ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF MAURITIUS

v.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

REPLY OF THE REPUBLIC OF MAURITIUS

VOLUME IV

ANNEXES 91 - 146

18 November 2013

Annex 91

Note Verbale dated 10 May 1985 from Ministry of External Affairs, Tourism and Emigration, Mauritius to British High Commission, No. 12/85(1197)

Ex. 12/85(1197)

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MINISTRY OF EXTERNAL AFFAIRS, TOURISM, & EMIGRATION
MAURITIUS

10th May, 1985

The Ministry of External Affairs, Tourism, & Emigration presents its compliments to the British High Commission and has the honour to refer to the recent statement of Mr Malcolm Rifkind, M.P., Minister of State for Foreign and Commonwealth Affairs, in the local press to the effect that Diego Garcia is part and parcel of British territory.

The Ministry wishes to reaffirm and reiterate the sovereignty of Mauritius over Chagos Archipelago which has been detached from the territory of Mauritius in 1965 in contravention of the UN General Assembly Resolutions 1514 (XV) and 2066 (XX).

During his visits to the United Kingdom, the Prime Minister discussed the question of Diego Garcia with the British Prime Minister who agreed that the Archipelago would revert to Mauritius. Besides it is common ground that Mauritius is enjoying the right to exploit all resources on and around the Archipelago, including the Exclusive Economic Zones (EEZ) as published in the Government Gazette No 119 of 29th December 1984.

The Ministry views with concern Mr Rifkind's unqualified statement and urges that a mechanism be set up to monitor and review these matters.

The Ministry of External Affairs, Tourism, & Emigration avails itself of this opportunity to renew to the British High Commission the assurance of its highest consideration.

Ministry of External Affairs, Tourism & Emigration

British High Commission
King George Avenue
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Annex 92

"Conservation of Fish Stocks in the British Indian Ocean Territory: The Need for a Buffer Zone"

CONSERVATION OF FISH STOCKS IN THE BRITISH INDIAN OCEAN TERRITORY

THE NEED FOR A BUFFER ZONE

SUMMARY

Alone among Indian Ocean States the BIOT does not have a fisheries protection zone. Its only protected waters are a three mile territorial sea (1969) and the twelve mile fisheries zone (1984). As fish stocks are depleted elsewhere, the major fishing nations are now concentrating on the Indian Ocean. Massive over-fishing has already taken place in the southern Indian Ocean, and the absence of positive fisheries protection around the Chagos Archipelago invites despoilation of fish stocks, particularly by Japan, Taiwan and Korea. It also works against conservation measures imposed by fishing zones and licensing arrangements in place in the rest of the Indian Ocean. Some form of fisheries conservation for the Chagos is therefore necessary to protect existing fish stocks and the natural environment, to support conservation measures elsewhere in the Indian Ocean, and more long term to provide revenue to BIOT from fishing.

INDIAN OCEAN FISH

The main commercial fish are tuna species, these are migratory fish crossing the Indian Ocean. They are particularly attractive to Japanese, Taiwanese and Korean fishermen and command high prices. Intensive commercial fishing, generally from factory ships, can quickly deplete fish stocks and is responsible for the indiscriminate slaughter of other marine animals including turtles, dolphins and young fish. However, traditional fishing ~~which is also~~ carried out from mother ships using small boats and hand lines, has little impact on fish stocks.

Empirical research and fish catches demonstrate that there are considerable fish stocks in the Indian Ocean. To protect them all Indian Ocean island states have declared 200 mile economic exclusion zones and signed agreements with a number of fishing nations and the European Community. The economy of the Seychelles has been radically improved with revenue from fishing. Little

fishing is currently conducted round the Chagos Archipelago although reports are received intermittently of far eastern factory ships near the BIOT / ~~although~~ Some of the tuna landed in Seychelles undoubtedly is caught within the western edge of a 200 mile limit around the Chagos. Occasional sightings are made of factory ships around Diego Garcia. Only traditional Mauritius fishermen are permitted to fish within the BIOT twelve mile fisheries limit. Various estimates of the importance of fishing in the Chagos Archipelago have been made. In a survey completed in 1949 it was estimated that the fishable area of the Chagos Archipelago was about 2500 square miles in an area approximatly 150 miles by 90. Fishing trawls on hand lines produced "the richest experienced fishing haul anywhere" (Colonial Office Fisheries Publication Volume 1/3 1953 - Report on the Mauritius and Seychelles Fisheries Survey). More than 250,000 tonnes of tuna annually is taken from the Western Indian Ocean. Fish landing statistics for Mauritius and the Seychelles are attached at annexe.

THE BRITISH INDIAN OCEAN TERRITORY FISHERIES PROTECTION

A three mile territorial sea around all the islands in the Chagos was declared in 1969 (Proclamation 1/69). This was followed by a twelve mile fisheries zone declared in 1984 (Proclamation 8/84). No commercial fishing is permitted within the Territorial Sea and only Mauritian fishermen are licensed to fish within the Fisheries Zone. Licenses are granted to Mauritians to satisfy a general undertaking given in 1965 following discussions with the Mauritius Council of Ministers on the detachment of the Chagos Archipelago. It was agreed that 'the British Government would use its good ~~through~~ offices with the US government to ensure that ..... facilities in the Chagos would Archipelago available to the Mauritian Government so far as ~~its~~ remains practicable : .... (b.) fishing rights'. Precisely what was intended was never set out in detail. Since the creation of BIOT, Mauritian ~~never~~ fishermen have applied and been granted licenses to fish in the BIOT by the British High Commission in Port Louis. This is certainly with the knowledge of the Mauritian Government.

However, the Mauritian Government itself maintains a claim to the Chagos Archipelago and in 1977 declared a twelve mile Territorial

Sea round the islands in the Archipelago. This was followed in 1984 by a 200 mile Exclusive Economic Zone (EEZ). Representations were made at the time by the British High Commission in Port Louis about this abrogation of UK sovereignty.

CONSERVATION

The United Kingdom has an obligation as a sovereign power to protect the BIOT. Its environment is fragile. It is the largest coral atoll group remaining unspoilt. Most of the sea bounded by the atolls of the Chagos is very shallow and could be devastated by commercial fishing. A number of conservation organisations have expressed concern that no territorial or fishing zone had been declared around the BIOT in order to protect the reefs and marine life. Against this background of almost no protection it seems strange that far eastern factory fishermen have not already damaged the Chagos Archipelago. It seems that they have kept away on the basis that there is a military facility in the south and that a UK 200 mile protection zone is assumed to exist ~~already exists~~ round the Archipelago. Commercial fisheries would be quick to fill this vacuum if it word ever got out that they could do so with~~out~~ impunity.

Factory fishing, long-line and gill netting, would destroy the Chagos Archipelago's marine environment. Both kinds of fishing are indiscriminate, killing all kinds of marine life, apart from the commercially desirable tuna. The present twelve mile fishing limit round the islands of the Chagos Archipelago offers no protection.

The argument for conservation is three-fold; it is a duty of the sovereign power to safeguard the environment for the future; other Indian Ocean islands are already conserving fish stocks by declaring 200 mile fishing zones of their own; and potential economic gain to the BIOT. Tuna move between the Seychelles 200 miles EEZ, moving to the south of the Mauritius 200 mile EEZ, north to the Maldives and west to Madagascar's EEZ as well as through the Chagos. Only in the Chagos Archipelago are they unprotected. As well as bilateral agreements the western Indian Ocean Archipelagic states of Mauritius, Seychelles, Maldives, Comoros and Madagascar are members of the Indian Ocean Tuna Commission and have collective agreements

with the European Community to open up their fishing grounds to EC countries. The absence of any measure to conserve fish stocks in the Chagos Archipelag makes conservation measures elsewhere much less useful.

Although there are no plans for the moment for BIOT to licence commercial fishing there is no reason why this should not happen in the future, provided safeguards were ensured to protect the environment inside the Chagos. By not having a fisheries protection zone we will therefore be foregoing potential revenue while, at the same time, offering no impediment to the vandalising of the fish stocks under our putative control by unrestricted commercial fishing.

OTHER DEPENDANT TERRITORIES AND INDIAN OCEAN REGIONAL STATES

Apart from Gibraltar and Hong Kong, where special situations apply, and the British Antarctic Territory which is subject to special international treaty arrangements, only the BIOT is unprotected by a comprehensive fisheries zone. All other Dependent Territories have either a 200 mile or 150 mile fisheries protection zone. All other Indian Ocean island states have a twelve mile territorial sea and 200 mile exclusive economic zone. France has a 200 mile exclusive economic zone in place in respect of around Reunion. The BIOT is therefore out of step with current international practice and the precedent of other island Dependent Territories. The fisheries protection and licensing arrangements in place in Seychelles and Mauritius are mainly self administering. Neither state possesses a sea-going patrol capability and rely on cheap licenses to impose restraint on licenses out of self-interest. This seems to work well. In the BIOT case ~~under consideration in general~~ fishing licensing is not currently contemplated but ~~illegal fishing in~~ a 200 mile Fisheries Zone could be monitored by existing patrol facilities in Diego Garcia and action taken against illegal fishing as necessary.

