup>35</sup> Ultimately the elections were held on August 7, 1967.<sup>36</sup> About 90 per cent. of the registered electors voted. The Mauritius Labour Party, the Muslim Committee of Action and the Independent Forward Bloc, which had formed an *ad hoc* Independence Party, obtained 54.5 per cent. of the votes and won thirty-nine seats, nearly all in mainly rural constituencies. The Parti Mauricien Social Démocrate, under Duval's skilful leadership, obtained 43.5 per cent. of the votes and won twenty-three seats, all in urban constituencies or Rodrigues where

<sup>34</sup> See H.C. Deb. Vol. 731, cols. 92-94 (Written Answers) (July 7, 1966); and Schedule 1 to the Constitution of 1966 (S.I. 1966, p. 5190), now reproduced in Schedule 1 to the Independence Constitution (S.I. 1968, p. 1871).

<sup>35</sup> This was attributable partly to the cumbersome procedure for registration and partly to a disinclination on the part of the Mauritian Ministers to rush to the hustings amid gathering storms. Under the then existing constitution the Governor could have dissolved the Legislative Assembly without ministerial advice, but to do so would have been highly injudicious.

<sup>36</sup> Both the process of registration and the elections were scrutinised by a team of Commonwealth observers. They made criticisms on points of detail but agreed that the procedures were free and fair (Commonwealth Nos. 2 and 3 (1967)).

Hindus are in a minority. The Hindu Congress proved to be a damp squib; the intervention of its candidates had no effect on the result in any constituency. Other parties and independent candidates received negligible support.

Of the Independence Party's successful candidates, thirty-one were Hindus, five were Muslims and three were members of the General Population. Of the P.M.S.D.'s successful candidates, three were Hindus, five were Muslims, thirteen were members of the General Population and two were Sino-Mauritians; it is generally thought that the party received at least 70 per cent. of the Muslim vote, at least 80 per cent. of the General Population vote and the bulk of the Chinese vote, but little support among Hindus other than Tamils.

The eight best loser seats were then allocated, four to each party; six went to candidates belonging to the under-represented General Population, one to a Muslim and one to a Hindu. The Muslim was Mr. A. R. Mohamed, the leader of the Muslim Committee of Action. For many years Mr. Mohamed, perhaps the most colourful figure in Mauritian politics, had been the arch-priest of best-loserdom. The self-government constitution was brought into force,<sup>37</sup> and the new Legislative Assembly passed a resolution requesting the United Kingdom Government to implement the decisions taken in London in 1965. On October 24, 1967, it was announced that Mauritius would become independent on March 12, 1968.

### III. MAURITIUS AT THE UNITED NATIONS

A brief note on the treatment of the problems of Mauritius by the political organs of the United Nations may be interpolated at this point.

Mauritius was first discussed at the United Nations in 1964, and then only in a perfunctory way. The creation of the British Indian Ocean Territory in 1965 was naturally condemned<sup>38</sup>: it involved the dismemberment of existing colonial territories and the establishment of a new colony with a view to its use for "foreign bases." Indeed, the Committee of Twenty-Four has refused to recognise the existence of the new colony as a legitimate entity.

1967 was a bad year for Britain at the United Nations. Britain was denounced for refusing to use force to quell the Rhodesian rebellion; the grant of associated statehood to five small islands in the Caribbean was not accepted as a bona fide act of decolonisation; and the General Assembly ended by demanding in effect that

<sup>37</sup> For the text, see Mauritius Constitution Order 1966 (S.I. 1966, p. 5190); for the Royal Instructions, see S.I. 1967, p. 2135. Three minor amendments were made to the Constitution Order in 1967 (see S.I. 1967, pp. 2133, 3807, 5455; the third designated the Premier as Prime Minister). See also the Mauritius (Former Legislative Council) Validation Order 1966 (S.I. 1966, p. 5254); for the background to this Order, see *Annual Report for 1966*, pp. 5-6.

<sup>38</sup> General Assembly Resolution 2066 (xx) (1965).

Gibraltar be handed over to Spain against the will of the overwhelming majority of the colony's inhabitants. Against this background one would hardly have expected the Committee of Twenty-Four or the Fourth Committee of the General Assembly to congratulate Britain on the progress that was being made towards the decolonisation of Mauritius, particularly in view of the fact that from September 1965 till August 1967 progress was not immediately perceptible. Even so, some of the proceedings before those bodies may cause the most hardened cynic to blench. Statements of fact were treated as falsehoods and fantasies were accepted as facts.<sup>39</sup> But once independence had been achieved (presumably to the surprise of the majority of the Committee of Twenty-Four), all was forgotten, if not forgiven.

#### IV. INDEPENDENCE

The road from internal self-government to independence was short but stony. In the first place, separatist agitation developed in Rodrigues, which has an almost exclusively Creole population and had voted overwhelmingly for the P.M.S.D. and against Mauritian independence at the 1967 elections. Separatist movements in former

- <sup>39</sup> (i) On June 15, 1967, a Mr. Sibsurrin, who claimed to have 50,000 supporters in Mauritius, launched into a vitriolic attack on the Government of Mauritius when giving evidence by special invitation as a petitioner before the Committee of Twenty-Four. He was treated with deference by the Chairman and some of the other delegates. (See A/AC. 109/S.R. 535.) At the General Election held a few weeks later, Mr. Sibsurrin obtained 63 votes in his constituency, receiving the support of 0.6 per cent. of the voters.
- (ii) On June 16, 1967, the Indian representative on the Committee observed that the "United Kingdom Government's policy with regard to Mauritius was to delay independence as much as possible . . . the United Kingdom Government had found one pretext after another to postpone the inevitable, giving the impression that it had found parting with that rich colony extremely difficult." (See A/6700/Add. 8, at pp. 38-39.) For many years the Indian Government had had a resident Commissioner in Mauritius.
- (iii) The Tanzanian representative remarked in April 1967: "The electoral system under which each voter would be obliged to cast three votes was one which had been tried in Tanganyika prior to its independence and had since been discarded. Such a system actually amounted to a denial of the right to vote . . ." (A/6700/Add. 8, Annex, p. 24). The representative may conceivably have had his mind on Fiji, not Mauritius. If he was indeed addressing his mind to the right country his incomprehension was total.
- (iv) On November 24, 1967, the representative of the Democratic Republic of the Congo noted with regret (in the course of a debate on a report on the activities of foreign monopolies which were allegedly impeding the granting of independence in colonial territories) that the situation in Southern Africa was being repeated in Mauritius (see A/C.4/S.R. 1724 at p. 9). In fact there are no foreign (or British) monopolies operating in Mauritius; and the date for the independence of Mauritius had been announced four weeks earlier. This anthology could easily be enlarged.

One should add that the Committee of Twenty-Four had at its disposal a substantial body of factual information, prepared by the Secretariat, about Mauritius; and that the British representative made supplementary factual statements and replied to the questions and assertions of other representatives.

island dependencies of larger islands or island groups which have just achieved full self-government are becoming a common phenomenon—the Anguillan rebellion against the authority of St. Kitts and the desire of Barbuda to sever its links with Antigua are two manifestations of this trend—and they are apt to present very great difficulties. The antipathy in Rodrigues towards Mauritius was accentuated by ethnic differences. However, the United Kingdom Government refused to accede to the Rodriguan request for secession.<sup>40</sup>

Secondly, the rioting between Muslims and Creoles in Port Louis, the capital of Mauritius, late in January 1968 quickly led to the proclamation of a state of emergency<sup>41</sup> and the calling in of British troops from Singapore. The most serious disorders were soon quelled, but not before many casualties and heavy damage to property had occurred. The connection between the rioting and political rivalry was tenuous; the immediate causes appear to have been the growth of prostitution and protection rackets operated by communal gangs; but once violence had begun it spread beyond the organised hooligans and assumed an uglier dimension. Hindus were unaffected. For the P.M.S.D. the outcome was an evaporation of the party's support among the Muslim section of the population.

The United Kingdom Parliament passed the Mauritius Independence Act 1968; and the Mauritius Independence Order 1968,<sup>42</sup> embodying the Constitution, was made. Meanwhile a compensation scheme for expatriate public officers who chose to retire had been adopted.<sup>43</sup>

Princess Alexandra was to represent Her Majesty at the independence celebrations. On the advice of the United Kingdom Government—advice which was resented and criticised in Mauritius—she did not attend them. Despite the continuance of the state of emergency, the celebrations passed off with dignity and without untoward incidents; the only casualty directly attributable to the celebrations was a member of the Mauritius Police Force, injured during the course of an over-ambitious motor-cycle display. The official Opposition had instructed its supporters to boycott the celebrations; two members of the P.M.S.D. nevertheless attended the State Opening of Parliament, and one of them, loudly applauded from the Government benches, seconded the Prime Minister's address in reply to the Speech from the Throne.<sup>44</sup> In Rodrigues prudence prevailed,

<sup>40</sup> *The Times*, January 13, 1968. Union with Réunion seems to have been the preferred option of the Rodriguans. About this time Rodrigues was struck by two cyclones, and shortly afterwards there was rioting on the island over the distribution of food supplies.

<sup>41</sup> The Governor was still responsible for internal security, but he acted in consultation and with the concurrence of the Prime Minister.

<sup>42</sup> S.I. 1968, p. 1871.

<sup>43</sup> S.I. 1967, p. 3782. See further Cmnd. 3606 (1968) (Public Officers Agreement).

<sup>44</sup> Another unexpected incident was a small but vigorous Maoist demonstration at Plaisance Airport to greet the official guests from Peking.

and the official flag-raising ceremony took place unceremoniously under the cover of darkness.

## V. THE CONSTITUTION

At first glance the Independence Constitution may seem to be a not very remarkable product of the Westminster export model factory. Closer scrutiny reveals a number of unusual features calling for explanation.

### *The Legislature*

Mauritius has a unicameral legislature of seventy members. The peculiarities of the best loser system under which eight of the seats are allocated after the filling of the sixty-two constituency seats have already been outlined.<sup>45</sup> The most regrettable aspect of the electoral system is that candidates must declare, at the time of their nomination, to what community they belong; but this was the price paid in order to obtain agreement between the parties in 1966.

Constituency delimitations are to be conducted at intervals of not more than ten years by an Electoral Boundaries Commission, composed of a chairman and two to four other members appointed on the advice of the Prime Minister after consultation with the Leader of the Opposition; the members will hold office for five years, subject to removal in the same manner as superior judges.<sup>46</sup> Supervision of the registration of voters and the conduct of elections is entrusted to an Electoral Supervisory Commission, the Chairman of which is to be appointed by the Judicial and Legal Service Commission, a conspicuously non-political body; the other members of the Supervisory Commission are appointed in the same manner as those of the Boundaries Commission; all enjoy the same judicial-type tenure. Bills and other legal instruments relating to registration and elections must be submitted in draft to the Supervisory Commission for comment; any report made by the Commission must be laid before the Assembly. An Electoral Commissioner, a barrister appointed by the Judicial and Legal Service Commission and enjoying judicial security of tenure, works under the exclusive authority of the Supervisory Commission.<sup>47</sup>

### *Executive and Legislature*

Provision is made for the normal Cabinet system of parliamentary government. But there can be as many as fifteen Ministers and five

<sup>45</sup> At p. 610 *ante*. See Constitution, s. 31 (2) and Sched. 1. Resident Commonwealth citizens, as well as citizens of Mauritius, may vote and be elected to the Legislative Assembly (Constitution, ss. 33, 42). The Speaker of the Assembly is removable only on the resolution of two-thirds of the membership of the Assembly (s. 32 (3) (d)).

<sup>46</sup> ss. 38 (1), 39, 92 (2)-(5).

<sup>47</sup> ss. 38 (2), 40, 41, 92 (2)-(5).

parliamentary secretaries.<sup>48</sup> Undoubtedly Mauritius could be governed by fewer office-holders; the liberal upper limit is a manifestation of the politics of accommodation,<sup>49</sup> of which Sir Seewoosagur Ramgoolam is an accomplished exponent. In this plural society, governed by a potentially fissiparous coalition, it has been thought necessary to accommodate as many political and communal interests as possible within the framework of the Constitution. There are other plural societies (*e.g.*, the Lebanon) in which more elaborate and devious expedients are employed for a similar purpose.<sup>50</sup>

A Parliament lasts for five years unless sooner dissolved. Normally the Governor-General may dissolve Parliament only on the Prime Minister's advice. However, he may dissolve without advice if (i) the office of Prime Minister is vacant and he considers that there is no prospect of being able to find a successor with majority support in the Assembly; or (ii) the Assembly has passed a vote of no confidence in the Government and the Prime Minister has neither resigned within three days nor advised a dissolution within seven days or such longer period as the Governor-General considers reasonable.<sup>51</sup> If the latter situation arises and the Governor-General decides not to dissolve, he must instead remove the Prime Minister. If after a General Election the Governor-General is of the opinion that the Prime Minister has lost his majority, he *may* remove the Prime Minister, but not until ten days have elapsed, unless he is satisfied that the Opposition has won a majority of seats<sup>52</sup>; the requirement of ten days' grace is presumably designed to cover the type of situation that arose in Sierra Leone early in 1967, precipitating a *coup d'état*. The office of Prime Minister does not automatically become vacant on a dissolution of Parliament.

### *The Governor-Generalship*

This recital shows that the Governor-General is invested with several personal discretionary powers which may have to be exercised in times of political crisis. In addition, he has a limited discretion in choosing a Prime Minister and has a free discretion to appoint an acting Prime Minister when the Prime Minister is incapable of tendering advice on this matter, and his concurrence is needed before any appointment to his own personal staff is made.<sup>53</sup>

<sup>48</sup> ss. 59-62, 66. Ministers other than the Attorney-General must be chosen from among members of the Assembly. Special provision is made (ss. 59 (3), 60 (3), 69) for an Attorney-General who is not a member of the Assembly; the first two Attorneys-General have, however, been existing members of the Assembly.

<sup>49</sup> Cf. Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (1968).

<sup>50</sup> Leonard Binder (ed.), *Politics in Lebanon* (1966). And cf. the Dodo in *Alice in Wonderland* (Chap. 3): "... all must have prizes."

<sup>51</sup> Constitution, s. 57.

<sup>52</sup> s. 60.

<sup>53</sup> ss. 59 (3), 63, 89 (8).

This list of personal discretions differs in content from that found in other Westminster model constitutions, but it is not extraordinary in its general range; indeed, the Governor-General of Mauritius lacks the general discretionary power found in some of the recent Commonwealth constitutions to refuse a Prime Minister's request for dissolution whenever he thinks that a dissolution would be contrary to the national interest and that an alternative government can be found without a dissolution.