POLITICAL PROBLEMS

The Mauritian authorities may object to a declaration by BIOT of a

200 mile exclusive economic zone but their objections are likely to be easily over-turned especially if no economic gain to BIOT is envisaged and Mauritian Fishermen retain access as hitherto. The argument that BIOT is conserving fish stocks as a responsible Indian Ocean states territory and this protection is in the long term interests of Mauritius in respect of its own reserved fishing rights is self-evident. Moreover, as the BIOT UK has undertaken to cede the ~~is ceded~~ to Mauritius when no longer required for defence use, it is in their interest that we protect it now. Other Indian Ocean island states are unlikely to protest, and even if giving no public support to a BIOT Fisheries Zone would, in private, be glad that a gap currently existing in fisheries protection in the Indian Ocean has been closed.

Under the arangements already concluded with the EC, and bilaterally, Mauritius presumably could licence commercial fishing in and around BIOT within the 200 EEZ declared in 1977. This could have major implications on the security of the naval support facility, but could not be resisted as all the sea outside of the 12 mile Fisheries limit around the Chagos is unrestricted international waters (or within the Mauritius 200 EEZ depending on the point of view).

Against this background is the special provision regarding fishing in 1976 Anglo-US Exchange of Notes (Cmnd 6413) paragraph 13 of which states ... "The Government of the United Kingdom will not permit commercial fishing ... in ... those areas of the waters, Continental Shelf and sea-bed around Diego Garcia over which the United Kingdom has sovereignty or exercises sovereign rights unless it is agreed that such activities would not harm or be inimical to the defence use of the island". This is so loosely drawn in respect of geographical application that the phrase "around Diego Garcia " could apply to a restricted area in the south of the Archipelago only. A proposal to start licensing Commerical fishing would on practical grounds need to be discussed with the Americans but a declaration of a Fisheries Zone would certainly appeal northern if commercial fishing was in the short term not contemplated.

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CONCLUSION

There is a strong case for immediate fisheries protection round the BIOT, on conservation, environmental and sovereignty grounds. It is not necessary to have an expensive infrastructure in place to protect the fisheries zone, no other Indian Ocean island state has an effective fisheries protection system.

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Annex 93

Extract from Adede, A.O., "The system for settlement of disputes under the United Nations Convention on the Law of the Sea: A drafting history and a commentary" (M. Nijhoff, 1987)

> this Convention, a Contracting Party which has taken measures alleged to be contrary to this Convention shall not be entitled to object to the jurisdiction of the tribunal under Articles 9 and 10 of this Chapter solely on the ground that local remedies have not been exhausted as required under international law.

In the two paragraphs of the above article, the Working Group attempted to reflect the proper role played by the local remedies rule under international law by both asserting its application in appropriate cases as a bar to an international proceeding and by noting that there are instances in which the rule need not stand in the way of an international proceeding against a State. It may be recalled that the efforts to ascertain the proper place of the rule in the context of the Law of the Sea Convention led the Working Group in Caracas[18] to produce two alternative texts with several variants now combined in the two paragraphs of Article 14. The point being made with respect to the rule as formulated above is that the interplay between its application and the specific exclusion made under paragraph 3(a) of draft Article 17 was clearly intended to insulate coastal States from unnecessary international proceedings brought against them.

Continuing with the commentary on the rest of the specific issues excluded from the compulsory procedures under paragraphs 3(b)-(d) of draft Article 17, it must be observed that the formulations in each of those paragraphs were still considered by many participants as far from satisfactory. It was clear from the outset that there were those who strongly opposed the idea of making sea boundary delimitation disputes subject to any third-party compulsory procedures and therefore urged the exclusion and those who maintained that such disputes must be made subject to the compulsory procedures either within the Law of the Sea Convention itself or some other procedures entailing binding decisions. As will be shown in the subsequent chapters, the problems raised by this particular exclusion and the related issue of the actual standard for sea boundary delimitations between States with adjacent or opposite coasts, eluded an acceptable solution until 1981.[19] With respect to the exclusion under paragraph 3(c) questions were, for example, raised as to why 'law enforcement activities pursuant to the convention' were not to be considered as 'military activities', excluded from compulsory procedures under the paragraph. As to paragraph 3(d), many participants found unacceptably vague the last phrase: 'unless the Security Council has determined that specified proceedings under this Convention would not interfere with the exercise of such functions in a particular case' and called for its clarification.

was the question as to whether or not the Convention itself should contain an exhaustive enumeration of such sensitive issues and that the Working Group's Geneva document left the question open.

In his attempt to improve on the drafting of provisions on this issue, the President prepared the following draft Article 18:

Article 18

1. Nothing contained in the present Convention shall require any Contracting Party to submit to the dispute settlement procedures provided for in the present Convention any dispute arising out of the exercise by a coastal State of its exclusive jurisdiction under the present Convention, except when it is claimed that a coastal State has violated its obligations under the present Convention: (i) by interfering with the freedoms of navigation or overflight, or the freedom to lay submarine cables and pipelines, or related rights and duties of other Contracting Parties; (ii) by refusing to apply international standards or criteria established by the present Convention or in accordance therewith, provided that the international standards or criteria in question shall be specified.

2. When ratifying the present Convention, or otherwise expressing its consent to be bound by it, a Contracting Party may declare that it does not accept some or all of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

(a) Disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention;

(b) Disputes concerning sea boundary delimitations between adjacent States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third-party procedure entailing a binding decision, which it accepts for the settlement of these disputes;

(c) Disputes concerning military activities, including those by Government vessels and aircraft engaged in non-commercial service, it being understood that law enforcement activities pursuant to the present Convention shall not be considered military activities;

(d) Disputes in respect of which the Security Council of the United Nations is exercising the function assigned to it by the Charter of the United Nations, unless the Security Council has determined that specified proceedings under the present Convention would not interfere with the exercise of such functions in a particular case.

3. If the parties to a dispute are not in agreement as to the applicability

of paragraphs 1 or 2 to a particular dispute, this preliminary question may be submitted for decision to the tribunal having jurisdiction under Article 9 and 10 of this Chapter by application of a party to the dispute.
4. A Contracting Party, which has made a declaration under paragraph 2, may at any time withdraw it in whole or in part.
5. Any Contracting Party which has made a declaration under paragraph 2 shall not be entitled to invoke any procedure except under such declaration in relation to any excepted category of dispute against any other Contracting Party.
6. If one of the Contracting Parties has made a declaration under paragraph 2(b), any other Contracting Party may compel the declarant to refer the dispute to the regional or other third-party procedure specified in such declaration.

The first important point to be made concerning the above text is that it embodied the President's decision to close the list of the issues to be exluded from the compulsory procedures of the Convention. Thus only the four categories of disputes specified under paragraph 2(a)-(d) of Article 18 above, as originally suggested in the Working Group's document, were considered as dealing with sensitive matters to be excluded. It is useful to mention here that, apart from further consideration of the actual formulation of acceptable texts with respect to these four specific issues, the question of limiting the list was thus settled by the President. No further suggestions for additions were made henceforth.[22]

The above text also revealed that the President limited the enumeration of the specific categories of disputes with respect to which Contracting Parties would accept the compulsory procedures under the Convention. Paragraph 1 of Article 17 of the Working Group's document analyzed in the previous chapter[23] listed four such categories including '[failure] to have due regard to other rights and duties of other States under the Convention,' and '[abuse] or [misuse of] the rights conferred upon [a State] by this Convention (*abus ou détournement de pouvoir*) to the disadvantage of another Contracting Party.' As can be seen, these two categories were dropped by the President, retaining with drafting adjustments, only the two categories of disputes specified in paragraph 1 of Article 18 above.

5. A liberal approach to the question of access to the third-party procedures under the Convention

The final substantive issue with respect to which the President's informal paper departed from the approach adopted in the document of the Working Group concerned the question of parties with access to the tribunals

exception in paragraph 2(b) of Article 18 concerning boundary disputes, historic bays and titles.[55] Taking into account the fact that paragraph 1 of Article 18 had already limited the scope of compulsory procedures for disputes arising in the economic zone to a few cases stated therein,[56] other delegates tok the view that the other four exceptions of paragraph 2(a)-(d) of Article 18 would render practically ineffective the settlement system being established. Thus, without singling out any of the four subparagraphs for comments, these delegations stated their difficulties with Article 18 as a whole,[57] emphasizing the need to have an effective disputes settlement system for the emerging area known as the 'economic zone'.[58] Taking the opposite view, namely that the exclusive jurisdiction of the coastal States in the economic zone should not be jeopardized by submission to international proceedings, other delegates supported the entire Article 18 and specifically the exceptions in question. In their view, the exceptions of paragraph 2, taken together with the limited scope for compulsory proceedings under paragraph 1 of Article 18, promoted a wider acceptability of the dispute settlement system. Thus, it was argued: 'Article 18 paragraphs 1 and 2, ... seem to offer a balanced range of possible exclusions which could go far towards increasing acceptability of the system.'[59]

It was clear from the debate that the question of exceptions to the compulsory procedures would remain a delicate one and a major test in the degree of acceptance of the third-party procedures for a large category of Law of the Sea disputes.

4. Views on the status of the disputes settlement system within the Convention

Another controversy arose over a basic assumption of both the Background Paper of the Informal Working Group and the President's text. These documents proceeded on the premise that the settlement of disputes articles would form an integral part of the final Convention. During the debate on the President's text, a view surfaced that the subject should be treated in an optional protocol to the Convention:

> 'Since the question of the settlement of disputes involve[s] the sovereignty of all States, the procedures to be followed must be chosen by States themselves. If most States agree to draft specific provisions on dispute settlement procedures, those provisions should not be included in the Convention itself, but should form a separate protocol so that countries [can] decide for themselves whether to accept it or not.'[60]

Others, however, rejected the optional protocol idea and 'wished to emphasize the necessity of making the general obligation to settle disputes an integral part of the future convention [since] the solution adopted at the First United Nations Conference on the Law of the Sea in 1958, in the form of an Optional Protocol of a Signature, was insufficient and unacceptable.'[61]

The ultimate goal, as evidenced in the documents so far analyzed, was to establish a system for peaceful settlement of Law of the Sea disputes through procedures which would be flexible enough to allow States the choice of effective modes of settlement ranging from the noncompulsory judicial ones. It was generally agreed that numerous articles of the final Convention would be in the form of delicately balanced provisions, representing painfully worked out compromises which would require careful interpretation and application. As observed by the President in his explanatory memorandum for the plenary:

> 'Dispute settlement procedures will be the pivot upon which the delicate equilibrium of the compromise must be balanced. Otherwise the compromise will disintegrate rapidly and permanently. I should hope that it is the will of all concerned that the prospective Convention should be fruitful and permanent. Effective dispute settlement would also be the guarantee that the substance and intention within the legislative language of the Convention will be interpreted both consistently and equitably.'[62]

C. First revision of President's draft articles (Part IV Rev. 1)

At its 65th meeting on 12 April 1976, the Conference authorized the President to prepare a new single negotiating text on the subject of settlement of disputes, which would have the same status as Parts I, II and III of the Revised Single Negotiating Text (RSNT),[63] produced by the Chairmen of each of the three main committees during the 1976 summer session of the Conference to replace the SNT produced at the end of the 1975 Geneva session.[64]

On the basis of the observations made during the general debate analyzed above, and taking into account views expressed by various delegations informally and suggestions made by the Contact Group of the Group of 77 on the Settlement of Disputes,[65] President Amerasinghe prepared his first revision of the draft articles on the subject, which was officially designated as Part IV of the RSNT.[66]

apparent that no further substantive objections would be raised about them. Future versions of the two paragraphs dealt henceforth with minor drafting changes.

Paragraph 3 of the draft article was, however, found unacceptable by a number of delegations. As can be seen, it was intended to preserve the right of individuals such as an owner, operator, or master of a detained vessel access to the third-party procedures as envisaged under draft Article 15 below.[90] It was felt that, since there were already difficulties with the idea of according individuals access under draft Article 15, it was unwise for paragraph 3 of the above draft Article 13 to prejudge the issue. It became clear from the discussions on draft Article 13 that its paragraph 3 would not be included in the future versions of the article.[91]

6. Automatic exclusion of certain disputes from the settlement system: Exceptions to such exclusions and optional exceptions by specific declarations

In draft Article 18 of Rev. 1 set out below, the President produced his most complicated text in which three distinct issues were addressed as suggested in the long heading above.

> *Article 18. Exceptions*
> 1. Nothing contained in the present Convention shall empower any Contracting Party to submit to the dispute settlement procedures provided for in the present Convention any dispute in relation to the exercise of sovereign rights, exclusive rights or exclusive jurisdiction of a coastal State, except in the following cases:
> (a) when it is claimed that a coastal State has violated its obligations under the present Convention by interfering with the freedom of navigation or overflight, the freedom to lay submarine cables or pipelines or by failing to give due regard to any substantive rights specifically established by the present Convention in favour of other States;
> (b) when it is claimed that any other State, when exercising the aforementioned freedoms, has violated its obligations under the Convention or the laws and regulations enacted by a coastal State in conformity with the present Convention; or
> (c) when it is claimed that a coastal State has violated its obligations under the present Convention by failing to apply international standards or criteria established by the present Convention or by a competent international authority in accordance therewith, which are applicable to the coastal State and which relate to the preservation of the

marine environment, provided that the international standards or criteria shall be specified.

2. When ratifying the present Convention, or otherwise expressing its consent to be bound by it, a Contracting Party may declare that it does not accept some or all of the procedures for the settlement of disputes specified in the present Convention with respect to one or more of the following categories of disputes:

(a) disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third party procedure, entailing a binding decision, which it accepts for the settlement of these disputes;

(b) disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, it being understood that law enforcement activities pursuant to the present Convention shall not be considered military activities; and

(c) disputes in respect of which the Security Council of the United Nations, while exercising the functions assigned to it by the Charter of the United Nations, determines that specified proceedings under the present Convention interfere with the exercise of such functions in a particular case.

3. If the parties to a dispute are not in agreement as to the applicability of paragraphs 1 or 2 to a particular dispute, this preliminary question may be submitted for decision to the forum having jurisdiction under Articles 9 and 10 of this Chapter by application of a party to the dispute.

4. A Contracting Party, which has made a declaration under paragraph 2, may at any time withdraw it.

5. Any Contracting Party which has made a declaration under paragraph 2 shall not be entitled to invoke any procedure excepted under such declaration in relation to any excepted category of dispute against any other Contracting Party.

6. If one of the Contracting Parties has made a declaration under paragraph 2(a) any other Contracting Party may refer the dispute to the regional or other third-party procedure specified in such declaration.

Let it be observed in the first place that the article constituted a significant departure from the drafting techniques of earlier versions which, as first reflected in the Working Group Geneva's document, required States to designate disputes to be settled by the compulsory procedures and those to be excluded from such procedures.[92] In contrast, draft Article 18 above no

longer required States to make such declarations. As can be seen, paragraph 1 of the article constituted a general clause which automatically excluded from the third-party procedures certain disputes arising out of a coastal States exercise of its 'sovereign rights', 'exclusive rights', or 'exclusive jurisdiction' under the Law of the Sea Convention. In order to appreciate fully the scope of the third-party procedures, it was necessary to refer to the substantive provisions of the other parts of the Convention in order to ascertain the specific issues over which coastal States had the power to exercise sovereign rights, exclusive rights, or exclusive jurisdiction, and which were, accordingly, excluded from the disputes settlement sytem of the Convention.

But that was not all. Having ascertained the specific issues excluded by reference to the substantive provisions, it was again necessary to return to draft Article 18 which further stipulated exceptions to the exclusions as provided in paragraph 1(a)-(c) of the article. Thus, there were compulsory exclusions followed by compulsory exceptions to such exclusions. What emerged from the complicated paragraph 1 was that disputes related to a coastal State's management of living resources, exploitation of the continental shelf, construction of artificial islands and other installations, preservation of the marine environment, conduct of scientific research, and the use of winds and currents to produce energy were all excluded automatically from the third-party settlement proceedings with respect to the issues over which a coastal State had the right to exercise 'jurisdiction'. But there was less scope for the third-party procedures with respect to issues over which a coastal State had the right to exercise 'exclusive jurisdiction', and even less scope for the third-party procedures with respect to the issues over which a coastal State had the right to exercise either 'exclusive rights' or 'sovereign rights'.

Under paragraph 2 of draft Article 18, the President dealt with the question of optional exclusion of certain sensitive issues from the compulsory procedures of Section 2 through a special declaration as originally suggested in the Working Group's Geneva document. Thus, taken together draft Article 18, as noted earlier, was indeed a complex text.