What is extraordinary and unique in Mauritius is the range of other personal discretions vested in the Governor-General. This feature of the Constitution is traceable to the decision taken in 1965 to remove from the hands of the political branch of the Executive the power to exercise certain highly sensitive functions which might give rise to serious political contention.

Thus, the Governor-General personally appoints and removes not only the Leader of the Opposition (s. 73) and the members of the Commission on the Prerogative of Mercy (s. 75); what is far more important is that personal responsibility for the appointment of the Chief Justice, the Ombudsman, and members of the Public Service and Police Service Commissions, is vested in the Governor-General.<sup>54</sup> In 1965 it was thought inexpedient to follow the normal course of leaving responsibility for these appointments in the hands of the Prime Minister, having regard to the political and communal tensions obtaining in Mauritius.

The importance of the Service Commissions in the governmental and social structure of Mauritius can hardly be overestimated. For many years Creoles had been strongly entrenched in the civil service, the police and the judiciary; their morale and even loyalty might be undermined if they felt that they were being made the victims of communal or political discrimination or personal nepotism, and allegations of impropriety (usually ill-founded) against persons wielding political authority have abounded in Mauritius. Well-paid jobs outside the public service are very scarce; jockeying for position is commonplace. Once the Service Commissions had been given executive and not merely advisory powers, and internal self-government had been introduced, new assurances were vitally necessary. It is significant that the Constitution lays down that the Public Service and Police Service Commissions shall be composed of a Chairman (who at the present time is British) and four other members; it was expected of the Governor-General that he should play his part in the politics of accommodation by appointing one member from each of the four main sections of the population.

<sup>54</sup> ss. 77 (1), 86 (1), 90 (1). The Chief Justice is to be appointed after consultation with the Prime Minister, the members of the Public Service and Police Service Commissions after consultation with the Prime Minister and the Leader of the Opposition, and the Ombudsman after consultation with the Prime Minister, the Leader of the Opposition and the Leaders of other parties represented in the Assembly. The Governor-General may also prescribe which offices are to be created on the Ombudsman's staff (s. 96 (4)).

Personal responsibility for initiating the procedure for removal of the Chief Justice, the members of Commissions and the Ombudsman, also lies with the Governor-General. The officers concerned are removable only for inability or misbehaviour on the report of a judicial tribunal of inquiry appointed by the Governor-General in his discretion. The initiative in setting in motion the machinery for removing the Commissioner of Police, the Director of Public Prosecutions, the Director of Audit and the Electoral Commissioner, who also have judicial security of tenure, rests with the appropriate Service Commission, but the members of the judicial tribunal of inquiry are still appointed by the Governor-General in his discretion.<sup>55</sup> For superior judges, apart from the Chief Justice himself, the responsibility for setting the machinery in motion rests with the Chief Justice; before removal can be ordered a reference must be made to the Judicial Committee of the Privy Council.<sup>56</sup>

If, of course, the Governor-General were to be an obedient instrument of an authoritarian Prime Minister, these safeguards would be valueless. It was therefore agreed at the 1965 Conference that established conventions relating to the appointment and removal of a Governor-General of an independent Commonwealth country would be varied in the case of Mauritius. First, in recommending the appointment, "the Prime Minister would take all reasonable steps to ensure that the person appointed would be generally acceptable in Mauritius as a person who would not be swayed by personal or communal considerations." Secondly, the first Governor-General would be a non-Mauritian and his name would be agreed between the British Government and the Mauritian Prime Minister before it was submitted to Her Majesty; in fact the first Governor-General of Mauritius was Sir John Rennie, the last Governor of Mauritius, and he was succeeded six months later by Sir Leonard Williams, formerly General Secretary of the Labour Party. Thirdly, once appointed the Governor-General would not be removed "unless a recommendation was made to Her Majesty for the termination of his appointment on medical grounds established by an impartial tribunal appointed by the Chief Justice."<sup>57</sup>

### *Internal Security*

Mauritius has a regular police force and a small but efficient special mobile force; they were not able to cope with the communal rioting early in 1968 without the assistance of British contingents.

The police force is under the command of a Commissioner of Police; at present he is an expatriate. He is appointed by the Police Service Commission after consultation with the Chief Minister,

<sup>55</sup> ss. 78 (4)-(6), 92.

<sup>56</sup> s. 78 (3).

<sup>57</sup> Cmnd. 2797 (1965), p. 8. These provisions do not appear in the Constitution; it was considered inappropriate to limit Her Majesty's prerogative powers in these matters by means of the formal terms of a constitutional instrument.

and has judicial security of tenure; as has been noted, only the Commission can initiate the procedure for his removal. In the operational control of the police the Commissioner is subject to *general* directions of policy with respect to the maintenance of public safety and order given by the responsible Minister<sup>58</sup>; the Minister exercising these functions is in fact the Prime Minister.

In accordance with an inter-governmental Agreement,<sup>59</sup> provision has been made for assistance and advice on the staffing, administration and training of the police forces to be supplied by volunteer members of the British armed forces stationed in Mauritius. If a threat to the internal security of Mauritius arises, the British and Mauritian Governments will consult together.<sup>60</sup>

### *Courts and Judiciary*

Reference has already been made to the Judicial and Legal Service Commission, which appoints and removes judicial officers.<sup>61</sup> There is a Supreme Court, consisting of the Chief Justice (appointed by the Governor-General in his discretion after consultation with the Prime Minister), the Senior Puisne Judge (appointed on the advice of the Chief Justice) and other puisne judges appointed on the advice of the Judicial and Legal Service Commission (ss. 77, 78, 80). The jurisdiction of the Supreme Court is set out in the Constitution; it has original jurisdiction in cases where contravention of the guarantees of fundamental rights is alleged and in other constitutional questions, and questions of constitutional interpretation arising before other courts are referable to the Supreme Court.<sup>62</sup> Provision is made for the circumstances in which appeals will lie to the Privy Council.<sup>63</sup>

### *Fundamental Rights*

The constitutional Bill of Rights (Chapter II) has seventeen sections; its terms are similar to those adopted in other Commonwealth constitutions, but there are some special features.

- (i) The declaratory section (s. 3) lists "freedom to establish schools" among the fundamental freedoms; and there is a separate section (s. 14) guaranteeing the right to send children to non-government schools and the right (subject to qualifications) of religious denominations and religious, social, ethnic and cultural organisations to establish and

<sup>58</sup> Constitution, ss. 72, 90, 91, 93.

<sup>59</sup> Cmnd. 3635 (1968).

<sup>60</sup> Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968), art. 4).

<sup>61</sup> See also ss. 85, 86; Sched. 2; and p. 614, *ante*. The Commission is composed of the Chief Justice as chairman, the Senior Puisne Judge, another judicial member appointed on the advice of the Chief Justice, and the Chairman of the Public Service Commission.

<sup>62</sup> ss. 17, 83, 84.

<sup>63</sup> s. 81; see also S.I. 1968 No. 294.

- maintain schools at their own expense. In fact Government aid is provided to denominational schools.
- (ii) The guarantee of freedom from discrimination expressly mentions differential treatment attributable to caste (s. 16 (3)).
  - (iii) Derogation from basic freedoms (*e.g.*, privacy, conscience, expression, assembly, association, movement) is permissible for prescribed purposes unless the restriction in question is shown "not to be reasonably justifiable in a democratic society." The onus of proving unreasonableness is thus cast upon the person complaining of unconstitutional restraint; the formulation of the permissible grounds for derogation departs from the convoluted wording of recent constitutions and reverts to the original Nigerian model.
  - (iv) Three of the provisions under which liberty of the person may be restricted are of interest: arrest under an order of the Commissioner of Police upon reasonable suspicion of engaging in activities likely to cause a serious threat to public safety or order (s. 5 (1) (k)); an order restricting a person's movement or residence or his right to leave Mauritius (s. 15 (3) (a), (b)); and a preventive detention order made during a state of emergency (s. 18). In each of these situations the person affected is entitled to have his case reviewed before an independent tribunal, with a legal chairman, appointed by the Judicial and Legal Service Commission; procedural safeguards are provided; in the first two of these situations the decision or recommendation of the tribunal is binding but in the last the recommendation is advisory only.
  - (v) A proclamation of a state of emergency (under which a number of the guarantees may be partly suspended) lapses unless it is approved within a short period by a two-thirds' majority of the full membership of the Assembly (ss. 18 (1) (2)).

### *The Ombudsman*

The constitutional provisions for the office of Ombudsman<sup>64</sup> are based on the writer's own recommendations of 1964,<sup>65</sup> with modifications made in the light of subsequent discussions and the rules adopted for the Ombudsman in Guyana<sup>66</sup> and the Parliamentary Commissioner for Administration in Britain.<sup>67</sup>

The main differences between the Mauritian Ombudsman and the British Parliamentary Commissioner are the following:

<sup>64</sup> Constitution, ss. 92, 96-100.

<sup>65</sup> Mauritius Legislative Assembly, Sess.Pap. No. 2 of 1965, paras. 37-48.

<sup>66</sup> S.I. 1966 No. 575, Sched. 2, arts. 52-56 and 3rd Sched.

<sup>67</sup> Parliamentary Commissioner Act 1967.

- (i) The Mauritian Ombudsman is appointed not on the advice of the Prime Minister but by the Governor-General in his personal discretion.
- (ii) He is removable not by parliamentary action but in pursuance of an adverse report by a judicial tribunal of inquiry.
- (iii) He has power to entertain complaints of injustice sustained by maladministration perpetrated by central government departments and officials when they are put to him directly by members of the public, and can conduct investigations purely on his own initiative.
- (iv) He can investigate complaints against the police and persons or boards inviting tenders for government contracts.
- (v) He is entitled to report adversely if he concludes that the action in respect of which the complaint was made was, *inter alia*, "based wholly or partly on a mistake of law or fact" or "otherwise unjust or manifestly unreasonable" (s. 100 (1)), and the types of recommendations that he is empowered to make (see s. 100 (2)) include reform of the law.
- (vi) He is not precluded from investigating a complaint merely because the subject-matter falls within the constitutional guarantees of fundamental rights (s. 97 (6)).
- (vii) He must not, however, conduct an investigation if he is given notice by the Prime Minister that the action complained of was taken by a Minister or Parliamentary Secretary in the exercise of his deliberate judgment (s. 97 (7)) or that the investigation of the matter would not be in the interests of the security of Mauritius (s. 97 (9)); nor can the Ombudsman call for any document or information if the Attorney-General notifies him that its disclosure, or the disclosure of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or public security (s. 99 (5)).

Although the exclusions from the Ombudsman's area of competence are generally narrower than in Britain, the first of the three mentioned above is obviously open to criticism; it indicates that there were problems in securing agreement on the establishment of the office.

An Ombudsman for Mauritius will not be a panacea for all ills; he can nevertheless be expected to fulfil functions more important than in Britain, for in Mauritius allegations of official malpractices are far from being uncommon. Because of inter-communal suspicions, it was generally felt desirable that the first Ombudsman ought to be appointed from outside Mauritius. It is a sad comment on the problems of small and far-away countries that seven months after independence the institution still existed only on paper.

*Constitutional Amendment*

The Constitution of Mauritius is rigid. Bills for ordinary constitutional amendments require the support of two-thirds, and for the amendment of specially entrenched sections (comprising nearly a half of the Constitution) the support of three-quarters, of the total membership of the Assembly at the final vote.<sup>68</sup> At the present time this means that it will be impossible to alter any specially entrenched section, and difficult to alter other sections of the Constitution, in the absence of the acquiescence of the official Opposition.

*Miscellaneous*

The Constitution also includes provisions relating to citizenship (Chap. III)<sup>69</sup> and the independent offices of Director of Public Prosecutions (s. 72) and Director of Audit (s. 110). Salaries of the holders of major non-political offices are charged on the Consolidated Fund and are not reducible during the tenure of the occupant (s. 109).

Although the general regulation of the public service is placed within the exclusive jurisdiction of the Public Service Commission, the principal representatives of Mauritius abroad are appointed on the Prime Minister's advice; he must consult the Commission before any such appointment is made from within the public service (s. 87). Appointments of departmental heads within Mauritius and to the office of Secretary to the Cabinet are made by the Public Service Commission, but only with the Prime Minister's concurrence (s. 89 (4)).

Regulations or orders having the effect of depriving persons of personal liberty or restricting freedom of movement or creating new criminal offences or imposing new penalties must be laid before the Assembly subject to the negative resolution procedure; the requirement of laying may, however, be dispensed with by Parliament during a state of public emergency (s. 122).

## VI. RETROSPECT AND PROSPECT

The constitutional structure of Mauritius is directly attributable to communal and political divisions in the period immediately preceding independence. The structure is relatively rigid; if the picture in the kaleidoscope changes shape, it is to be hoped that the structure will not prove so rigid as to be unalterable by the prescribed procedures.

For all its peculiarities, Mauritius is a genuine liberal democracy. Some see it as an exemplar of government by discussion; some would wish for more government and less discussion. But the burdens of historical tradition, underlying communal tensions, claustrophobic remoteness and humid climatic conditions all tend to slow down the

<sup>68</sup> Constitution, s. 47.

<sup>69</sup> See also Mauritius Independence Act 1968, ss. 2, 3.

tempo of decision-making, urgent though the immediate problems may be. A higher value is placed on the achievement of a consensus than on dynamic leadership. The various constitutional provisions requiring the Prime Minister to consult the Leader of the Opposition are not mere formalities; indeed, Sir Seewoosagur Ramgoolam, fully aware of the damage that can be wrought by political acrimony aggravated by communal hostility, has maintained close personal relations with Mr. Duval, and the practice of consultation has extended far beyond the minimum constitutional standards. Perhaps a more satisfactory political system would be one bringing the present Opposition back into an all-party coalition government—Mauritius can ill afford a division between “ins” and frustrated “outs”—but such a team would be an unruly one, and at the moment personal resentment of the Opposition’s recent tactics is too strong within the Government’s ranks for such a prospect to be realised.

Meanwhile the Opposition’s strength has been debilitated by defections. Because its support has rested primarily on a communal basis, it will have difficulty in achieving power by constitutional means in the foreseeable future. The main threat to the Government’s position may come from the growing ranks of the under-employed, unemployed and unemployable; opposition attracting the support of those forces could, in time, be formidable.

The position of Rodrigues may also give rise to serious problems. Whether the establishment of an elected council on the island will mollify local feelings is doubtful. The alienation of Rodrigues, too long neglected by Britain and Mauritius, is a fact of life. Mauritius proclaims itself to be “the key to the Indian Ocean”; it maintains close political, economic and strategic links with Britain<sup>70</sup>; but if Rodrigues were to purport to cut itself adrift, the key could well change hands, for there is no reason to suppose that Mauritius unaided would be capable of exercising effective coercion.