During the discussion, focusing first on paragraph 1 of the article, views ranged from those calling for its outright deletion to those which supported its retention with substantial drafting changes. Some representatives objected to the drafting technique of using the terms 'sovereign rights', 'exclusive rights' and 'exclusive jurisdiction' on the grounds that the substantive provisions of the part of the Convention in which those specific terms are defined might be changed later. There was also the view that Article 18 should mention the three coastal maritime zones by name – the territorial sea, the continental shelf, and the exclusive economic zone – and

then provide more specifically how disputes arising from the activities in each zone would be subject to the third-party procedures, having regard to the 'exceptions to the exclusions' of paragraph 1(a)-(c) of the article. Another view was that, apart from referring to the actual coastal maritime zones by name as suggested, paragraph 1 of Article 18 should also add a specific clause stating that the exceptions envisaged did not apply so as to make coastal States' right to determine total allowable catch of fish or to determine the surplus thereof subject to the compulsory procedures of Section 2. There was also another view relating especially to the last part of paragraph 1(a) of the draft article. The suggestion was that the last phrase 'or by failing to give due regard to any substantive rights specifically established by the present Convention in favour of other States' should be deleted because it was too vague. But it was suggested that the phrase could be improved by mentioning specifically the other internationally lawful uses of the sea related to navigation or communication. This compromise proved acceptable.[93]

Thus the search for a balanced approach continued. Some States emphasized that resource control and management by coastal States should not be unnecessarily challenged by the compulsory procedures, but that the legitimate rights of the other States in the economic zone should not be sacrificed either. The system had to avoid turning the economic zone into either territorial seas or high seas. The essential point was that, while the exercise of reasonable discretion by coastal States under the Convention should not be questioned, the abuse of power by a coastal State in the exercise of such discretion should nevertheless be checked. Paragraph 1 of Article 18 had sought to give due regard to the substantive provisions of the Convention defining the scope of coastal States rights within the economic zone, while at the same time providing a balanced safeguard for the rights of other States.

Paragraph 2 of Article 18, dealing with the exception of certain sensitive issues from the compulsory procedures of Part IV, also received considerable scrutiny. As during the general debate, there were problems with respect to each specific category of disputes being exempted. For example, some representatives accepted the permissible exclusion of sea boundary delimitation disputes under paragraph 2(a), but did not agree with the clause of the same paragraph which read: '... provided that the State making such a declaration shall indicate therein a regional or other third-party procedure, entailing a binding decision, which it accepts for the settlement of these disputes.' This clause seemed to impose a duty upon States to elect, in advance, settlement through either compulsory procedures or a regional body, and took no account of the fact that there were a number of States which would not belong to any suitable regional body. The basic

problem with the clause was that it created a contradiction in the paragraph which, on the one hand sought to exclude sea boundary disputes from the compulsory procedures of Part IV, while on the other hand made the same disputes subject to some other compulsory procedures to be sanctioned by the Convention. However, there was the view that such a provision was necessary since it gave the assurance that sea boundary disputes would have alternative judicial means of settlement sanctioned by the Convention. The idea was that no category of Law of the Sea disputes would be left without a compulsory settlement procedure. It was clear from these discussions that this specific issue would remain problematic in the development of this article.

Paragraph 2(b), excepting military activities from compulsory procedures while providing that law enforcement activities pursuant to the Convention were not to be considered military activities (and therefore, were not exempted from the compulsory procedures), also created difficulties. From its wording, it appeared that paragraph 2(b) created a situation in which, in the exculsive economic zone of a State, the military activities of foreign States' ships would be excluded from third-party settlement, but the coastal State's law enforcement activities would be subject to compulsory international settlement. This imbalance was found to be unnecessary and was later removed.

Paragraph 2(c) dealng with the exception of disputes as to which the Security Council of the United Nations was exercising its functions under the Charter, was also subject to further scrutiny. The issue here was the precise meaning of the phrase 'exercise of functions' by the Security Council, and how the Security Council would determine that a specific proceeding under Part IV on the settlement of disputes interfered with the exercise of the Security Council's functions in a particular case. The issue was not resolved in the discussions of Rev. 1.

7. Flexibility in the choice of forums with jurisdiction in cases of interim measures and prompt release of vessels

In his informal paper, the President assigned the Law of the Sea Tribunal, together with the International Court of Justice as the only forums with jurisdiction in all cases of interim measures under draft Article 12. The Law of the Sea Tribunal alone, was however, designated as the only forum with jurisdiction in cases of vessels detained by coastal States.[94] We have also seen how several delegations objected to this and suggested that the flexibility in the choice of forums established with respect to all other proceedings under the Convention should be maintained. Thus, even with respect to interim measures and detention of vessels, States should be allowed the

exclude from the compulsory procedures of Section 2 by a specific declaration to that effect. Thus, by providing for exclusions and then exceptions to the exclusions and for further declarations for more exclusions, Article 18 was a long and cumbersome text.

It was clear that, apart from addressing some of the criticisms made on the various provisions of Article 18 as observed in the previous chapter,[26] the next revision would certainly simplify the provisions concerning the scope of the compulsory procedures under the system. The simplification was indeed achieved in the second revision of the President's document which dealt with the question of the scope of the compulsory procedures in the two separate articles set out below. In doing this, the second revision reverted to the original approach of separating the question of definition of the scope of the compulsory procedures (Article 17 below) from the question of exclusion of certain sensitive issues from the compulsory procedures of Section 2 of the system as a whole (Article 18 below).

Article 17. Limitations on applicability of section 2

1. Disputes relating to the exercise by a coastal State of sovereign rights, exclusive rights or exclusive jurisdiction recognized by the present Convention shall be subject to the procedures specified in Section 2 only in the following cases:

(a) When it is claimed that a coastal Stae has acted in contravention of the provisions of the present Convention in regard to freedom of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation or communication; or

(b) When it is claimed that any State, in exercising the aforementioned freedoms, has acted in contravention of the provisions of the present Convention or of laws or regulations enacted by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is claimed that a coastal State has acted in contravention of specified international standards or criteria for the preservation of the marine environment or for the conduct of marine scientific research, which are applicable to the coastal State and which have been established by the present Convention or by a competent international authority acting in accordance with the present Convention; or

(d) When it is claimed that a coastal State has manifestly failed to comply with specified conditions established by the present Convention relating to the exercise of its rights or performance of its duties in respect of living resources, provided that in no case shall the sovereign rights of the coastal State be called in question.

2. Any dispute excluded by paragraph 1 may be submitted to the procedure specified in Section 2 only with the express consent of the coastal State concerned.
3. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of Article 10.

Article 18. Optional exceptions
1. A Contracting Party when ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in Section 2 with respect to one or more of the following categories of disputes:
(a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third party procedure, entailing a binding decision, which it accepts for the settlement of such disputes.
(b) Disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, provided that law enforcement activities pursuant to the present Convention shall not be considered military activities;
(c) Disputes in respect of which the Security Council of the United Nations, while exercising the functions assigned to it by the Charter of the United Nations, determines that specified proceedings under the present Convention interfere with the exercise of such functions in a particular case.
2. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of Article 10.
3. A Contracting Party which has made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to a procedure specified in Section 2.
4. A Contracting Party which has made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category to any procedure in Section 2 as against any other Contracting Party, without the consent of that party.
5. If one of the Contracting Parties has made a declaration under subparagraph 1(a) of this article, any other Contracting Party may submit any excepted category of dispute against the declarant party to the procedure specified in such declaratoin.

In dealing with the scope of the compulsory procedures under Article 17 above, the second revision attempted to make the application of the compulsory procedures to correspond to the degree of coastal State powers over certain activities within the Exclusive Economic Zone (EEZ) as was provided in the substantive articles of the Convention concerning such activities. Thus the article made the scope of the compulsory procedures of Section 2 wider with respect to disputes concerning activities within the EEZ over which a coastal State was entitled to exercise only 'jurisdiction'. Such activities included the preservation of the marine environment and the conduct of marine scientific research, as provided in paragraph 1(c) of the article. A similar scope for compulsory procedures was allowed with respect to claims concerning coastal States' actions relating to the other freedoms within the EEZ listed under paragraphs 1(a) and 1(b) of the article.

The scope of the compulsory procedures was however narrower and more limited with respect to disputes concerning activities in the EEZ over which a coastal State was entitled to exercise 'exclusive rights' or 'sovereign rights'. Accordingly, with respect to disputes relating to coastal States' management of the living resources in the EEZ, over which it was entitled to exercise 'sovereign rights', the compulsory procedures could be used, 'provided that in no case shall the sovereign rights of the coastal State be called into question,' as stipulated in paragraph 1(d) of Article 17 above. Thus it can be seen that the second revision clearly distinguished between the scope of the compulsory procedures in the case of disputes involving preservation of the marine environment and conduct of marine scientific research on the one hand, and disputes relating to the exploration and exploitation of the living resources on the other. With respect to the former the compulsory procedures were envisaged even to the extent of calling into question the sovereign rights of the coastal States. This was clearly not the case with regard to the latter as just indicated above. As will be shown later, this distinction was later refined.[27]

During the discussion of the article at the 1977 session of the Conference, there was still concern over the failure of the article to identify by name the specific maritime jurisdictions in question. A suggestion was thus made to change the first clause in the *chapeau* of the article to refer specifically to disputes within the 'economic zone' or 'continental shelf'. There was also the view that the article should be reformulated so as to ensure a more balanced protection against possible abuse of powers by the coastal States to the detriment of other States, and possible abuse of powers by other States to the detriment of the coastal States.