On the Mauritian style of politics, an unending source of fascination, perhaps it is wisest to leave the last word to the voice of authority. “Why,” said the Dodo, “the best way to explain it is to do it.”<sup>71</sup>

S. A. DE SMITH \*

<sup>70</sup> Mutual Defence and Assistance Agreement (Cmnd. 3629 (1968)). The United Kingdom is empowered to station forces on the island, to operate a telecommunications system and to exercise landing rights at Plaisance Airport, but it cannot intervene in the internal affairs of Mauritius without the request and consent of the Government of Mauritius and is under no obligation to act on such a request.

<sup>71</sup> Lewis Carroll, *Alice in Wonderland*, Chap. 3 (on the Caucus race).

\* Professor of Public Law in the University of London; formerly (from 1961) Constitutional Commissioner for Mauritius.

**ANNEX 23**

Internal Memo, 27 April 1973

RESTRICTED  
~~Confidential~~

32/1 (24)  
10/7 (7)



Foreign and Commonwealth Office  
London SW1

Telephone 01-

en la

R G Giddens Esq  
British High Commission  
FORT LOUIS  
Mauritius

Your reference 32/1

Our reference HKT 18/1

Date 27 April 1973

*the bee  
manila  
GHS*

Dear Giddens,

THE LANCASTER HOUSE AGREEMENT

32/1 (17)

1. Thank you for your letter of 28 March about the conditions attached by the Prime Minister to his acknowledgement of the payment of £650,000.

2. The Prime Minister's recollection of the meeting at Lancaster House does not agree with the official record. Our undertakings in regard to navigation and meteorological facilities, fishing rights, and the use of the airstrip were much less definite than his version indicates. The true form of these undertakings was set out in the agreed record of the Lancaster House meeting of 23 September, a copy of which I enclose. The Prime Minister may be modifying these undertakings in the hope of establishing his new version on the record for subsequent use, or he may simply be relying on his memory and the written note which he sent to Trafford Smith of the Colonial Office on 1 October 1965. In either event we clearly cannot allow the new version, with its unfounded assertion of prospecting rights, to supersede the agreed official record. The question of tactics is how to re-establish the authentic version of our undertakings.

*Not enclosed*

3. We take it from the High Commissioner's letter to ~~Andrew~~ Stuart of 6 April that you do not want to stir up Mr Ramgoolam unnecessarily. It may therefore be that we should not try to refute the distortions in his letter point by point. A way round this might be for you to acknowledge his letter and discharge, ending up with something on the following lines: "Referring to the third paragraph of your letter, we can assure you that there is no change in the undertakings given on behalf of Her Majesty's Government which are set out in the record, as then agreed, of the meeting at Lancaster House on 23 September 1965." A reaffirmation in this form would be acceptable to the Legal Advisers. The use of "assure" instead of "confirm" would enable us to maintain that we had not concurred with the assertions contained in Ramgoolam's letter, and would therefore re-establish the original agreement

(6)

/for



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- 2 -

for the record. But the point might well be too subtle for the Mauritians, and you may wish to consider whether to enclose a copy of those undertakings for ease of reference. There would then be a lesser risk of misunderstanding and future trouble but perhaps a greater one of current disagreement. You will be better able than we to weigh the relative advantages.

*Yours ever*

*Andrew Stuart*

A C Stuart  
Hong Kong & Indian Ocean Dept

ENC

cc:-

R E Holloway Esq  
EAD

~~Confidential~~  
RESTRICTED

**ANNEX 24**

Letter from United Kingdom to Mauritius, 3 May 1973

10/7

3 May 1973

Dr the Rt Hon Sir Seewoosagur Ramgoolam Kt MLA  
Government House  
PORT LOUIS

(18) 32/1 - 1973

I said in my letter of 28 March that I had passed the text of your letter to me of 24 March about resettlement of the displaced Ilois, to my Government.

2. I have been asked by my Government formally to acknowledge your letter and to add, with reference to paragraph 3, an assurance that there is no change in the undertakings, given on behalf of the British Government and set out in the record, as then agreed, of the meeting at Lancaster House on 23 September, 1965.

P A Carter

## **ANNEX 25**

UN Diplomatic Conference, Plenary, 22<sup>nd</sup> meeting, 28 June 1974

**Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/ SR.22**

**Summary Records of Plenary Meetings  
22<sup>nd</sup> plenary meeting**

*Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)*

that reason, it sought true international co-operation which would lead to the replacement of exploitation by co-operation.

61. Capitalism had given rise to a polarization characterized by technical and financial progress in North America and Europe on the one hand, and by under-development and scientific and technological backwardness, in short, by poverty and misery, in Asia, Africa, Latin America and the Caribbean on the other. Thus the world was divided not only between capitalist régimes and socialist régimes, but, even more, between industrialized and non-industrialized countries, between rich and poor, between those who, thanks to their technical advancement, were exploiting the natural wealth to their satisfaction and those, including two thirds of mankind, who sold their raw materials under increasingly unjust conditions. Under these circumstances, one might wonder how the United Nations could succeed in its ideal of universality, justice, security, peaceful coexistence, development and well-being for all peoples if a system of relationships was maintained in which the rich were becoming increasingly rich and the poor increasingly poor. In view of the claim by some Powers that they should assume certain privileges in order, as they said, to ensure world security, Guinea maintained that the present situation must not be allowed to continue. It would be a tragic farce if, instead of reacting vigorously to that situation, the peoples, in their desire to bring about a change, were to plead for the generosity of

those who were profiting from it. Justice, both economic and social, was not granted: it must be won.

62. His delegation, speaking for a people which had been identified with the cause of all peoples fighting for freedom, the inalienable right of peoples, was mindful that while there were independent nations which were still suffering from economic exploitation, there were other nations which were at that very time suffering from odious colonial domination. The liberation movements operating in Angola, Mozambique, Zimbabwe, Namibia, South Africa and the Middle East were fighting for the restitution of their fatherlands and were the authentic representatives of their respective peoples. They deserved to occupy a place at the Conference, so that any decisions which might be adopted on behalf of States and peoples would have greater guarantees.

63. Within the framework of the Conference in which the foundation of a new régime of ocean space was to be established, Guinea was opposed to, and would always oppose, the iniquitous and unjust system represented by exploitation and economic imperialism, and would seek to replace it by dynamic, egalitarian and genuine co-operation. If that was the meaning of consensus, Guinea was in favour of consensus.

*The meeting rose at 1.05 p.m.*

## 22nd meeting

Friday, 28 June 1974, at 3.20 p.m.

*President: Mr. H. S. AMERASINGHE (Sri Lanka).*

*In the absence of the President, Mr. Al-Saud Al-Sabah (Kuwait) Vice-President, took the Chair.*

### General statements (continued)

1. Mr. VU'O'NG' VAN BAC (Republic of Viet-Nam), after paying a tribute to the host country, the Secretary-General of the United Nations and the President of the Conference, said that his country had a long-standing interest in working out a new law of the sea more in keeping with the times. It had participated in the United Nations Conferences on the Law of the Sea in 1958 and 1960, the Second Ministerial Meeting of the Group of 77 at Lima in 1971 and the Third Session of the United Nations Conference on Trade and Development in 1972. Despite the hardships caused by aggression from the North, his country had continued to attend to the legal problems and opportunities associated with the maritime space adjacent to its national territory. In 1967, the Republic of Viet-Nam had proclaimed its exclusive competence and direct control over the part of the continental shelf contiguous to the South Viet-Nameese territorial sea. In 1970 a law was passed to regulate prospecting for, exploration for, and exploitation of the Republic's hydrocarbon resources, and in 1972 a decree was issued establishing an exclusive fishery zone extending 50 nautical miles from the outer limit of the territorial sea. The vote on a bill to fix new limits for the territorial sea and fishery zone had been postponed pending the results of the work of the Conference, so as to ensure compliance of the law with generally accepted standards. That in itself was sufficient to show his country's interest in the codification of the new law of the sea. Moreover, despite the paucity of the Republic's human and material resources, it had taken an active part in the preparatory work of the Conference. His country's constant and profound interest in a law of the sea that would command general

observance was explained by the Republic's natural position as a maritime State and by its fundamental political orientation.

2. Because of its geographical position, the Republic of Viet-Nam was naturally sea-minded. It saw in the rational use and exploitation of the adjacent ocean space the key to a brilliant future for the Viet-Nameese nation. Many of the country's inhabitants lived off the sea, and the prospects for exploiting the riches of its continental shelf were most encouraging. It was not surprising, therefore, that his country was closely interested in any development relating to the law of the sea.

3. That natural interest accorded perfectly with his country's profound attachment to the cause of peace and international co-operation. The Republic of Viet-Nam had signed the cease-fire agreement and done everything to implement it, and it had proposed substantial demobilization and the holding of free and honest general elections to settle the whole South Viet-Nameese problem. He wished to reaffirm his Government's firm resolve to respect scrupulously and to implement fully the Paris Agreement of 27 January 1973, and it hoped that the other parties would do likewise. His country also believed in the virtue of international co-operation. It maintained friendly relations and co-operated with many of the countries present. It was ready to establish relations with other countries on a basis of mutual respect for sovereignty and territorial integrity and of non-interference in each country's domestic affairs. It was a member of United Nations specialized agencies and many other international organizations, and it was always ready to make a positive contribution to joint undertakings at the regional and world level. That was why it was playing its part in the Third United Nations Conference on the Law of the Sea by contributing to the drafting of a new law of the sea—a decisive stage on the road to peace and international co-operation.

4. His delegation had come prepared to talk the language of reason and moderation. It would work to narrow the gap between differing points of view, for it knew that a new law of the sea would be worthless unless it was widely supported and could reconcile the legitimate interests of each State and group of States with the general interests of navigation, scientific research and the rational exploitation of the common heritage of mankind.

5. Although it was aware of the constant need for compromise, his country could not forget that it was a developing country and therefore a part of the third world, many of whose ideas it shared. It advocated a territorial sea extending up to a limit of 12 nautical miles from the appropriate baseline; a bill to that effect was under consideration in the National Assembly of the Republic. It supported the idea of the patrimonial sea put forward by the Latin American countries. It demanded the recognition of the exclusive rights of coastal States over the patrimonial sea, sea-bed and subsoil and over their continental shelf. It would consider with sympathy and understanding the legitimate claim of archipelagic and land-locked States and those of developing coastal States unable to establish wide areas of national jurisdiction because they were surrounded by narrow seas or because of other geographical or ecological factors. It advocated concerted efforts to prevent the pollution of ocean space, and to promote scientific research and technological progress, the results of which must be shared equitably. It approved the creation of an international authority to handle the administrative, economic and technical management of the common heritage beyond the limits of national jurisdiction and to be responsible for combating pollution of the high seas and for the transfer of marine technology to developing countries. It was also in favour of working out an appropriate system for the peaceful settlement of conflicts. In putting forward detailed suggestions on the problems mentioned, his delegation would not be inspired simply by the pursuit of selfish interests; it would show extreme moderation in order to reach as unanimous an agreement as possible.

6. The only point on which his delegation could accept no compromise was respect for his country's sovereignty, which had been dearly won and defended during the previous 30 years. It would accept no interference in the domestic affairs of the country. No one could question, using the pretext of arriving at the broadest possible representation at meetings, the oneness and representativeness of the Government of the Republic of Viet-Nam, which was the sole State authority in South Viet-Nam and the sole authentic representative of the South Viet-Nameese people. Nor would South Viet-Nam accept any attempt to violate its territorial integrity on land or at sea. He reiterated that, as the Secretary-General of the United Nations and the Security Council had already been informed, the Hoang-Sa (Paracel) and Truong-Sa (Spratly) Archipelagos were part of the national territory of the Republic of Viet-Nam. At the beginning of 1974, a neighbouring Power had gone so far as to use force to take illegal possession of some of the islands. Its action was a flagrant violation of international law and the United Nations Charter and had provoked the just indignation of the peoples on the side of peace and justice. The South Viet-Nameese people would not bow to that act of violence and would never renounce that part of its territory. In view of the fact that the sovereignty of a coastal State over neighbouring islands must be established to fix the limits of its national jurisdiction over the contiguous ocean space, his delegation felt in duty bound to point out that the Republic of Viet-Nam possessed indisputable and inalienable sovereign rights over a number of islands lying off its coast which had been unjustly claimed or illegally occupied by neighbouring countries. The Republic of Viet-Nam was determined to assert its sovereign rights over those islands. Nevertheless, true to its policy of peace and wishing to preserve good neighbourly relations, it was prepared to settle the conflicts by negotiation or

any other peaceful means provided by the United Nations Charter. His country could not accept encroachments on the part of the continental shelf that belonged to it by right, but was prepared to resolve any differences that might arise between its neighbours and itself through bilateral negotiations or by recourse to appropriate international jurisdiction.

7. He hoped that his delegation's just and reasonable position would find a favourable welcome and would contribute positively to the success of the Conference.

8. Mr. SRIVASTAVA (Inter-Governmental Maritime Consultative Organization) said that his organization was deeply interested in many of the important issues before the Conference. It had therefore prepared and submitted to the Conference document A/CONF.62/27 which set forth in some detail information about IMCO, its past work and future work programme. There were four specific matters he wished to speak about: the origins, composition and structure of IMCO, and changes recently made or proposed to make the work of the organization more effective; IMCO's role in and future potential for providing technical assistance to developing countries; IMCO's work on the prevention and control of marine pollution, the way in which that work had developed and the new institutional arrangements made to carry it out; the wide variety of IMCO's maritime activities and their relevance to other areas of vital concern to many countries in the world.

9. The convention establishing IMCO had been adopted by a United Nations Maritime Conference in 1948, when international maritime activity had not been as widespread as in 1974. Naturally, the original members of the organization were largely maritime Powers. Since then IMCO's membership had changed greatly with the emergence of a world-wide interest in maritime operations. Eighty-six countries were currently members of IMCO, and they represented all the regions of the world evenly. About two thirds of the members came from the developing countries of Africa, Asia and Latin America. The organization was in touch with several prospective new member countries and, although IMCO specialized exclusively in maritime activities, its membership was expected to reach 100 in the near future. Any State Member of the United Nations was entitled to join IMCO at any time simply by acceding to the IMCO Convention. He pointed out that whenever the organization convened an international conference, invitations were sent to all State Members of the United Nations and its specialized agencies. Like other organizations within the United Nations system, IMCO functioned through a number of committees of which all but two were open to every member of the organization. They included the Legal Committee, which dealt with legal questions, the Facilitation Committee, which was concerned with the facilitation of maritime traffic, the Committee on Technical Co-operation, which advised the IMCO Council and Assembly on the development and implementation of its expanding programme of technical assistance to developing countries, and the new Maritime Environment Protection Committee (MEPC) established in 1973 to be responsible for the over-all co-ordination and administration of IMCO's work on the prevention and control of marine pollution.

10. IMCO was a world maritime organization that rendered very effectively a vital service to the world community in the highly technical and specialized field of shipping. Naturally, as with other similar organizations, there was a need for continuous review, for improvement in working methods and for periodic reorganization as part of the process of development. The Assembly and Council of the organization were fully conscious of that need and took appropriate action from time to time. In November 1973, the IMCO Assembly had set up an *ad hoc* working group of the whole to examine the composition and size of the Council and of the Maritime Safety Committee. The working group had already met and had formulated proposals for amending the relevant provisions of the Convention establishing IMCO. The proposed changes would entail an

increase in the membership of the Council to increase the representation of the developing countries on it. The Maritime Safety Committee, which had hitherto been a restricted body of 16 elected members, would be open to all IMCO member States. The improvements in the structure of the organization would be very important ones. IMCO was thus developing and adapting its structure to meet current requirements taking fully into account the relatively large increase in its membership, almost entirely from developing countries, in recent years.

11. Speaking about the provision of technical assistance to developing countries, he pointed out that many developing countries wanted to establish national merchant navies. The International Development Strategy for the Second United Nations Development Decade<sup>1</sup> referred to that matter specifically, as did the Programme of Action on the Establishment of a New International Economic Order. The developing countries also wished to establish modern shore maritime administrations, to provide efficient port and harbour services and to engage in other related activities. A number of IMCO technical conventions and recommendations would have to be implemented effectively to promote and ensure maritime safety according to international standards and to prevent marine pollution from ships. But there was a severe shortage, and sometimes even total lack, of national maritime expertise, without which no viable long-term programme of maritime development could be successfully carried out. IMCO had been very willing, and even anxious, to arrange for the necessary technical assistance to establish national, subregional or regional merchant navy training institutions to train personnel in navigation, marine engineering and other related subjects, and was particularly equipped to provide assistance in shipping and related matters. It had therefore developed a programme of technical assistance under the sponsorship of the United Nations Development Programme (UNDP) and in close collaboration with other organizations, particularly the United Nations Conference on Trade and Development (UNCTAD) and the International Labour Organisation (ILO), interested in certain aspects of shipping and related matters. The programme, which the governing bodies of IMCO would like to see enlarged further, had begun six years previously on a very modest scale and had grown steadily until it comprised several large-scale and quite a number of small-scale projects in Africa, Asia and Latin America. Apart from technical training, assistance was being provided in the modernization of maritime administrations, the evolution of modern maritime codes and ways of dealing with marine pollution.

12. It was reasonable to predict that one direct result of the successful conclusion of the Conference might well be a new upsurge in maritime activity. Maritime expertise, already in short supply, would be increasingly in demand, and more maritime experts would have to be made available. IMCO was at the disposal of the world community to provide assistance in that respect and it would, of course, continue to work in close co-operation with the ILO and UNCTAD. The organization's recent discussions with UNDP for increased financial assistance for worth-while projects had been very reassuring.

13. Between the time of the Convention establishing IMCO and its entry into force, the Government of the United Kingdom, recognizing the importance of and the need for urgent international action to prevent marine pollution by oil discharged from ships, had convened an international conference in 1954 to consider the matter. Since 1959, when IMCO had become the depository of the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, adopted by that conference, it had developed the subject progressively. Amendments to the Convention in 1962 and 1969 had first limited and then prohibited the discharge of oil in all areas of the sea, except in strictly defined situations. Further amend-

ments made in 1971 restricted the size of individual oil tanks in tankers and regulated their design, with a view to reducing the quantities of oil that could escape from a tanker involved in an accident. The 1954 Convention had been superseded by the comprehensive International Convention on the Prevention of Marine Pollution from Ships in 1973, which contained extensive provisions to prevent pollution of the sea by oil, liquid and dry chemicals, ship-generated garbage and sewage, and so forth. IMCO considered that all types of marine pollution—intentional, negligent or accidental—by ships and other craft, and steps to prevent pollution, had to be dealt with in an integrated manner. First, action was needed to prevent pollution caused not only by oil but also by other noxious substances and by ships' garbage and sewage. Secondly, because of inadequate or non-existent shipboard facilities, ships were sometimes obliged to discharge pollutants overboard; special tankage and other such facilities and equipment were needed to enable ships to retain probable pollutants on board and to make sure that effluents were properly monitored. Thirdly, shore reception facilities had to be provided at all ports to allow the safe discharge of pollutants retained on board vessels during a voyage. Fourthly, attention had to be given to the prevention of accidents at sea by establishing safety standards for the design, construction, equipment and operation of ships, by a formulation of traffic separation schemes for high traffic density areas, and by the elaboration and updating of international regulations for preventing collisions at sea so as to ensure safe passage across the oceans. Fifthly, technical personnel manning such ships as large tankers and chemical vessels had to be trained up to the highest possible standards. IMCO had sought to achieve those objectives in a co-ordinated manner, mainly by conventions, recommendations and codes of practice.

14. A new and important feature of IMCO's work on marine pollution was the concept of the special areas established in the 1973 Convention as being particularly vulnerable to pollution and regulated by especially rigorous provisions. Where necessary, additional provisions for such areas could also be formulated on a regional basis.

15. Although IMCO's attention had been concentrated mainly on the prevention of pollution, it had not neglected measures to deal with pollution if it occurred. Working with the group of experts dealing with the scientific aspect of marine pollution, IMCO had studied various aspects of pollution by oil and other noxious substances carried in or by ships. As a result of the studies, recommendations had been made on ways of dealing with oil spillages, on the dissemination of information about national arrangements for reporting pollution incidents, and on the co-ordination of efforts by neighbouring countries where necessary. Attention had also been given to the problem of providing compensation to victims of pollution damage. There were conventions in existence that dealt with the question of the right of States to take action to protect their interests from damage by pollution and to provide States and individuals with adequate compensation for damage suffered.

16. Although much had been achieved, there was still much to be done. For the effective prevention of marine pollution from ships, continuous vigilance and periodic reviews of ship design and equipment, navigation rules, personnel training, certification standards and the like were required, and IMCO was fully committed to that unremitting effort. In 1971, the IMCO Assembly had declared that its objective was the complete elimination of intentional marine pollution and the minimization of accidental pollution by 1980. The establishment of the Marine Environment Protection Committee (MEPC) was further clear evidence of IMCO's determination to follow up the provisions of the 1973 International Convention for the Prevention of Marine Pollution from Ships and its related protocol. The organization was maintaining close contact with the Secretariat of the United Nations Environment Pro-

<sup>1</sup>General Assembly resolutions 2626 (XXV), and 3202 (S-VI).

gramme. The text of the 1973 Convention had been transmitted to the Secretary-General of the United Nations for submission to the Conference so that it would be taken into account in the broader context of the Conference.

17. As indicated in document A/CONF.62/27, IMCO's work was not confined to the prevention of marine pollution from ships. The greater part of its effort was dedicated to ensuring the safety and efficiency of navigation and hence the continuous availability of the reliable and efficient shipping services required for international trade and commerce. Continuous efforts were needed to improve shipping technology in order to provide better and more economical maritime transport. Although that involved highly technical work and the discussion of apparently irrelevant issues, the work was of crucial importance to all nations of the world, since its success or failure affected the development of world trade and commerce on which the development of most countries of the world, especially the developing countries, depended so directly. IMCO would continue to strive for the continuous improvement of maritime safety and shipping technology.

18. Over the previous 10 years, IMCO had acquired experience and expertise in dealing with the complicated problem of marine pollution from ships and had promoted several international conventions and other agreements. The process was a continuous one, however, and any suggestions or guidance for the intensification of IMCO's efforts would receive every attention. Co-ordination of IMCO's efforts with those of other United Nations agencies concerned with the preservation of the human environment, particularly UNEP and a possible future authority for the sea-bed, would be essential. IMCO was determined to do all it could to ensure that the co-ordinated efforts of the United Nations system would contribute effectively to the preservation and enhancement of the quality of the marine environment and achieve the most fruitful results possible for all mankind.

19. He wished the Conference every success in its efforts and pledged IMCO's fullest assistance and co-operation in its work.

20. Mr. KIM Guk Jun (Democratic People's Republic of Korea) said that the Conference had been convened at a moment when great changes had taken place in world political and economic relations and there was therefore an urgent necessity to codify the many problems arising with respect to the law of the sea.

21. The peoples of the newly independent countries in Asia, Africa and Latin America were waging a dynamic struggle to exercise complete sovereignty in all spheres of State and social life and in the international arena. As the President of the Democratic People's Republic of Korea had said, there was an irresistible trend among the peoples of the world towards independence.

22. The Conference should discuss all problems arising in the field of the international law of the sea in accordance with the new trends and the changed international relations and should settle them in accordance with the aspirations of all countries and nations. The peoples of the developing countries were waging a vigorous struggle to safeguard their territorial seas and natural resources as part of their fight against aggression and imperialist and colonial intervention. In particular, in the field of the law of the sea, the peoples of the third world were independently fixing the limits of their territorial sea and the zone under their jurisdiction in conformity with the actual conditions of their countries, thus frustrating imperialist efforts to limit the territorial waters to only three miles. The question of the 200-nautical-mile limit, rightly raised by the third world countries, enjoyed the support of countries throughout the world.

23. The Government of the Democratic People's Republic of Korea regarded it as a sacred duty to support actively the struggle of all peoples who were resolutely struggling to achieve freedom and liberation, national independence and social pro-

gress and to defend the sovereignty, territorial sea and natural resources of their countries. It fully supported the demand of the third world countries that each country should independently fix its territorial sea and limits under national jurisdiction by a proper standard taking into account its geographical conditions, economic realities, defence security and the interests of neighbouring coastal States. The international sea-bed beyond national jurisdiction should be developed in a unified way by an International Authority on an equal basis and the benefits gained therefrom should be effectively used for the development of the developing countries. Accordingly, the peoples of Asia, Africa and Latin America should unite in order to be successful in their common cause.

24. That need for unity had been eloquently proved by the principles and declarations adopted by the sixth special session of the United Nations General Assembly, by the resolution on the law of the sea adopted at the Fourth Conference of Heads of State or Government of Non-Aligned Countries, held at Algiers in 1973, by the Assembly of the Organization of African Unity held at Addis Ababa in 1973 and by the meeting of Ministers of the Specialized Conference of the Caribbean Countries on Problems of the Sea held at Santo Domingo in 1972.

25. Today, aggression and interference by outside forces were the main obstacles to the realization by the peoples of Asia, Africa and Latin America of their national independence, the safeguarding of their political sovereignty and to the building of independent, prosperous and new societies. The Korean people, too, had one half of their country occupied by foreign imperialist forces of aggression and their national dignity and sovereignty were ruthlessly denied. They were thus unable to order their economy in a co-ordinated way and to utilize rationally their abundant natural resources. The occupation of South Korea by the United States Army and the acts of interference which grossly violated the exercise of sovereignty should cease, yet aggression was continuing and the acts of plunder by the militarist forces of Japan in the southern half of Korea and its adjacent sea and continental shelf had become increasingly violent. Korea's south sea had thus become one of the areas where the imperialist and colonialist Powers were competing for a "marine monopoly". That was vividly demonstrated in the "South Korea—Japan Fisheries Agreement" and the "South Korea—Japan Agreement on the Joint Development of the Continental Shelf" which South Korea had concluded with foreign aggressive forces in 1965 and January 1974 respectively. It was also expressed in the "individual contracts" which South Korea had concluded with the United States and other imperialist oil monopolies.

26. Today, the fishing grounds and the continental shelf in the south sea were still being plundered by the foreign aggressive forces against the interest and will of the Korean people. The Korean people did not therefore recognize the shackling and unequal agreement which the South Korean authorities had concluded with the foreign aggressors and had already declared them null and void. In order that the people might fully utilize their natural resources, the United States troops which had donned the helmet of the United Nations Forces should withdraw from South Korea and all intervention should cease. The Government of the Democratic People's Republic of Korea and the people had therefore consistently waged the struggle for the independent and peaceful reunification of the country without any interference by outside forces. They would continue in the future to fight resolutely in firm unity with the peoples of Asia, Africa and Latin America, who were upholding the banner of independence, as well as with the peoples of socialist countries in order to achieve national sovereignty in the entire territory of their country and to contribute actively to the common cause of mankind.

27. If the current Conference was to settle satisfactorily the tasks assigned to it in conformity with the aspirations, wishes and interests of all States, it should oppose the "marine mo-

nopoly" of the imperialists and colonialists, and the seas and oceans of the entire world should be opened to all. To that end, delegations of Governments, including the Royal Government of National Union of the Kingdom of Cambodia which genuinely represented the people of that country, should be able to participate in the Conference.

*Mr. Barnes (Liberia), Vice-President, took the Chair.*

28. Mr. SOTH (Khmer Republic) said that he regretted that the representative of the Democratic People's Republic of Korea had referred to a problem that was solely the internal concern of the Khmer Republic. He reserved the right to reply on the matter at a later stage.

29. Mr. KOLOSOVSKY (Union of Soviet Socialist Republics) expressed his appreciation to the people and Government of Venezuela for their hospitality to the Conference. He also took the opportunity to greet the peoples of all Latin American countries striving to consolidate their political and economic independence.

30. The Conference on the Law of the Sea was one of the most important international conferences ever convened by the United Nations. Unfortunately, the principle of universality had not been respected and, in spite of requests from the Soviet Union and socialist and developing countries, the Provisional Revolutionary Government of the Republic of South Viet-Nam had not been invited to the Conference. As a result, the Democratic Republic of Viet-Nam had declared that it would be unable to participate in the Conference. He reaffirmed his delegation's support of the position taken by the Democratic Republic of Viet-Nam with regard to the legitimate right of the Provisional Revolutionary Government of the Republic of South Viet-Nam to participate in the Conference.

31. His delegation, like many others, believed that the problems which the Conference had to solve were of great significance. It had been convened at a time when far-reaching changes were taking place in the world. As the General Secretary of the Central Committee of the Communist Party of the Soviet Union, Mr. Brezhnev, had said at the recent World Peace Conference in Moscow, the main development in international relations was the trend away from the "cold war" towards a relaxation of tension and from military confrontation to the strengthening of security and peaceful co-operation. That was why there was increasing recognition of the principles of peaceful coexistence, which were gradually becoming an important, commonly accepted rule of international life. That development was the result of efforts by many countries. The consistently peaceful policy pursued by the Soviet Union aimed at the full implementation of the over-all Peace Programme, adopted by the Twenty-fourth Congress of the Communist Party of the Soviet Union in 1971, which played an outstanding role in those changes, and which must necessarily affect the work of the Conference. The seas could not be allowed to become areas of rivalry and confrontation, which they would do unless the Conference acted in accord with that constructive trend in international relations.