Several specific suggestions were made for the improvement of pargraph 1 of the article. Thus it was noted that, with respect to navigation, over-

flight, and other activities, paragraph 1(a) should refer to both 'freedoms and rights' instead of simply to 'freedoms'. It was also suggested that the Law of the Sea Convention should be specifically mentioned in the context of the 'other internationally lawful uses of the sea' stipulated under the paragraph.

The same addition of the word 'rights' was suggested with respect to paragraph 1(b) of the article. Some urged that the expression 'in contravention of the provisions of the present Convention' be replaced by the phrase 'in contravention of their obligations under the present Convention'. In sum, paragraph 1(b) was viewed as an appropriate counterbalance to paragraph 1(a).

With respect to paragraph 1(c) of the article, there was some apprehension concerning the treatment therein of marine scientific research. There was a specific suggestion to delete reference to scientific research, thereby separating it from preservation of the marine environment. The idea was to prevent placing on the same footing scientific research with preservation of the marine environment for which the compulsory procedures had the authority even to call into question the sovereign rights of coastal States. It became evident at this point that there were those who did not want the compulsory procedures of Section 2 to have such a wide scope with respect to disputes relating both to the conduct of scientific research and the management of the living resources.

As for paragraph 1(d) of the article, there was a suggestion that a provision be added to make it clear that a coastal State could be challenged before the compulsory procedures only when it acted beyond the limits of its discretion. But there was the view that the paragraph as thus drafted and even with the suggested addition, already leaned too much towards protecting only the rights of coastal States. There was therefore a suggestion that the paragraph be reworded to apply to cases 'when it is claimed that a coastal State has failed to perform its duties or to observe the conditions for the exercise of its rights in respect of living resources provided for in the present Convention' regardless of whether or not the coastal States' sovereign rights were called into question.

The most penetrating overall suggestion called for a better balancing of the interests of coastal States and those of the other States. There was some fear that coastal States would be unreasonably brought into international tribunals on frivolous complaints, thereby justifying the coastal States' fear of 'abuse of process'. Equally valid was the noncoastal States' fear of 'abuse of power' by coastal States in the exclusive economic zone. The latter abuse would not be subject to the safeguard of international adjudication binding on the coastal States. A greater balance was thus necessary, since without such a balance noncoastal States would be left to the mercy of national courts.

It became apparent that Article 17 could be changed to provide for equal treatment of coastal States and other States, thereby avoiding both 'abuse of power' and 'abuse of process.' A deterrent to such abuse by both sides would be to have a provision asking the Court or tribunal in every case to make a preliminary examination of a complaint to determine whether it had been established *prima facie* that there existed a substantial complaint to be met by the opposing party or whether the complaint was frivolous and unfounded. This approach was in line with the views expressed by the President when introducing the discussion on the article. He drew attention to the attempt made to introduce the *prima facie* findings with respect to Article 12 on interim measures proceedings and called for the use of the same principle in Article 17.

The discussion on Article 17(1)(a) also reflected a problem noted by the President in his introductory statement. Since the wording of Article 17(1)(a) was predicated on article 46(1) of substantive Part II of the RSNT,[28] any formulations of Part IV concerning settlement of disputes ought not to change or prejudge the substantive provisions of Article 46. Thus, if the pharse 'and other internationally lawful uses of the sea related to navigation and communication' was to be changed in Part IV, consideration had first to be given to possible changes that might occur in Article 46(1) of Part II. The settlement of disputes provisions could not be allowed to conflict with the relevant substantive articles of the Convention.

Taking leave of Article 17 on the scope of the compulsory procedures of Section 2 of the system we now turn to the discussion of Article 18 of the second revision, set out above, and dealing with the problem of exclusion of certain sensitive ideas from the compulsory procedures of the system.

Introducing the article for discussion, the President observed that paragraph 1(a) of the article remained as it was in the first revision. He also noted that there was some apprehension on the part of certain delegates who pointed out that, under the guise of dealing with sea-boundary delimitations, territorial claims could also be raised and adjudicated. It was the view of the President, however, that such would not be the case. He explained that territorial claims should be resolved in accordance with the general rules of international law. He noted that the Convention on the Law of the Sea was not intended to deal with such disputes.

The most lively debate over paragraph 1(a) of Article 18 focused on the phrase 'provided that the State making such a declaration shall indicate therein a regional or other third party procedure, entailing a binding decision which it accepts for the settlement of such disputes.' Since this clause remained in the text despite the objections raised about it during the discussion of the first revision,[29] the comments about it during the sixth session of the Conference were even more vehement.

C. The question of settlement of sea boundary delimitation disputes

As may be recalled from the discussion in the previous chapters, the question of settlement of sea boundary disputes was dealt with in the article dealing with the exclusion of certain sensitive issues from the compulsory procedures for the settlement of disputes under the Convention. In the ICNT that question was covered under paragraph 1(a) of Article 297.

Having thus been identified as one of the core issues to be resolved in the context of the other articles concerning the formulation of the rule on delimitations of maritime boundary between States with opposite or adjacent coasts, the issue was asssigned to Negotiating Group 7 as has been noted earlier.

Several delegations maintained their position that all disputes concerning maritime boundary delimitation were inappropriate for settlement through the compulsory judicial procedures of Section 2 of Part XV of the ICNT. Other also maintained the opposite view calling for the settlement of all boundary delimitation disputes through the compulsory procedures embodied in the Convention.

The ICNT attempted to strike a compromise by allowing a State the option of removing these disputes from the compulsory procedures, provided the State exercising such an option indicated and accepted as an alternative settlement mechanism, a regional or other third-party procedure leading to a binding decision and to which all the parties to the dispute had access. The ICNT went on to provide that decisions made by these alternative procedures accepted by the parties would exclude the determinations of any claim of sovereignty or other rights with respect to continental or insular land territory.

Certain basic difficulties persisted with regard to each of the clauses of sub-paragraph 1(a) of Article 297. As was observed in the previous discussions, doubts were expressed as to the practical feasibility of requiring designation of a regional or other third-party procedure to which all parties to the dispute would have access. There was also the view that the exclusion of any 'claim to sovereignty' would be used as a pretext for completely excluding from the compulsory procedures all legitimate delimitation disputes.

Negotiating Group 7, which was mandated to examine these issues, did not have time for a thorough discussion. the Group spent most of its time dealing with the substantive provisions on delimitation provided under Articles 15, 74 and 83 of the ICNT. Towards the end of its work, the Group was, however, able to hold private consultations among the delegations which either had submitted informal suggestions concerning sub-paragraph 1(a) or had expressed views on its content. The consultation group of four-

Annex 94

Extracts from Nordquist, M.H., Rosenne, S. and Sohn, L.B., (eds), "United Nations Convention on the Law of the Sea 1982: A Commentary", Vols. V, VI (Nijhoff, Dordrecht, 1989).

9. A/CONF.62/L.41 (1979), reproduced in A/CONF.62/91 (1979), XII Off. Rec. 71, 94 (Chairman, Third Committee).
10. A/CONF.62/L.45 (1979), reproduced in A/CONF.62/91 (1979), XII Off. Rec. 71, 110 (President).
11. A/CONF.62/L.50 (1980), XIII Off. Rec. 80 (Chairman, Third Committee).
12. A/CONF.62/L.52 and Add.1 (1980), XIII Off. Rec. 86 (President).
13. A/CONF.62/WP.10/Rev.2 (ICNT/Rev.2, 1980, mimeo.), article 296. Reproduced in II Platzöder 3, 121-23.
14. A/CONF.62/WS/5 (1980), XIII Off. Rec. 104 (Argentina).
15. A/CONF.62/L.59 (1980), XIV Off. Rec. 130 (President).
16. A/CONF.62/WP.10/Rev.3* (ICNT/Rev.3, 1980, mimeo.), article 297. Reproduced in II Platzöder 179, 300-01.
17. A/CONF.62/L.78 (Draft Convention, 1981), article 297, XV Off. Rec. 172, 220-221.

Drafting Committee

18. A/CONF.62/L.75/Add.5 (1981, mimeo.).
19. A/CONF.62/L.82 (1981), XV Off. Rec. 243 (Chairman, Drafting Committee.
20. A/CONF.62/L.152/Add. 25 (1982, mimeo.).
21. A/CONF.62/L.160 (1982), XVII Off. Rec. 225 (Chairman, Drafting Committee).