32. The main aim of the Conference was to draw up agreed principles and norms for the rational exploitation of marine resources, which would promote peaceful co-operation among nations, taking account of the interests of coastal and landlocked countries, large and small countries, developed countries and those countries which were just beginning to establish their own independent national economy. His delegation, in accordance with its policy of supporting anti-imperialist and anti-colonialist struggles, felt that account should also be taken of the special interests of countries which had just been liberated from colonial dependence and of the interests of all developing countries.

33. The tasks facing the Conference were extremely difficult and complex. Their solution, however, was facilitated by the fact that considerable experience of co-operation among States in the oceans of the world had already led to the development

of a number of important, commonly recognized principles and rules relating to the law of the sea, the existence of which would stimulate further work on the updating of existing, and the preparation of new, provisions to meet modern needs.

34. There were a number of problems of cardinal importance, which, if resolved, would make it easier to reach agreement on other questions. At a time when economic activity was becoming more and more international, when goods were being produced specially for export and international trade, the role of such trade had greatly increased. It was however only possible when the necessary conditions existed for international navigation, in which all countries were interested, and without which such trade was unthinkable. The most important issues were the breadth of the territorial sea, the freedom of passage for all vessels through straits used for international navigation, and the freedom of the high seas.

35. The 12-mile limit for the territorial sea was recognized by approximately 100 States and was in keeping with the interests of the overwhelming majority of coastal States. Embodying it in an international convention would mean that a widely accepted international practice would become international law. The 12-mile limit was adequate for the security of coastal States and for the exercise of their economic rights and interests, and it was also acceptable for international shipping. That balance would be disturbed if the breadth of the territorial sea was excessively expanded. In that case, even the rights of coastal States as recognized in international law would acquire new characteristics; there could be serious interference with international navigation and shipping would be made dependent on the unilateral action of coastal States. Extending the breadth of the territorial sea would thus have a negative effect on international trade and on the world economy as a whole.

36. The right of transit for all ships through straits used for international navigation was closely linked to the questions of the breadth of the territorial sea and the freedom of international navigation. Such straits were the focal points of international shipping routes because they were the routes of the most intensive navigation. There could be no real freedom of international navigation or international communication without free transit for ships through straits used for international navigation and linking the high seas. The conclusion to be drawn from the established practice of navigation in international straits was that a rule of common law had already been established, recognizing the right of transit through such straits for all ships. Such a rule was in keeping with the interests of all countries even of those which did not yet have their own merchant marine. His delegation supported the retention of the principle of free transit for all ships through straits used for international navigation linking the high seas. However, in view of the contemporary conditions of navigation and particularly of the increase in traffic and in the speed and size of ships, special provisions for strict compliance with the appropriate international regulations in those straits should be enforced to protect the security and other interests of coastal States. In the case of straits linking the high seas to the territorial waters of a coastal State and leading only to such waters, his delegation supported the régime of innocent passage, taking into account the individual characteristics of the straits concerned.

37. One of the most important issues to be considered by the Conference was that of fishing. All States should be entitled to exploit the food resources of the seas and should also have a duty to conserve them. The coastal States undoubtedly had special interests with regard to the living resources of the sea adjacent to their coasts. However, all peoples should have the right to exploit the living resources of the seas and thus increase food production. His delegation was sympathetic to the wish of the developing countries to use the natural resources of the sea to raise the standards of living of their peoples, and thus to strengthen their national economy and political indepen-

dence; account should be taken of their special interests in fishing and also in the utilization of other marine resources. As indicated in General Assembly resolution 3067 (XXVIII), the question of fishing was closely related to other aspects of the law of the sea and those problems should be resolved as a whole or in a package deal.

38. He suggested that, provided that there was agreement among the participants to the Conference on a mutually acceptable solution concerning the breadth of the territorial sea, the right of transit through and overflight over international straits, international shipping, scientific research and other important problems the future convention should also include a provision recognizing the rights of coastal States to establish 200-mile economic zones and to exploit all living and mineral resources in their zones. Provision would, of course, also have to be made for the coastal State to grant to fisheries of other States, on a non-discriminatory basis, the right to fish in its economic zone in accordance with provisions established in the convention, such as payment of a modest fee where that State did not catch 100 per cent of its allowable catch in the zone. That would permit other countries to utilize the food resources of the sea and would prevent under-utilization of those resources. Although the establishment of a 200-mile economic zone would cause considerable loss to Soviet fisheries, his delegation would accept it with a view to reaching mutually acceptable decisions on all important questions relating to the law of the sea in the interests of all peoples.

39. The matter of a régime for the international sea-bed and ocean floor was also important, the question being to what extent that régime would fulfil the needs of mankind and correspond to the rational utilization of sea-bed resources. His delegation advocated the establishment of such a régime which would meet the interests of all countries in the development of their national economies. It favoured the establishment of an international organization in which States would co-operate in industrial exploration and exploitation of the mineral resources of the sea-bed. There should be no cumbersome, expensive machinery for such an organization, whose executive organ, in which all the major groups of States would be represented, would play the most important role. He fully agreed with the proposal made by the developing countries that exploitation of those mineral resources should be for the benefit of all mankind, irrespective of the geographical location of States and whether or not they had a coastline, with particular regard to the interests of the developing countries. In accordance with its peace-loving policy, his delegation favoured a provision that the sea-bed would be used exclusively for peaceful purposes. Naturally, the régime governing the sea-bed should in no way affect the status of superjacent waters which were part of the high seas, where the principles of free use by all States were in effect.

40. The Conference included a large number of land-locked and shelf-locked States, many of which were developing countries whose economic situation was further complicated by their lack of access to the sea. He therefore proposed that the right of free access of land-locked States to the sea should be recognized as a general principle of international law.

41. The increase in scientific research on the oceans was a direct result of the scientific and technological revolution. In that respect, two factors played an important role: the increase of international co-operation and the strengthening of the international legal régime governing the seas.

42. States should co-operate by combining their material, technical and other resources under the auspices of appropriate international organizations and by exchanging scientific data and the results of experiments. The Soviet Union provided extensive scientific and technological assistance to other, particularly developing countries, tens of thousands of whose citizens studied in the USSR, and would be willing to expand that assistance to include marine technology. Freedom of scientific

research in the high seas was an important stimulus without which further development of fundamental marine science, which constituted the basis for the economically efficient exploitation of ocean space and marine resources, would not progress.

43. His delegation supported the adoption of measures for the conservation of the marine environment and the prevention of pollution from any source. That was an important question which should be given serious consideration.

44. The complexity of the problems faced by the Conference stemmed from the deep relationship and interdependence of various forms of the activity of States in the world oceans. That was emphasized in General Assembly resolution 3067 (XXVIII), which said that the problems of ocean space were closely interrelated and should be considered as a whole. The provisions adopted by the Conference should become universally recognized norms of the international law of the sea and must therefore be acceptable to all groups of States. That could be achieved if a balance was maintained between national interests and the requirements of international co-operation, the consolidation of peace and the security of peoples. His delegation intended to co-operate actively with other delegations with a view to seeking just and acceptable solutions to the problems. He expressed his conviction that the spirit of goodwill and the willingness to seek reasonable solutions, essential to the success of the Conference, would prevail.

45. Mr. MAHMOOD (United Nations Council for Namibia) said that the Council for Namibia, which was struggling for the independence of that country, was most gratified to be represented at the Conference in the city that was the birthplace of Simón Bolívar, the great Liberator.

46. The decision of the General Assembly to invite the United Nations Council for Namibia to participate in the Conference was of historic importance for Namibia. It was an implementation of the decision whereby the General Assembly had terminated South Africa's mandate and had declared that Namibia would henceforth be under the direct responsibility of the United Nations. It was therefore only right that the interests of Namibia in the Conference should be represented not by South Africa, but by a delegation from the Council which included, as an integral part, the representative of the national liberation movement of Namibia, the South West Africa People's Organization (SWAPO), recognized by the General Assembly as the authentic representative of the Namibian people. The subject-matter before the Conference concerned many of the vital interests of Namibia and its inhabitants since Namibia had a large coastline and, had circumstances been different, might have become an important maritime nation.

47. Much of Namibia's livelihood was derived from the sea and its fishing industry provided both food for the population and needed foreign exchange. Even more important was the potential for off-shore drilling for oil and natural gas which had already been initiated. Experts had determined that other valuable resources existed in the subsoil of Namibia's territorial sea. The country, however, was facing the real danger that the occupying Power was misusing its temporary and illegal authority to deplete its resources.

48. The Council, as the true representative of Namibia, was therefore most interested in an equitable solution of issues relating to the law of the sea. It was interested in all related issues because they affected the very existence and prosperity of the Namibian nation. It was therefore looking forward to close co-operation, during the Conference, with other members in the same geographical position as Namibia, in particular members of the Organization of African Unity.

49. The Council would strive for a convention which, while safeguarding the national interests of Namibia, would be beneficial to the international community as a whole. To that end, it would not neglect the interests of the land-locked countries, in particular those of Namibia's good neighbours, Botswana

and Zambia. It went without saying that any convention agreed to by the Conference would, as far as Namibia was concerned, require ratification by the Government of an independent Namibia.

50. The United Nations Council for Namibia wished to express its satisfaction at the adoption of the amendment to rule 62A of the rules of procedure of the Conference. That amendment had rightly recognized that the Council should not be treated as a specialized agency. While it was understandable that the specialized agencies should participate in the Conference only when the questions within the scope of their activities were being discussed, the Council had a special status. Its interest extended to all subjects and issues before the Conference and it should have the right to participate on a continuing basis.

51. The Council, which was most grateful and proud to represent Namibia, wished to thank the countries of Latin America, the overwhelming majority of which, together with the freedom-loving peoples of Africa and Asia, had been extending valuable support to the just cause of the people of Namibia.

*Mr. Al-Saud Al-Sabah resumed the Chair.*

52. Mr. KAPOOR (International Hydrographic Organization), recalling that he had made a statement in March 1973 at the 92nd meeting of the sea-bed Committee, said that the International Hydrographic Organization had been founded in 1921 for the purpose of facilitating the exchange of hydrographic knowledge and promoting maximum standardization of charts and nautical documents and of the techniques used in hydrographic and bathymetric surveys. Considerable success had been achieved in that field, and a world-wide international series of charts was now being produced according to international specifications by a number of States members of the International Hydrographic Organization, as a co-operative venture; any member might incorporate in its own series charts produced by other States.

53. A nautical chart was an instrument compiled from precise and intensive surveys made at sea to delineate the nature of the bottom topography, navigable channels, underwater obstructions and so forth. It was used as a scientific instrument for the purpose of navigation, for the location of fishing grounds, for the laying of cables and pipelines, or for the exploration and exploitation of sea resources. Charts provided information

needed for the work of the Conference on the Law of the Sea in so far as it related to defining limits and evaluating morphological factors; they provided the basis for the construction of baselines, the demarcation of international maritime boundaries, fishery zones, traffic separation schemes, etc. To provide that information, major resurveys would be needed in many parts of the world, as many current charts were based on old data. Considerable resources, both in vessels and in technical personnel, would be needed for those surveys, and existing facilities would have to be strengthened and hydrographic services established in many countries. The International Hydrographic Organization believed that hydrographic facilities should be established in developing countries and was ready to provide the necessary technical advice and assistance in training, equipment and technology.

54. A programme to provide bathymetric data on a global basis for the use of the world scientific community had been initiated in 1903 and had been taken over by the International Hydrographic Organization in 1932. The data collected so far had been acquired through co-operative research programmes and hydrographic expeditions, and constituted the only global collection of ocean depths. The numerous data accumulated over the years varied in reliability and in density; in certain areas they were so sparse that they did not permit of any accurate morphological interpretation. So far, three complete editions of a world series of general bathymetric charts had been issued. A new series, in which scientists and hydrographers were co-operating, was being compiled under a programme sponsored jointly by the Intergovernmental Oceanographic Commission of UNESCO and the International Hydrographic Organization.

55. The International Hydrographic Organization was willing to co-operate fully in the work of the Conference and would be prepared at all times to provide such technical assistance as was within its competence.

56. Mr. OGISO (Japan) said that the representative of the Democratic People's Republic of Korea had, in his statement, made certain references to agreements between the Republic of Korea and Japan. He could not accept the allegations he had made in that connexion, and he reserved his right to reply at an appropriate time.

*The meeting rose at 5.25 p.m.*

## 23rd meeting

Monday, 1 July 1974, at 10.40 a.m.

*President: Mr. H. S. AMERASINGHE (Sri Lanka).*

### General statements (continued)

1. Mr. JOSEPH (Trinidad and Tobago) observed that his country had not attended the two previous United Nations Conferences on the Law of the Sea, which had been held before it had attained its independence in 1962, and that it had therefore played no part in shaping the existing law. It was, however, a party to the four 1958 Geneva Conventions. It had also participated actively in the work of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction from its inception, and was among those delegations which had called for the convening of the present Conference, in order that questions relating to the law of the sea could be dealt with comprehensively.

2. The Conference, in which the developing countries would now participate, would seek to establish new norms of interna-

tional conduct in ocean space, norms which should reflect technological advances and the necessary adjustments which international social justice and equity required. In seeking such norms, however, the Conference should by no means erode those fundamental principles of existing law which were peremptory in their character and application.

3. The principle of the common heritage of mankind was the corner-stone on which the Conference must build any institutional mechanism to govern the marine area beyond national jurisdiction. For that reason, pending the establishment of an international régime and machinery, there should be no unilateral exploitation of the resources of the international sea-bed area. His delegation supported the creation of a strong international authority with comprehensive powers, which would govern and control the area, and which would, by itself or in association with others, explore it and exploit its resources for the benefit of the entire international community.

## **ANNEX 26**

UN Diplomatic Conference, Plenary, 31<sup>st</sup> session, 8 July 1974

# **Third United Nations Conference on the Law of the Sea**

1973-1982

Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-

**A/CONF.62/ SR.31**

## **Summary Records of Plenary Meetings**

### **31<sup>st</sup> plenary meeting**

*Extract from the Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (Summary Records of Plenary Meetings of the First and Second Sessions, and of Meetings of the General Committee, Second Session)*

League's policies of co-operation with all nations for the benefit of mankind.

45. These resolutions had also been co-ordinated with the measures adopted by the Organisation of African Unity, in furtherance of the close co-operation between the two organizations and the solidarity between their member States.

46. The League and all its members were determined to contribute to the success of the Conference in establishing a new legal order based on equity and justice.

47. Another question of great importance was that of permitting the participation in the Conference of the Palestine Libera-

tion Organization as the legitimate representative of the Palestinian people. The whole world had come to acknowledge that the people of Palestine were struggling for their legitimate right of self-determination, of which they had been deprived for so long. The League of Arab States also strongly supported the participation of all other liberation movements recognized by the regional organizations, and was convinced that the Conference would respond positively to that wish, seeing that such participation had been endorsed by the great majority of previous speakers.

*The meeting rose at 5.30 p.m.*

## 31st meeting

Monday, 8 July 1974, at 10.45 a.m.

*President:* Mr. H. S. AMERASINGHE (Sri Lanka).

### General statements (continued)

1. Mr. STRONG (United Nations Environment Programme) said that the importance of the Conference from the environmental point of view could not be emphasized too strongly. The decisions it would take would affect the protection of the environment on which the life and well-being of all peoples depended.

2. The protection of the oceans was vital to the future of humanity, and any exploitation of their resources that was not accompanied by a *a priori* commitment to protect the environment could not be considered sound or sensible.

3. The current state of the marine environment was far from satisfactory. By the end of the century, the seas would be more intensely exploited than many areas on land. Their potential was of course immense, but care must be taken to exploit that potential without destroying it. It was not an organization that was required for that purpose but a comprehensive oceans management system. The United Nations Environment Programme (UNEP) made no claim to a monopoly of even the environmental aspects of such a system. Such organizations as the proposed International Sea-Bed Authority and the Intergovernmental Maritime Consultative Organization (IMCO) should also be expected to incorporate environmental considerations in their special areas of competence. At the same time, as the responsibilities of those organizations would not be essentially environmental and might even on occasion conflict with environmental interests, it was for UNEP to make sure that they took full account of the environmental problems they created by their activities and that those activities were carried out in accordance with general environmental objectives and with the priorities established by Governments.

4. Currently, there was a disturbing increase in the use of "flags of convenience", important conventions remained unratified, and there was no framework of law, no organization for the sea-bed and no set of international standards for the protection of the marine environment.

5. Many Governments were struggling to study and resolve all those problems; he himself had been asked by UNEP to make an assessment of the problems affecting the marine environment and its living resources in specific areas.

6. The number of fish in the sea was not unlimited and there was already a decrease in the total world catch, for which over-fishing and pollution were partly responsible. If those causes were eliminated or brought under control, there would be hope of obtaining greater yields of some species on a sustainable basis. The United Nations General Assembly had asked UNEP

and the Food and Agriculture Organization of the United Nations to survey the state of depletion of fish stocks so as to gain an accurate idea of the different factors that were responsible for it.

7. For marine pollution, the Global Environmental Monitoring System which was being established in line with a decision taken by the UNEP Governing Council would provide the framework for a wide variety of research activities such as the Global Investigation of Pollution in the Marine Environment, the Pollution of the Oceans Originating on Land, the River Inputs into Ocean Systems, and the Integrated Global Ocean Stations System, which would be undertaken by existing inter-governmental or non-governmental organizations receiving support from UNEP. On the initiative and with the continuing help of the Intergovernmental Oceanographic Commission and its associated agencies a concerted attack was being mounted on scientific questions relating to a number of high-priority marine pollutants.

8. Nevertheless, however valuable the help of scientists might be in that field, they could not take the essential decisions. Those decisions concerned the choices which would decide the present and the future of mankind, and they should be defined and embodied in "standards". A standard was an authoritative measure of what was acceptable or unacceptable. The standards would not necessarily be binding on States. For example, in the general category of standards, there were the recommendations of competent international bodies. That approach was to be encouraged in highly technical matters, along with the trend towards standards recommended within the context of general principles. In his opinion, the establishment of those principles was the primary environmental task of the Conference on the Law of the Sea; for that reason, he wished to outline some of the principles in the hope of facilitating and perhaps accelerating the Conference's deliberations. First, in the sphere of the obligations of States, the following principles could be defined: States shall protect the quality and resources of the marine environment for the benefit of present and future generations; States shall co-operate with each other and with the competent international bodies in taking measures to protect the marine environment, including the development of minimum international standards and the establishment of machinery for dispute settlement; States shall take fully into account standards recommended by the competent international bodies in taking national measures for the protection of the marine environment. They shall also conform their national laws to obligatory international measures. And they shall ensure that their national laws and regulations provide adequate enforcement of national control measures.

9. In the field of management and conservation of living resources, he proposed the following principles: States shall cooperate with other States and with competent international bodies in achieving high optimum yields of living marine resources on a sustainable basis; States shall adopt and enforce conservation measures for fishing carried out within their national jurisdictions.

10. For the control of pollution from all sources, he proposed the following principles: States shall be liable for injury caused by their own activities, those of their nationals and others under their control or registration to any portion of the marine environment, including areas and resources beyond the limits of national jurisdiction; States shall use the best practicable means to minimize the discharge of marine pollutants from all sources, land-based as well as marine-based.

11. Turning to the question of pollution from ships, he suggested that the Conference should adopt the following resolution: Urges States to accelerate the national procedures required to bring into force the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed in London in 1972, the 1969 and 1971 amendments to the International Convention for the Prevention of the Pollution of the Sea by Oil, the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, and the International Convention on Civil Liability for Oil Pollution Damage concluded in 1969, the International Convention for the Prevention of Pollution from Ships signed in 1973, and other conventions on marine-based sources of pollution.

12. Even when those agreements came into force, difficulties in bringing about compliance would remain; he therefore proposed the following principles: States shall enforce their international obligations on ships flying their flags and shall have the right to do so on ships utilizing their coastal waters and on ships utilizing their ports; coastal States shall have the right to establish pollution control standards more stringent than those agreed internationally where these are necessary to prevent harm to areas determined in an appropriate international forum to be especially sensitive.

13. In the field of pollution from sea-bed activities, he said that if the Conference created a sea-bed Authority, it should have among its responsibilities: the setting of minimum binding standards to control pollution from exploration and exploitation of sea-bed resources beyond the limits of national jurisdiction. It should also have the right to ensure compliance with those standards by inspection and by exclusion of violators from the benefits of exploitation. Another principle that might be adopted was: coastal States shall take the minimum international standards set by the Sea-Bed Authority fully into account in regulating activities within their coastal areas and shall explicitly justify any weakening of such standards.

14. Under the heading of scientific research several points might be covered by the following principles: States shall permit scientific research in coastal areas, provided that it has peaceful purposes and that arrangements are made for complete and prompt sharing of its results with the coastal State; States shall co-operate with each other and with the competent international bodies in elaborating and executing plans for scientific research in the marine environment.

15. In the field of technical assistance, he proposed the following principles: States shall co-operate in providing technical assistance to developing countries to enable them to participate in programmes of scientific research in the marine environment and to take internationally-agreed measures for the protection of the marine environment; States shall provide, within the limits of their capabilities, assistance requested by other States threatened by major pollution incidents affecting the marine environment.

16. Those points did not constitute an exhaustive list and they did not necessarily require a separate convention, but they

might be included in the various instruments under consideration. In any event, the new instruments to be agreed upon by the Conference should open legal and institutional avenues rather than making fixed and immutable arrangements.

17. Before concluding, he said that he would like to comment on two other concerns of very great importance. The first was the impact of the points he had mentioned on the major issues confronting the Conference concerning the proposed establishment of economic resource zones in coastal areas. He had taken no position, from the environmental point of view, on those zones as a concept. Their usefulness depended entirely on the specific rights and responsibilities that were attached to them. Accordingly, he was alarmed by the tendency to consider economic resource zones as in effect equivalent to the territorial sea. If that was to be the outcome of the Conference, important environmental and equity considerations would have been swept aside. From the environmental point of view, coastal State enforcement of anti-pollution measures within an economic resource zone might be desirable; but minimum international standards for the control of pollution from all marine-based sources that would be applicable within the economic zone were equally important. The rational management of fisheries could not be achieved within artificial boundaries, even those that defined an area of exclusive fishery rights. The future of world order lay not in division of the spoils but in a management system of overlapping and complementary competences. National and international action inevitably merged in a complex of interacting relationships, and one could not be effective without the other.

18. Another concern was the exemption of State-owned ships, in particular naval vessels, from existing international agreements on pollution from ships. Such exemption posed a special problem from the environmental point of view. The general interest must not be sacrificed for any reason. While amendment of the Conventions themselves would take years, that matter deserved much greater attention; in the meantime, voluntary declarations and actions by individual States could change present practice.

19. In conclusion, he said that the problem of sea-bed resources raised a critical question of equity in the relations between the more industrialized and the developing countries, as well as between coastal and shelf-locked or land-locked States. Failure to create a strong sea-bed régime would lead to pre-emption of the lion's share of the benefits by those with the capital and technology required, and to an accumulation of new pollution problems that would threaten in particular those States least able to take protective measures.

20. The two thirds of the world's population whose lives were polluted by worsening poverty must receive their share of the benefits of exploiting the resources of the oceans; it was not a matter of charity but of equity. The Conference had the opportunity to provide the additional resources required to bring decent standards of life to those people. Such action would not only reduce their dependence on the vagaries of development assistance from the more wealthy countries but would also provide a new underpinning for their economic security, which was indispensable to a viable world order.

21. Mr. VALENCIA RODRIGUEZ (Ecuador) said that his country had always held the same ideas with regard to the law of the sea, which were well known. It exercised its sovereignty and jurisdiction over the sea adjacent to its coast to a distance of 200 nautical miles measured from the relevant baselines. On 18 August 1952, Ecuador, Peru and Chile had proclaimed in the Declaration of Santiago their exclusive sovereignty and jurisdiction over an area extending for 200 miles as well as over the corresponding sea-bed and subsoil. In 1954, those three countries had undertaken to proceed by common agreement to the legal defence of the principle of sovereignty over that area of the sea. Since then, however, Ecuador had had to face the incursions of pirate vessels from powerful industrialized coun-

tries which, pretending to be ignorant of its rights, had entered its territorial waters in order to plunder the wealth of a small developing country.

22. There were as yet no rules of international law to determine the breadth of the territorial sea. Neither the Conference for the Codification of International Law, held at The Hague in 1930, nor the United Nations Conferences on the Law of the Sea, held in Geneva in 1958 and 1960, had solved the problem. In fact, it was for the coastal State to indicate the breadth of the sea falling within its sovereignty and jurisdiction. In that connexion, he cited several examples of unilateral acts. Under the principles concerning the legal régime of the sea adopted by the Inter-American Council of Jurists at its second meeting, each State was entitled to set reasonable limits for its territorial sea, taking account of both geographical, geological and biological factors and economic, security and defence requirements. Consequently, it was impossible to claim that such unilateral acts infringed the rights or interests of the international community. Nor was there any reason to be surprised at the way the principle of the 200-mile limit had gained ground, although there were slightly different interpretations of it according to the geographical, geological and the living resource interests and the actual situation of each region or State. In that regard, he stressed the importance of the Declarations of Montevideo and Lima.<sup>1</sup> The position taken up in those Declarations presupposed the physical and legal unity of the zone from the point of view of surface area, the water column, the sea-bed with its subsoil, and the corresponding resources; and it implied that the coastal State exercised all the rights flowing from that concept. His country had therefore proclaimed its sovereignty and jurisdiction over the whole area and could not rest content with a simple recognition of uncertain powers, for specific purposes, within a 200-mile limit, since there was a risk that the limit might be deprived of any meaning.

23. As to the objective basis for the proclamation by the coastal State of sovereignty and jurisdiction over the adjacent waters for a distance of 200 nautical miles, he said that the developing countries were aware that they had a duty to provide their peoples with the resources needed for their economic growth, to satisfy their basic needs and to improve their material and cultural level of living in order to narrow the gap between rich and poor countries. The developing States possessing a coastline had become aware that the resources with which nature had endowed them were precisely those which were located in the sea adjacent to their coast but which were exploited by countries possessing large fishing fleets which used methods that had even led to the extinction of many species. That situation had favoured exclusively the enterprises of rich countries and consumption by peoples with a high income and a diet that was already rich in protein, while the developing countries, where the population problem was accompanied by a dearth of resources of all kinds, suffered from increasing poverty—a situation so well described by the representative of Western Samoa.

24. The sea and its resources were the answer to the problems of population explosion and poverty experienced by the countries of the third world, which included Ecuador. His country would not accept a convention that infringed its full rights over renewable and non-renewable resources of the area, and it would defend its resources—not only because they belonged to it, but also because its future was closely linked with the rational satisfaction of the needs of its people. Furthermore, Ecuador's exercise of its rights over a 200-mile-wide belt of sea in no way harmed the interests of the international community, whether from the point of view of freedom of overflight and navigation or of the laying of submarine cables. In that connexion, Ecuador acknowledged that separate régimes could co-exist, since the coastal State also had a duty to co-operate with the international community.

<sup>1</sup> Documents A/AC.138/34 and 28.

25. Turning to the question of fishing, he said that, as early as 1927, the League of Nations had declared that fishery resources must be preserved for the future benefit of mankind; and, in 1956, the International Law Commission had recognized that the existing rules did not protect marine life from extermination. Consequently, the coastal State was left without defences against the plundering of its fishery resources by foreign fishing vessels. That situation could not be allowed to continue when the peoples of coastal States belonging to the under-developed world were suffering from malnutrition and dying of hunger. Some of those States had therefore repudiated the classic law formulated and imposed by the major Powers, and the coastal States had undertaken to defend and protect their resources, without however precluding other States, which adhered to the provisions they had laid down, from participating in the rational exploitation of their wealth. Since the area within the 200-mile limit constituted a single physical and legal unit, each and every species living within it was subject to the measures adopted by the coastal State in exercise of its sovereignty. An international régime that ignored those principles would open the way to the plunder of the resources of the coastal State by foreign fishing fleets and to unequal competition between rudimentary and highly-developed fishing techniques. In defending its fishery resources, the coastal State did not preclude co-operation with other States and with international organizations for the conservation of species by means of rules which it adopted in exercise of its sovereignty.

26. The principle of sovereignty over the adjacent sea was the only one which safeguarded the rights of the coastal State—in other words, the right of peoples to survive. The new law of the sea should spring from recognition of those facts and sanction solutions that were in harmony with the principles of international social justice. He understood sovereignty over the adjacent sea to mean a contractual sovereignty limited by the need for international coexistence and co-operation. What State could declare, in present circumstances, that it exercised full sovereign powers as conceived by the absolutists of bygone eras? There must therefore be a new conception of sovereignty, distinct from the traditional concept. The concepts of territorial sea, high seas, freedom of the seas, and innocent passage, among others, were merely a reflection of the political interests of certain Powers at a given point in history. Thus, the Powers which had formerly clung to the principle of *mare clausum* had become the champions of *mare liberum*. At that time, the doctrine had been based upon colonialism. In the present day, it was the actual situation of peoples, not the interests of a group of Powers, that made the transformation of the law of the sea imperative. The reformulation of the concepts involved should correspond to the realities of life, of which the law should be the truest expression.