Informal Documents

22. SD.Gp/2nd Session/No.1/Rev.5 (1975, mimeo.), article 17; reissued as A/CONF.62/Background Paper 1 (1976, mimeo.), article 17 (Co-Chairmen, SD.Gp). Reproduced in XII Platzöder 108 and 194.
23. NG5/16 (1978), reproduced in A/CONF.62/RCNG/1 (1978), X Off. Rec. 13, 120 (Chairman, NG5).
24. NG5/17 (1978), reproduced in A/CONF.62/RCNG/1 (1978), X Off. Rec. 13, 117 (Chairman, NG5). [The symbol "NG5/17" has been dropped from the reproduction of this document in the English version of X Off. Rec].
25. NG5/18 (1978), reproduced in A/CONF.62/RCNG/2 (1978), X Off. Rec. 126, 168 (Chairman, NG5).
26. SD/3 (1980, mimeo.) (President). Reproduced in XII Platzöder 239.
27. SD/3/Add.1 (1980, mimeo.) (President). Reproduced in XII Platzöder 275.

COMMENTARY

297.1. The acceptance by many participants in the Third U.N. Conference on the Law of the Sea of the provisions for the settlement of disputes relating to the interpretation of the Law of the Sea Convention was, from the very beginning, conditioned on the exclusion of certain issues from the obligation to submit them to a procedure entailing a binding decision.

There was no doubt that the basic obligations of Part XV, section 1, relating to the settlement of disputes by means agreed upon by the parties to the dispute (articles 279 to 284) should apply to all disputes arising under the Convention. Beyond that, however, there was some opposition to an unlimited obligation to submit a dispute to a procedure entailing a binding decision. When Ambassador Reynaldo Galindo Pohl (El Salvador) introduced the first general draft on the settlement of disputes at the second session of the Law of the Sea Conference (1974), he immediately highlighted the need for exceptions from obligatory jurisdiction with respect to "questions directly related to the territorial integrity of States." Otherwise, a number of States might have been dissuaded from ratifying the Convention or even signing it.[1]

297.2. The document presented at Caracas by an informal working group (Source 1) suggested three basic options on the subject, each of which was defended strongly within the group. First, the integrity of the compromise package to be embodied in the Convention was to be preserved at all cost; therefore, an effective dispute settlement system must apply "to all disputes relating to the interpretation and application of this Convention" (ibid., Alternative A). Second, the dispute settlement machinery should have no jurisdiction over specified categories of issues, or its jurisdiction over those issues should be limited to non-binding decisions (ibid., Alternatives B.1 and B.2). The third option contained an "opt-out" system which would allow States to exclude specified categories of disputes completely from dispute settlement or at least from procedures entailing binding decisions (ibid., Alternatives C.1 and C.2). In specifying the categories of disputes that could be excluded, the group listed such categories as: (a) disputes arising out of the normal exercise of regulatory or enforcement jurisdiction (except in cases of gross or persistent violation of the Convention or abuse of power) or, alternatively, disputes arising out of the normal exercise of discretion by a coastal State pursuant to its regulatory and enforcement jurisdiction under the Convention (except in cases involving an abuse of power); (b) disputes concerning sea boundary delimitation between States, including those involving historic bays or limits of the territorial sea; (c) disputes concerning vessels and aircraft entitled to sovereign immunity under international law, and similar cases in which sovereign immunity applies; (d) disputes concerning military activities; and (e) other categories that may be agreed upon.

297.3. On the basis of further negotiations at the third session of the Conference (1975), the informal negotiating group presented a concrete draft of provisions on dispute settlement (Source 22), which in article 17 tried to limit a State's right to make exceptions, by specifying the categories of disputes in which a State can choose not to participate in whole or in part. That text read as follows:

[1] 51st plenary meeting (1974), para. 10, I Off. Rec. 213.

Informal Documents

19. SD.Gp/2nd Session/No.1/Rev.5 (1975, mimeo.), article 17; reissued as A/CONF.62/Background Paper 1 (1976, mimeo.), article 17 (Co-Chairmen, SD.Gp). Reproduced in XII Platzöder 108 and 194.
20. NG7/20 (1978, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 408.
21. NG7/20/Rev.1 (1978, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 412.
22. NG7/27 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 438.
23. NG7/30 (1979, mimeo.) (Israel). Reproduced in IX Platzöder 451.
24. NG7/37 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 457.
25. NG7/45 (1979, mimeo.), article 298(1)(a), reproduced in A/CONF.62/91 (1979), XII Off. Rec. 71, 107 (Chairman, NG7).
26. SD/3 (1980, mimeo.) (President). Reproduced in XII Platzöder 239.
27. SD/3/Add.1 (1980, mimeo.) (President). Reproduced in XII Platzöder 257.

COMMENTARY

298.1. In view of the general reluctance to allow reservations to the Law of the Sea Convention and, at the same time, the insistence of some delegations that certain categories of disputes could not be submitted to third-party adjudication, an agreement was reached early in the Conference on the need for a list of well-defined classes of disputes which may be exempted from such adjudication by a declaration filed in advance (see para. 309.6 below). Once the special concerns of the coastal States with respect to their special rights in the exclusive economic zone were satisfied by the provisions which now are incorporated in article 297 (see article 297 Commentary), several other issues remained that had to be taken care of by an exemption clause. Prominent among these issues were disputes relating to sea boundary delimitations, historic bays or titles, military and law enforcement activities, and issues relating to the maintenance of international peace and security which are being dealth with by the Security Council of the United Nations. The provisions relating to each of these categories developed along different lines and will be dealt with separately, after a general consideration of the drafting history of this article.

298.2. The idea of a specific exemption clause for certain categories of disputes was considered early in the Conference by the informal working group on the settlement of disputes in 1974. While some of its members believed that the integrity of the compromise packages to be embodied in the Convention had to be preserved at all costs against unravelling by reservations that would actually result in a disintegration of the package, the majority agreed that various States consider certain matters to be so sensitive that they should not be subject to the far-reaching dispute settle-

ment procedures being envisaged for inclusion in the Convention. Consequently, the working group listed in its report (Source 1) alternative formulations of various items suggested by its members, without trying to decide at that time on the general desirability of a particular item or on its most appropriate formulation. These items related to disputes concerning the exercise of a State's regulatory or enforcement jurisdiction, sea boundary delimitations, historic bays, vessels and aircraft entitled to sovereign immunity under international law, and military activities.

298.3. Further negotiations at the third session of the Conference (1975) enabled the enlarged informal working group to prepare a more definitive draft of the list of disputes that could be excepted by a declaration (Source 19, para. 3). It included the following items:

> (a) Disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under this Convention, except in cases involving an abuse of power.
>
> (b) Disputes concerning sea boundary delimitations between adjacent States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third-party procedure, [whether or not] entailing a binding decision, which it accepts for the settlement of these disputes.
>
> (c) Disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, but law enforcement activities pursuant to this Convention shall not be considered military activities.
>
> (d) Disputes or situations in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council has determined that specified proceedings under this Convention would not interfere with the exercise of such functions in a particular case.

Although this list was supposed to be open-ended, no further items were ever added to the list. Further, the first item was soon removed in view of the elaboration of more precise provisions with respect to the applicability of dispute settlement procedures to disputes relating to the exercise by the coastal State of its sovereign rights or jurisdiction (see para. 297.7 above).

298.4. The working group's draft of article 17, paragraph 3, was revised slightly by President Amerasinghe for inclusion in article 18, paragraph 2, of his first draft of a new Part IV of the ISNT (Source 2). The only substantive change he made was to omit the reference to abuse of power in subparagraph (a), so that this subparagraph read:

> (a) Disputes arising out of the exercise of discretionary rights by a coastal State pursuant to its regulatory and enforcement jurisdiction under the present Convention[.]

298.5. During the plenary debate on the settlement of disputes at the fourth session of the Conference (1976) (see para. 297.6 above), issues were raised

with respect to each item on the list of optional exceptions (which will be discussed later in this Commentary). In light of that debate, President Amerasinghe omitted old subparagraph (a) relating to discretionary rights of a coastal State, renumbered the remaining three subparagraphs, and revised the new subparagraph 2(c) of article 18 (Source 4) to read:

> (c) disputes in respect of which the Security Council of the United Nations, while exercising the functions assigned to it by the Charter of the United Nations, determines that specified proceedings under the present Convention interfere with the exercise of such functions in a particular case.

Apart from that, there was only a small drafting change in new subparagraph (b) relating to law enforcement activities.

298.6. In light of the discussion in the Informal Plenary at the fifth session of the Conference (1976), the President again revised his draft. He separated the optional exceptions from "limitations on the applicability of section 2," and devoted the new article 18 of the RSNT, Part IV (Source 5), solely to optional exceptions, adding provisions about the effect of the exclusionary declarations and the procedure of making and withdrawing declarations. Up to this time, some of these clauses were common to the provisions on limitations and on optional exceptions (see also para. 297.9 above).