27. The fact that the area of the sea-bed beyond the limits of national jurisdiction had been recognized as the common heritage of mankind was of supreme importance. The idea of the high seas that had been imposed at a time where "might is right" had given way to a more humane and equitable doctrine: within that area, the sea could not be subject to arbitrary decisions and its resources could not be the subject of any act of appropriation, since they belonged to mankind. A legal régime must be established which guaranteed the peaceful use of the international sea and its wealth for the benefit of all mankind, without any privileges or monopolies being granted to particular Powers or enterprises.

28. The rational exploitation and use of the resources of the international sea should be undertaken for the benefit of all peoples, in order to preclude indiscriminate exploitation favouring solely those possessing financial resources and advanced techniques. In the sharing of the advantages deriving from the international sea and its resources, account must be taken of the needs of the developing countries, the situation of land-locked, near-land-locked or geographically disadvantaged

States, and also of the problems arising from the population explosion.

29. When the administrative authority was being established, account would have to be taken of the principle of the sovereign equality of all States laid down in the Charter. Therefore, any proposal to create privileged categories of member States was unacceptable, as were the temporary or permanent suspension of a State's membership and any attempt to prohibit its sharing of the advantages deriving from the international sea and its resources.

30. He pointed out that all States had a legitimate interest in preventing marine pollution and taking appropriate action to that end. Within the area under its jurisdiction, the coastal State was under an obligation to protect the marine environment, but it must do so in co-operation with neighbouring States, appropriate international bodies and the sea-bed authority.

31. The coastal States must encourage and authorize scientific research in its adjacent waters, while having the right to participate in the research and collect the results. It must also, in agreement with other States or competent technical bodies, take any steps it felt were necessary to protect its interests and to make a contribution to carrying out international programmes. It was also essential to establish standards that would guarantee effective participation by the developing countries in scientific activities to enable them to benefit from technical assistance and the transfer of technology. In that way it would be possible to ensure proper co-ordination between the area under the sovereignty and jurisdiction of the coastal State and the area that constituted the common heritage of mankind. It was obvious that a State's exercise of sovereignty over the sea adjacent to its coasts meant that the judges and courts of that State were competent to deal with offences committed in that area. It would be inadmissible, for example, for fishing offences committed in violation of the laws of the coastal State to be judged and punished by an international court. It was however logical that disputes regarding the international sea or the application of the convention to be adopted concerning that zone should be subject to the compulsory jurisdiction of the international courts to be set up by the convention in question.

32. The land-locked States must have the right of access to the sea in order to be able to make use of the sea and to exercise the preferential rights agreed on with neighbouring coastal States within their coastal waters; he hoped that a satisfactory solution would be found to the problems of Bolivia and Paraguay. It seemed that regional agreements specifying the utilization rights of those States and recognizing their preferential rights would solve the problem. It would also be just for those States to enjoy preferences in the use of the resources of the sea-bed and of international ocean space in general.

33. His country hoped that the convention to be drafted would be based on the sovereignty of States and would take into account the thinking that lay behind the different positions. It was for that reason that his country was not advocating the adoption by all countries of the idea of sovereignty over an adjacent sea 200 nautical miles wide, but rather was advocating that each State should extend its sovereignty and jurisdiction up to a distance of 200 miles, wherever such extension was possible. A formula that would suit States bordering on an open sea would not solve the problems of those bordering on closed or semi-closed seas. Similarly, the situation of States with a wide continental shelf was different from that of States with a narrow continental shelf; the archipelagic States were also a special case. There must therefore be different coexisting régimes that took into account the real geographical and ecological situation of States.

34. The new law of the sea must enshrine in compulsory rules the principles arising from the realities of a world preoccupied by development and characterized by the existence of new

States defending their sovereignty and trying to consolidate their economic independence. The convention to be adopted must be an instrument enabling States to satisfy their interests and must be based on the justice that was essential for the maintenance of international peace and security.

*Mr. Chao (Singapore), Vice-President, took the Chair.*

35. Mr. ANDERSEN (Iceland) said that three periods could be discerned in the coastal States' exercise of their jurisdiction over marine resources. During the first period, there had been the obsolete system that the international community tried to codify during the 1958 and 1960 Geneva Conferences. Although the right of the coastal State over the sea-bed and subsoil of the continental shelf had been recognized, efforts had been made to establish a 12-mile fishery zone but there had been no willingness to go any further, even for countries like his own which were overwhelmingly dependent on coastal fisheries. Those were the reasons why Iceland had not ratified any of the Geneva Conventions. Later, there had emerged the concept of the economic zone not exceeding 200 nautical miles, which had already received the support of the overwhelming majority of the international community. Now, in the third period, the Conference was attempting to formulate the concept of the economic zone.

36. In 1948, Iceland had enacted a law concerning the continental shelf fisheries. The law was based on the premises of a narrow territorial sea in the interests of the freedom of navigation, and of a wider fishery zone covering the entire continental shelf. The law had been implemented gradually and currently applied to an area 200 miles wide. Iceland had thus been fighting for more than 25 years for the concept of an economic zone which was a matter of life or death to it. The countries that had long opposed the concept of the economic zone but had subsequently abandoned their position had been realistic; their new attitude was contributing to the atmosphere of goodwill without which the Conference could not achieve the results expected of it.

37. During the preparatory stage of the Conference, Iceland had repeatedly made its views known and had stressed the overwhelming importance of fishing for the country's economy; fishery products constituted about 85 per cent of the value of its exports. It was neither just nor equitable to give coastal States sovereign rights over the sea-bed and its resources while denying them the right to the living resources of the superjacent waters. The continental shelf was an ecological unit; its resources were part of the natural resources of the coastal State. His delegation wished to see the Conference produce a package solution in terms of contemporary realities. Such a solution must contain the following elements, which seemed to have the support of most delegations: firstly, the territorial sea should be kept within narrow limits in the interest of freedom of navigation, commerce and transportation; it seemed reasonable to contemplate a breadth of 12 miles from baselines. Passage through straits used for international navigation and the situation of archipelagic States must be taken into account.

38. Secondly, if the territorial sea was limited to 12 miles, there must be an economic zone not exceeding 200 miles. The overwhelming majority of the members of the international community supported the view that coastal fishing grounds, and not only the sea-bed resources, were part of the natural resources of the coastal State up to a distance of 200 miles from the baselines. Any approach that did not take that into account would be doomed to failure. Provision could also be made, however, for a coastal State to allow foreign nationals to fish in its economic zone if it was unwilling or unable to utilize the resources concerned. In such cases, reasonable compensation or a licence fee should be envisaged; the resources would be neither wasted nor under-utilized. But a decision on that point would necessarily have to be in the hands of the coastal State itself. There must also be provision for the transfer of fisheries

technology. Access to a State's economic zone by developing States in the region would be a matter for agreement between the States concerned.

39. Thirdly, the question of conservation of fisheries must be dealt with in a realistic manner. Local fish stocks could best be conserved by the coastal State, with regional standards serving as a minimum. Conservation standards for semi-migratory species should be worked out on a regional basis; regional or international standards would be necessary for highly migratory species. Such regional or international standards would supplement national jurisdiction and would in no way be a substitute for it. In addition, special rules should apply to anadromous species, fishing for which should be prohibited except in rivers.

40. Fourthly, the claims of various States to sea-bed resources beyond the limit of 200 miles would have to be dealt with. That question was closely connected with the extent of the international sea. Some kind of revenue sharing might provide the solution to that problem.

41. Fifthly, the problem of the international sea-bed must be dealt with in accordance with the Declaration of Principles adopted by the General Assembly in December 1970.

42. Sixthly, pollution must be prevented. It had been pointed out that 80 per cent of marine pollution came from land-based sources and that pollution was no respecter of boundaries. It was therefore important to reduce all sources of pollution by adopting rules based on the results of the United Nations Conference on the Human Environment. The Executive Director of UNEP had provided some valuable information on that subject.

43. In the seventh place, scientific research should in principle be free, but the interests of the coastal State must be protected by providing for its participation in research projects and for it to have access to the results. Finally, the legitimate interest of land-locked States must be safeguarded.

44. If the Conference could concentrate its attention on working out a package deal of that kind, his delegation thought that it would be possible to work out the basic principles during the current session. If those principles could go down in history as the principles of Caracas, that would be a worthy tribute to the city that had received the participants so well. If the Conference could achieve those results through consensus, that would be a tribute to the United Nations also.

45. Mr. ABAD SANTOS (Philippines) thanked the Venezuelan Government for its warm hospitality and for the excellent arrangements it had made in organizing the Conference.

46. His delegation was fully aware of the importance of the Conference for the whole of mankind. To be sure, the problems confronting it were not easily solved, since they arose out of divergent and at times conflicting interests regarding the uses of the sea and its resources. He hoped, however, that by displaying mutual understanding and a generous spirit of negotiation, delegations could attain results that would be generally satisfactory to all.

47. As the sea had taken on greater importance, it had become manifest that the customary rules which had governed its use for centuries needed revision and expansion. The United Nations Conference on the Law of the Sea held in Geneva in 1958 had attempted to re-examine traditional practices, consider new problems and formulate new rules relative to the sea. Although it had resulted in four significant Conventions, the 1958 Conference had not altogether resolved such vital issues as the breadth of the territorial sea or the extent of the continental shelf. He wished to emphasize that, as early as 1955, during the preparatory phase of the 1958 Geneva Conference, the Philippines had presented a position paper stating that all waters around, between and connecting the different islands belonging to the Philippine Archipelago, irrespective of their width or dimension, were necessary appurtenances of its land territory, forming an integral part of the national or inland

waters of the Philippines and subject to exclusive Philippine sovereignty. It was also worthy of recall that, according to the excellent preparatory document prepared for the 1958 Geneva Conference at the request of the United Nations Secretariat by a distinguished Norwegian lawyer, outlying, or mid-ocean, archipelagos were defined as "groups of islands situated out in the ocean at such a distance from the coasts of firm land as to be considered as an independent whole rather than forming part of or outer coastline of the mainland".<sup>2</sup> The document concluded that "frequently the only natural and practical solution is to treat such outlying archipelagos as a whole for the delimitation of territorial waters by drawing straight baselines from the outermost points of the archipelago—that is from the outermost points of the constituent islands, islets and rocks".<sup>3</sup>

48. Lest it be supposed that the statement on that method of drawing straight baselines was simply a unilateral declaration in a preparatory document, it should be recalled that the Convention on the Territorial Sea and the Contiguous Zone<sup>4</sup> followed that same method in article 4, paragraph 1, which provided that: "In localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity, the method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured." Article 5, paragraph 1, of the same Convention stated the consequences of that method by laying down that "Waters on the landward side of the baseline of the territorial sea form part of the internal waters of the State".

49. His delegation realized that those provisions referred to continental States, but saw no reason for making the method of straight baselines inapplicable to archipelagos. Refusal to apply the method to archipelagos would constitute an injustice, and in fact, a growing number of countries had recognized the necessity of a special régime for archipelagos, the baselines of which should be drawn from the outermost islands.

50. It was because the Philippines was an archipelago that its delegation was deeply concerned about the resolution of that issue on the Conference agenda, and felt that an archipelago must be governed by rules which recognized its peculiar configuration. The Philippines, which included more than 7,100 islands with a population of 41 million and a combined land area of 300,000 square kilometres, was more than a group of islands. Its land, waters and people formed an intrinsic geographical, economic and political entity, and historically had been recognized as such. That basic consideration of unity made it necessary that there should be international recognition of the right of an archipelagic State to draw straight baselines connecting the outermost points of its outermost islands and drying reefs, baselines from which the extent of the territorial sea of the archipelagic State was or might be determined. The waters within the baselines, regardless of their depth or distance from the coast, together with the corresponding seabed, subsoil and superjacent air space were subject to the sovereignty and exclusive jurisdiction of the archipelagic State. Sovereignty and exclusive jurisdiction over those waters were vital to archipelagic States, not only to their economy but also to their national security and territorial integrity.

51. Basing itself on those premises, the Philippines, as early as 1961, had enacted legislation defining the baselines of its archipelago and providing that the waters within the baselines of the archipelago were internal waters. The 1973 Philippine Constitution had given that declaration constitutional status by providing that the waters around, between and connecting the islands of the archipelago, irrespective of their breadth and dimensions, formed part of the internal waters of the Philippines.

<sup>2</sup> *Official Records of the United Nations Conference on the Law of the Sea* (United Nations publication, Sales No. 58.V.4), vol. 1, p. 290.

<sup>3</sup> *Ibid.*, p. 302.

<sup>4</sup> United Nations, *Treaty Series*, vol. 516, p. 206.

52. That archipelagic concept had been endorsed by the Organization of African Unity in a Declaration on the Issues of the Law of the Sea prepared by 41 African ministers and later adopted by their respective Heads of State in 1973. That declaration had been presented to the Sea-Bed Committee and published as an official document of the General Assembly (A/CONF.62/33). The Latin American States had also supported the notion of an archipelagic State. Thus, Uruguay, in a document issued on 3 July 1973 (A/9021 and Corr.1 and 3, vol. III, sect. 13) recognized that concept and Ecuador, Panama and Peru had co-sponsored draft articles for inclusion in a convention on the law of the sea, article 3 of which made provision for an archipelagic State (*ibid.*, sect. 16) In a document dated 16 July 1973 (*ibid.*, sect. 23.), the delegation of the People's Republic of China had proposed, *inter alia*, the following: "An archipelago or an island chain consisting of islands close to each other may be taken as an integral whole in defining the limits of the territorial sea around it." Other countries, such as Greece and Malta, had also recognized the necessity of a special régime for archipelagos. No delegation had so far expressed formal opposition to that archipelagic concept.

53. It was worthy of note that during the present general debate, in addition to the co-sponsors of texts concerning archipelagos, Albania, Australia, Bangladesh, Canada, Ecuador, El Salvador, India, Iran, Norway, the Republic of Vietnam, Tonga and the United Kingdom had referred to or favourably endorsed the principle of archipelagos in their general statements and suggested that provisions on archipelagos should be included in the future convention on the law of the sea. His delegation appreciated those statements and interpreted them as giving due recognition to the issue of archipelagos in the codification of the law of the sea.

54. As a member of the community of nations, the Philippines fully recognized the importance of other issues before the Conference. His delegation was prepared to negotiate on any issue which did not bear upon territorial integrity and security. It had been rightly pointed out that the uses of the sea could be classified basically into two categories, resource-oriented and non-resource-oriented. The establishment of an exclusive economic zone or patrimonial sea, which had been strongly advocated by the African and Latin American States, was directed principally at the living and non-living resources of the sea. His delegation recognized the concept of the economic zone and supported its inclusion in the new law of the sea, as it believed that that would contribute in no small measure to the improvement of the economy and well-being of the developing countries. His delegation also was sensitive to the reasonable aspirations of the land-locked, shelf-locked and other geographically disadvantaged States to an equitable share in the benefits to be derived from the resources and uses of the sea.

55. As an archipelagic State, the Philippines had an economy which was largely dependent upon overseas trade, and his delegation supported the régime of innocent passage through straits used for international navigation but forming part of the territorial sea.

56. His delegation was fully prepared to participate in an extensive discussion on the equitable harmonization of those various uses of the sea. With regard to the claims made during the general debate over groups of islands situated in the South China sea, the Philippines wished to state that it maintained its claims to the islands known as Kalayaan, over which it had effective control and occupation.

57. The law of the sea to be formulated by the Conference should achieve a balance between the legitimate claims of particular States and of the international community. The proper balance could be achieved only when each State recognized that, at a given point, the interests of the international community were compatible with the particular vital interests of States.

58. Mr. FARES (Democratic Yemen), after thanking the Venezuelan Government for its hospitality, said that his delegation attached great importance to the Conference, which would deal with problems closely related to the economic and social development and the security of Democratic Yemen. The resources of the sea offered one way of helping to narrow the widening gap between developed and developing countries, and there again political will was indispensable. Because his country was small, with limited though not fully utilized resources, the resources of the sea were of vital importance to it. After a long period of colonial exploitation, the developing countries now realized that, without economic independence, their political independence was only a mockery. The developing countries could not achieve their legitimate aspirations for a better quality of life without exercising permanent sovereignty over their natural resources.

59. The old idea of inexhaustible resources of the seas had been rendered obsolete by modern technological capability and political power. The concept of the common heritage of mankind should not become an academic exercise while the resources of the developing countries were being depleted and their waters polluted for the benefit of a few developed countries. He shared the views of those who upheld the sovereignty of the coastal States over the resources within their national jurisdiction, without prejudice to the interests of other States and of the international community. The existing conventions on the law of the sea were grossly inadequate and no longer reflected the new developments that had taken place since their conclusion. A new convention, or conventions, should be initiated based on equity, equal sovereignty, security and the real participation of developing countries in world affairs. Without those, there could be only tension and instability in the world.

60. Democratic Yemen had enunciated its position with regard to the territorial sea in its Law No. 8 of 1970 under which the territorial sea had a breadth of 12 nautical miles measured from the straight baseline. That principle was in line with the position taken by most developing and socialist States. Under that law, the coastal State had full sovereignty over its territorial waters and commercial vessels had the right of innocent passage whereas non-commercial vessels had to acquire the prior authorization of the State in question. Furthermore, the law gave the coastal State the right to exercise the necessary control over the contiguous zone bordering the territorial sea to an extent of six miles measured from the end of the territorial sea. Democratic Yemen also recognized the right of coastal States to establish an exclusive economic zone not exceeding 200 nautical miles over which it enjoyed full sovereign rights of exploration and exploitation of its living and non-living resources, while respecting international navigation and overflight of the zone and the laying of cables and pipelines in the zone provided that such activities did not in any way prejudice the States' legitimate interest in the zone. That principle should also be applied to the islands belonging to the coastal States. Democratic Yemen felt that the sea was not just an important means of communication, but a vital element in the life of its people. Fishing, in particular, played an important role in Democratic Yemen's development plans. In its five-year development plan beginning in 1974, Democratic Yemen had given priority to fisheries which, together with agriculture, constituted more than one third of the plan.

61. With respect to straits used for international navigation and forming part of the territorial sea, his delegation believed that coastal States had the sovereign right of controlling and regulating passage. Foreign commercial vessels should have the right of innocent passage but should observe the laws and relevant regulations of the coastal State. Non-commercial vessels should obtain prior authorization for passage. Those regulations stemmed from the strategic importance of such straits and were for the peace and security of the coastal States. Democratic Yemen was fully aware of that problem because since its independence in 1967, it had been confronted with all types

of imperialistic warfare. Any international regime should take into account the legitimate interests of coastal States and provide for the necessary safeguards against the flagrant violations of the territorial sea of coastal States by the most sophisticated fleets.

62. On the point of delimitation, Democratic Yemen believed that where the coasts of two States were opposite or adjacent to each other, a median line should be adopted with every point equidistant from the appropriate baselines of the two States.

63. One final point that was of concern to Democratic Yemen was that of pollution of the marine environment. That problem had acquired dangerous dimensions particularly with respect to the spilling of oil. The Conference must face the important task of fixing the basic standards for the protection of the marine environment.

64. His country regretted and was concerned that the authentic representatives of the peoples of Viet-Nam, Cambodia and the liberation movements in Africa and Palestine were not participating in the Conference. It was inconceivable that at a Conference of such importance, their places were usurped by the representatives of colonialism, imperialism, racism and Zionism. In the Middle East, the Palestinians had been expelled from their homeland to give way to the establishment of a Zionist exclusively Jewish State serving the interests of imperialism and colonialism in the area. The Palestine Liberation Organization, the sole representative of the Palestinians, together with other representatives of the liberation movements struggling for their independence and sovereignty, should be invited to participate in the present and in future sessions of a Conference which would in many respects forge the destiny of mankind and which upheld justice and equity.

65. In conclusion, he was aware of the difficulties of the enormous task before the Conference and hoped that it would be successful. He gave the assurance that his delegation would unreservedly contribute its support and co-operation to that end.

66. Mr. LUPINACCI (Uruguay), exercising his right of reply, said that when he had stated his concern at the trend to consider the economic zone as the equivalent of the territorial sea, the Executive Director of the United Nations Environment Programme had, in his opinion, gone beyond the limits of his competence in an inadmissible manner by giving his opinion on a substantive question which was before the Conference and taking a position contrary to that of many participating States. He wished therefore to make the strongest possible protest on the matter.

67. Mr. VALENCIA RODRIGUEZ (Ecuador) said that he could not accept the statement by the Executive Director of UNEP on the economic zone. His delegation did not believe that the Executive Director was entitled to express an opinion on a question which dealt with the sovereignty of each State.

68. Mr. GALINDO POHL (El Salvador) said that he had listened with the greatest interest to the statement by the Executive Director of UNEP, whose concrete proposals deserved careful consideration. He did not, however, agree with him in his belief that the establishment of an economic zone would

neglect important considerations of equity and environmental protection. The proposed economic zone would be of such a nature as to be compatible with the interests of the international community. States knew and accepted their responsibilities regarding the marine environment. When rights were discussed, it was inappropriate to use the argument of potential abuses, which were naturally reprehensible. In 1958, it had been argued that the economic zone was a threat to freedom of navigation; in 1974 it was being argued that it was a threat to the preservation of the marine environment. The former argument had already been rejected as being inconsistent; the pollution argument would certainly also be rejected. Finally, he did not believe that the trend which seemed to alarm the Executive Director of UNEP was in fact real.

69. Mr. CALERO RODRIGUES (Brazil) could not accept the opinion of the Executive Director of the UNEP on the economic zone: it might well be asked why the coastal States responsible for controlling pollution in the territorial sea would not be in a position to do as much in the economic zone. Nor did he agree with the Executive Director in what he had said about fisheries management because, while there were artificial limits, it should not be forgotten that the limits were real and that a coastal State was in a better position to achieve results in that field than a somewhat vague international organization.

70. Mr. BAKULA (Peru) while recognizing that the statement of the Executive Director of UNEP had been most interesting, shared the opinions expressed against his one-sided point of view. The Executive Director had gone beyond his competence in supporting the views of certain Powers against those of several others. He reserved his right to return to that question.

71. Mr. LISTRE (Argentina) associated himself with the statements made by the representatives of Uruguay and other countries in the exercise of their right of reply. He was concerned to see a person entrusted with high responsibilities in an international organization criticizing the position taken by various delegations.

72. Mr. NJENGA (Kenya) said he was grateful to the Executive Director of UNEP for the thorough and comprehensive statement he had made; he was sure it would be very useful to the Conference in its work. He made an appeal to the delegations which had objected to one sentence of that statement, about which there seemed to have been some misunderstanding; the misunderstanding arose over whether the statement should be judged solely on the basis of that statement, or considered as a whole on its merits. His delegation, which took an active part in the evolution of the concept of the exclusive economic zone, would do its best to ensure that it retained its essential characteristics as a distinct concept with features significantly different from those of the territorial sea.

73. Mr. STRONG (United Nations Environment Programme) assured all delegations that he had in no way intended in his statement to take a position against the views of any Government. He regretted that his remarks, which had been aimed solely at the ecological aspects of the problem, had given rise to that interpretation.

*The meeting rose at 1.45 p.m.*

## ANNEX 27

Report of a Working Groups of Officials on the Question of Ratification of the International Covenants on Human Rights, 1 August 1974, Annex D (paragraphs 4-8) (copy of original report plus a re-typed version for clarity)

THE SUBSTANTIVE ARTICLES OF THE INTERNATIONAL COVENANT  
ON CIVIL AND POLITICAL RIGHTS (ARTICLES 1-27)

1. This Annex considers in detail the problems in relation to the United Kingdom (excluding the Channel Islands, the Isle of Man and other dependent territories) arising from individual Articles of the Covenant on Civil and Political Rights.
2. The Working Group considered that the following Articles require no comment in that they give rise to no issues of substance: Articles 5, 8 and 11.
3. Problems arising from the remaining articles are discussed below.

ARTICLE 1

4. This provides that all peoples have the right of self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. It also provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources. States Parties are required to promote the realisation of the right of self-determination and to respect it in conformity with the Charter of the United Nations.

5. The United Kingdom strongly opposed the inclusion of this article, holding that self-determination was a principle not a right. The essential objection from the United Kingdom point of view was that because of the vagueness of the article, it could be interpreted as imposing on a colonial power greater obligations in respect of its dependent territories than the Charter itself. Most of our remaining territories are still not ready to choose their eventual status. On signature of the Covenant in law, therefore, we sought to establish that acceptance of the Covenant would commit us to no more in the

/colonial

colonial field than do our present obligations under the Charter (especially Articles 1, 2 and 73), by entering the following declaration:

"The Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail".

6. In 1970, the General Assembly of the United Nations adopted the "Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". This Declaration included an elaboration of the principle of self-determination, which the United Kingdom accepted subject to an interpretative statement made by our representative prior to its adoption. Nonetheless, in view of the sensitivity of colonial problems at the United Nations, the Working Group considers it essential to maintain the declaration entered on signature.

7. A potentially more serious problem in relation to the metropolitan territory of the United Kingdom arises in respect of nationalist movements. Although the Declaration on Friendly Relations referred to above contains language which makes it clear that the right of self-determination relates primarily to dependent territories and is not to be understood as authorising or encouraging action aimed at dismemberment of the metropolitan territory of a State, it is possible that nationalist movements within the United Kingdom could invoke

/article 1

Article 1 in justification of claims to political separatism and regional control over economic resources. Whether or not such claims were upheld by the United Nations, the existence of Article 1 could give rise to domestic embarrassment.

8. The Working Group therefore considers that the following interpretative statement might be entered on ratification:

"The Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant and do not interpret this Article as conferring any right of action aimed at impairing the territorial integrity or political unity of the State."

However, the Working Group recognises that the latter part of such a statement might be difficult politically and it might be thought preferable therefore to stand on a simple confirmation of the declaration made on signature and rely on the Declaration on Friendly Relations for the rest.

#### ARTICLE 2

9. Paragraph 1 provides that each State Party should respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Paragraph 2 provides that, where not already provided for by existing legislative or other measures, each State Party should take the necessary steps to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the Covenant. Paragraph 3 provides that each State Party should ensure effective remedies for persons whose rights are violated.

10. The Working Group noted that paragraph 1 read in conjunction with paragraph 2, imposes obligations of a more immediate character than those under Article 2 of the Covenant on Economic, Social and Cultural Rights. The later articles of the Covenant

/must

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**Report of the Working Group of Officials on the Question of the Ratification of the  
International Covenants on Human Rights**

**1 August 1974**

**Annex D: The substantive articles of the International Covenant on Civil and Political  
Rights (Articles 1-27)**

**Paragraphs 4-8**

**(re-typed for clarity)**

Article 1

4. This provides that all peoples have the right of self-determination by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development. It also provides that all peoples may, for their own ends, freely dispose of their natural wealth and resources. States Parties are required to promote the realisation of the right of self-determination and to respect it in conformity with the Charter of the United Nations.

5. The United Kingdom strongly opposed the inclusion of this Article, holding that self-determination was a principle not a right. The essential objection from the United Kingdom point of view was that because of the vagueness of the Article, it could be interpreted as imposing on a colonial power greater obligations in respect of its dependent territories than the Charter itself. Most of our remaining territories are still not ready to choose their eventual status. On signature of the Covenant in 1968, therefore, we sought to establish that acceptance of the Covenant would commit us to no more in the colonial field than do our present obligations under the Charter (especially Articles 1, 2 and 73), by entering the following declaration:

“The Government of the United Kingdom declare their understanding that, by virtue of Article 103 of the Charter of the United Nations, in the event of any conflict between their obligations under Article 1 of the Covenant and their obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) their obligations under the Charter shall prevail”.

6. In 1970, the General Assembly of the United Nations adopted the "Declaration" on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations". This Declaration included an elaboration of the principle of self-determination, which the United Kingdom accepted subject to an interpretative statement made by our representative prior to its adoption. Nonetheless, in view of the sensitivity of colonial problems at the United Nations, the Working Group considers it essential to maintain the declaration entered on signature.

7. A potentially more serious problem in relation to the metropolitan territory of the United Kingdom arises in respect of nationalist movements. Although the Declaration on Friendly Relations referred to above contains language which makes it clear that the right of self-determination relates primarily to dependent territories and is not to be understood as authorising or encouraging action aimed at dismemberment of the metropolitan territory of a State, it is possible that nationalist movements within the United Kingdom could invoke Article 1 in justification of claims to political separatism and regional control over economic resources. Whether or not such claims were upheld by the United Nations, the existence of Article 1 could give rise to domestic embarrassment.

8. The Working Group therefore considers that the following interpretative statement might be entered on ratification:

"The Government of the United Kingdom maintain their declaration in respect of Article 1 made at the time of signature of the Covenant and do not interpret this Article as conferring any right of action aimed at impairing the territorial integrity or political unity of the State."

However, the Working Group recognises that the latter part of such a statement might be difficult politically and it might be thought preferable therefore to stand on a simple confirmation of the declaration made by signature and rely on the Declaration on Friendly Relations for the rest.