298.7. The new text of article 298 [then article 18 of Part IV of the RSNT (see Source 5)] read:

> 1. A Contracting Party when ratifying or otherwise expressing its consent to be bound by the present Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in Section 2 with respect to one or more of the following categories of disputes:
>
> (a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall indicate therein a regional or other third party procedure, entailing a binding decision, which it accepts for the settlement of such disputes;
>
> (b) Disputes concerning military activities, including those by government vessels and aircraft engaged in non-commercial service, provided that law enforcement activities pursuant to the present Convention shall not be considered military activities;
>
> (c) Disputes in respect of which the Security Council of the United Nations, while exercising the functions assigned to it by the Charter of the United Nations, determines that specified proceedings under the present Convention interfere with the exercise of such functions in a particular case.
>
> 2. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of article 10.

3. A Contracting Party which had made a declaration under paragraph 1 may at any time withdraw it, or agree to submit a dispute excluded by such declaration to a procedure specified in section 2.

4. A Contracting Party which had made a declaration under paragraph 1 shall not be entitled to submit any dispute falling within the excepted category to any procedure in section 2 as against any other Contracting Party, without the consent of that party.

5. If one of the Contracting Parties has made a declaration under subparagraph 1(a) of this article, any other Contracting Party may submit any excepted category of dispute against the declarant party to the procedure specified in such declaration.

298.8. In preparation for the sixth session of the Conference, the President held informal consultations on the dispute settlement provisions, on the margin of the informal intersessional consultations on First Committee matters held at Geneva in March 1977. The President's report on these consultations, which was circulated to all delegations,[1] contained the following statement on article 18:

2. In relation to article 17 and 18 one issue was whether the limitations on compulsory dispute settlement (article 17) and the exceptions (article 18) should apply to the "procedure for the settlement of disputes specified in the *whole Convention*" and not merely to the "procedures for the settlement of disutes specified in *section II*"....

3. The main criticism of article 18 centered around paragraph 1(a) in relation to sea boundary delimitations. The opposing positions were on the one hand that the words "entailing a binding decision" should be deleted, and on the other, that boundary delimitations be brought totally within the compass of section II of part IV. Paragraph 1(b) was also objected to on the basis that it was unreasonable to draw a distinction between military activities and para-military law enforcement activities.

298.9. After an additional discussion of this provision at the sixth session of the Conference (1977), the President reported that in preparing the text of the ICNT (Source 6) the following considerations were taken into account (see Source 7):

The compromise provision appearing in article 18 of the revised single negotiating text has been retained in substance in article 297 of the informal composite negotiating text, due to the fact that there was a nearly equal division of views as to the need, or otherwise, for compulsory binding procedures. Certain new elements have been incorporated in relation to disputes concerning delimitation of sea boundaries between adjacent or opposite States. They are, firstly, the exclusion of adjudication of territorial claims, and secondly, that

[1] "Informal Note from the President of the Third United Nations Conference on the Law of the Sea to All Delegations" (25 March 1977, mimeo.), sections 2-3, UN Job No. (1)-204003.

where a party has chosen a procedure not specified in this Convention, the other party to the dispute must have access to such procedure.

Subparagraph (b) of paragraph 1 of article 18 of the revised single negotiating text has been amended so as to give law enforcement activities similar immunity to military activities. The corresponding provision is in subparagraph (b) of paragraph 1 of article 297 of the informal composite negotiating text. Article 297.1 (c) has incorporated a change relating to disputes in respect of which the Security Council is exercising the functions assigned to it.

In addition, the new text made it clear, in the beginning phrase of article 297, paragraph 1, that the permissible declarations can apply only to the procedures under section 2 of Part XV that entail a binding decision, but are "[w]ithout prejudice to the obligations arising under section 1" that do not entail such decision, unless the parties agree otherwise (see Source 6). The formulation of the three exceptions was considerably revised, so that they read:

(a) Disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles, provided that the State making such a declaration shall, when such dispute arises, indicate, and shall for the settlement of such disputes accept a regional or other third-party procedure entailing a binding decision, to which all parties to the dispute have access; and provided further that such procedure or decision shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory;

(b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service and, subject to the exceptions referred to in Article 296, law enforcement activities in the exercise of sovereign rights or jurisdiction provided for in the present Convention;

(c) Disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations, unless the Security Council decides to remove the matter from its agenda or calls upon the parties to settle it by the means provided for in the present Convention.

298.10. No changes were made in the ICNT/Rev.1 with respect to article 298, but intensive negotiations in several groups contributed to important changes thereafter. In particular, discussions in Negotiating Group 7 (see para. XV.12 above) produced a new draft of article 298, paragraph 1, introducing the concept of conciliation for certain disputes relating to sea boundary delimitations (Sources 10 and 24). Agreement was reached in the Informal Plenary on aligning "the law enforcement activities that may be excluded by declaration with the exercise of the sovereign rights and jurisdiction which were excluded from the compulsory jurisdiction of a court or tribunal" (Source 11, L.52, para. 7), thus making the sphere of

application of article 298, paragraph 1(b), parallel to that of article 296 [later 297], paragraphs 2 and 3.

Consequently, the ICNT/Rev.2 (Source 12) contained the following new text of article 298, paragraphs 1(a) and (b):

> 1. Without prejudice to the obligations arising under section 1, a State Party when signing, ratifying or otherwise expressing its consent to be bound by this Convention, or at any time thereafter, may declare that it does not accept any one or more of the procedures for the settlement of disputes specified in this Convention with respect to one or more of the following categories of disputes:
>
> **(a) (i)** Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in annex V; and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory;
>
> (ii) after the Conciliation Commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 of Part XV, unless the parties otherwise agree;
>
> (iii) the provisions of this subparagraph shall not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties.
>
> (b) Disputes concerning military activities, including military activities by government vessels and aircraft engaged in non-commercial service, and disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under article 296, paragraphs 2 and 3[.]

298.11. Only one minor change was made in the relevant provisions of the ICNT/Rev.3 (Source 15), by providing a cross-reference to Annex V, section 2 (dealing with compulsory recourse to conciliation). Some drafting changes were made in the text of article 298 of the Draft Convention

(Source 16) as a result of the report of the Drafting Committee (Source 17).

298.12. The final text of article 298 makes it clear that with respect to the three categories of disputes specified in that article (but not to any other categories), a State may exclude one or more of these categories of disputes from adjudication under Part XV, section 2, by depositing a written declaration with the Secretary-General of the United Nations. Such declarations may be deposited either at the time of signing, ratifying or acceding to the Convention, or at any time thereafter. If a declaration excluding a category of disputes is made when a proceeding has already commenced before a court or tribunal, it has no retroactive effect on the proceeding.

A State Party which has made a declaration under this article may at any time withdraw it, thus agreeing to submit to adjudication any disputes previously excluded. In addition, a State Party may agree in a particular case to submit to adjudication a dispute which is excluded from adjudication by its declaration of exemption. This differs from general withdrawal of a declaration, as the declared exclusions remain applicable to other disputes, even those with the State with which the special agreement was concluded.

The Convention does not mention the possibility of a modification of a declaration, but a modification can easily be arranged by withdrawing a declaration and, at the same time, filing a new declaration which is either broader or narrower. For instance, a State which has filed only a declaration relating to sea boundary delimitations may deposit an additional declaration excepting disputes concerning military activities, or may instead deposit a completely new declaration containing both exceptions. Similarly, a State may withdraw an exception either by depositing a limited declaration deleting it from a declaration containing more than one exception, or by completely withdrawing the previous declaration and depositing a new one containing fewer exceptions. (Concerning the modalities of deposits of declarations, see para. 319.12 below.)

298.13. It is not clear whether a declaration has to apply to all disputes within a particular category, or can exclude only certain specific disputes. For instance, in making a declaration relating to sea boundary disputes, a State may have in mind a particular dispute with one of its neighbors but does not want to offend its other neighbors by a broad-gaged exclusion. In such a case it may exclude the sensitive dispute specifically or generically (e.g., all sea boundary disputes on the east coast). As the basic idea of the Conference was to limit to the maximum extent possible the available exceptions, it would be in the spirit of article 298 to permit narrower exceptions than those allowed therein. This also seems implied in paragraph 1(a)(i), where disputes relating to sea boundary delimitations are separated by a disjunctive "or" from disputes involving historic bays or titles, thus enabling a State to select only one of these subcategories for an exclusion through its declaration.

298.14. If a State has excepted a particular category of disputes by a declaration, it may not bring any dispute falling within that category against

any other State, even if that State has not made a similar declaration of exception (article 298, paragraph 3).

298.15. One of the available exceptions – relating to sea boundary delimitations or historic bays or titles[2] – requires the State making such exception to agree to submit the matter in certain circumstances to compulsory conciliation under Annex V, section 2. In such a case, if the necessary conditions are fulfilled, the fact that one party to a dispute has included this exception in its declaration does not prevent the other party to the dispute from resorting to a conciliation commission (article 298, paragraph 4).

298.16. Three main exceptions can be made under article 298 (see para. 298.1 above), each of which went through many permutations before achieving its final form. While the main lines of development were indicated in the first part of this Commentary, the scope of these exceptions may be further elucidated by a more careful analysis of the development of each of these exceptions.

298.17. As already noted (para. 298.2 above), references to sea boundary delimitations and historic bays may be found in the paper prepared by the informal working group on the settlement of disputes in 1974 (see Source 1). They appeared there in two alternative formulations. The first one contained two separate exceptions: disputes "concerning sea boundary delimitations between States," and disputes "involving historic bays or limits of [the territorial sea]." The second one combined these two exceptions by referring to disputes "concerning sea boundary delimitations between adjacent and opposite States, including those involving historic bays and the delimitation of the adjacent territorial sea."[3]

298.18. The text prepared by the informal working group on the settlement of disputes in 1975 (Source 19, quoted in para. 298.3 above) included a simplified version of the second alternative text. It referred to disputes "concerning sea boundary delimitations between adjacent States, or those involving historic bays or titles," and added to it the following proviso: "provided that the State making such a declaration shall indicate therein a regional or other third-party procedure, [whether or not] entailing a binding decision, which it accepts for the settlement of these disputes" (brackets in the original). This proviso curtailed the possibility of making this exception by allowing it only in cases where a State was a party to an

[2] For the main provision of the Convention relating to historic bays, see article 10, paragraph 2.

[3] It may be noted that the nearly contemporaneous declaration of El Salvador, accepting the jurisdiction of the International Court of Justice under Article 36 of the Court's Statute, contained elaborate exceptions relating to delimitation of its frontiers, territorial sea, continental shelf and historic bays, which are reflected in a condensed form in the reservation proposed at Caracas. Declaration of El Salvador of 26 November 1973, 1984-85 ICJ YB 73, 74. In explaining the document prepared by the informal working group in 1974 (Source 1), its cochairman, the representative of El Salvador, emphasized the need for an exception with respect to "questions directly related to the territorial integrity of States." 51st plenary meeting (1974), para. 10, I Off. Rec. 213.

alternative procedure outside the framework of the Convention (as envisaged also by article 282 of the Convention), or was willing to accept such an alternative procedure *ad hoc* for this particular purpose. The phrase in square brackets reflected the fact that some members of the group would have been satisfied with resort to conciliation procedure, while others insisted that boundary disputes were likely to be more frequent when the zones under the jurisdiction of the coastal States were more extensive, and that those zones would create a danger to peace if they were not definitely settled by a binding decision.

This problem was temporarily resolved by President Amerasinghe, who found the second argument more persuasive and omitted the phrase in square brackets from the first draft of the ISNT, Part IV (Source 2), which in all other respects repeated the working group's text.

298.19. In the second draft of the ISNT, Part IV (Source 4), the only change was the restoration of the reference to "opposite" States that was contained in the 1974 Caracas text (Source 1), but was omitted, probably inadvertently, from the working group's 1975 text (Source 19). Thus, the phrase was changed to refer to "sea boundary delimitations between adjacent or opposite States." An even smaller change was made in the President's third draft (Source 5), where in the final phrase of paragraph 1(a) of the now separated article 18 (on "Optional exceptions") the words "such disputes" replaced "these disputes."

298.20. As noted above (see para. 298.8), the President's draft was criticized for putting forth that the declaring State should be required to accept another procedure "entailing a binding decision," while many States considered that no exceptions with respect to boundary delimitations should be allowed. As the opinions were about equally divided, the essence of this provision was not changed in the ICNT (see Source 7).

Two other criticisms, however, were taken into account. One involved the issue of access to the tribunal chosen by the declarant State. It was pointed out that the other party to the dispute (for instance, one not belonging to a particular regional organization) may not be entitled to bring a dispute before the tribunal chosen by the declarant. It was agreed that "where a party has chosen a procedure not specified in this Convention, the other party to the dispute must have access to such procedure" (see Source 7). A clause was added, therefore, to article 297, paragraph 1(a), of the ICNT specifying that the forum indicated by the declarant State must be one "to which all parties to the dispute have access" (Source 6).

The other criticism related to mixed disputes, involving territorial as well as maritime boundaries. Some States feared that under the guise of a dispute relating to a sea boundary delimitation, a party to a dispute might bring up a dispute involving claims to land territory or an island. This complaint was found to be reasonable (see Source 7), and article 297, paragraph 1(c), was further amended in order to exclude from any procedure or decision under that provision any "determination of any claim to sovereignty or other rights with respect to continental or insular land

territory" (article 298, paragraph 1(a)) (for the revised text, see para. 298.9 above).

298.21. At the seventh session of the Conference (1978), the issue of "delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon" was identified as one of the "hard-core" issues, and Negotiating Group 7, under the chairmanship of Judge Eero J. Manner (Finland) was established to discuss this issue. Judge Manner himself chaired informal discussions on the delimitation problems, and established a separate subgroup, under the chairmanship of Professor Louis B. Sohn (U.S.A.), to discuss the separable issue of devising methods for settling boundary disputes (see paras. XV.10 and 12 above).[4]

298.22. This subgroup of NG7, during its meetings held at the seventh session of the Conference (1978), was presented with several conflicting proposals. Some members considered that all disputes concerning sea boundary delimitations should be settled by negotiations between the parties and could be submitted to third-party determination only by a special agreement between the parties to the dispute. They argued, therefore, that the text in the ICNT should be pared down by omitting all the provisos, so that a State would be able to exclude all "[d]isputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles."[5] Other members insisted, on the other hand, that binding decisions by a third party are necessary in order to forestall "the many potential disputes concerning that particularly delicate area";[6] subject to some drafting changes, they supported the text presented in the ICNT.[7] The NG7 subgroup suggested several possible compromises, taking into account the practice of States with respect to declarations accepting the compulsory jurisdiction of the International Court of Justice. For instance, States would be allowed to exclude disputes which came into existence prior to the entry into force of the Law of the Sea Convention,

[4] See also statement by Judge Manner on the establishment of the subgroup, 108th plenary meeting (1978), para. 37, IX Off. Rec. 99-100.

For a detailed analysis of the work of NG7 and its subgroup, see A.O. Adede, "Toward the Formulation of the Rule of Delimitation of Sea Boundaries Between States with Adjacent and Opposite Coastlines," 18 Va. J. Int'l L. 207 (1977).

[5] NG7/8 (1978, mimeo.) (Argentina). Reproduced in IX Platzöder 400. Similar views were expressed in the debate on the report of NG7 in the Plenary at the seventh session of the Conference (1978) by the delegations of Turkey, 105th meeting, para. 99, IX Off. Rec. 83; Soviet Union, 106th meeting, paras. 5-6, ibid. 84; and Argentina, id., para. 28, ibid. 85-86.

[6] This argument was repeated at the 106th plenary meeting by the delegate of Algeria, IX Off. Rec. 86, para. 31.

[7] See similar statements at the 103rd to 106th plenary meetings (1978) by the delegations of Greece, 103rd meeting, para. 50, IX Off. Rec. 65 ("the new law of the sea should provide for a procedure or procedures entailing a binding decision"); Colombia, 105th meeting, para. 20, ibid. 78; Japan, id., para. 85, ibid. 82; Republic of Korea, 106th meeting, para. 3, ibid. 84; Chile, id., para. 22, ibid. 85; Spain, id., para. 38, ibid. 86 (the proposed procedure for a compulsory settlement of delimitation disputes constituted "an unquestionable improvement and evidence of the existence of a truly advanced international society"); and Cyprus, id., para. 43, ibid.

or which related to situations or facts prior to that date;[8] or disputes which had been specifically listed in the declaration.[9] The subgroup also presented several other clauses, only one of which seemed to find a favorable reception among the delegates, namely, the suggestion that a delimitation dispute might be submitted, at the request of any party to the dispute, not to a procedure entailing a binding decision but to conciliation procedure.[10]

In his report to the Conference, the Chairman of NG7 noted that the paper prepared by the subgroup (also called the group of legal experts) presented seven "models" and twelve "alternatives"; and that some of these models and alternatives "gained a fair amount of support while others attracted but a few, if any delegations."[11] He stated further that none of these approaches received "such widespread and substantial support that [they] would offer a substantially improved prospect of consensus"; but that, nevertheless, "by combining elements displayed in some of the models and alternatives as well as, perhaps, introducing totally new ideas, further discussions might lead to formulations acceptable to all."

298.23. Prior to the eighth session of the Conference, several negotiating groups, including NG7, met in Geneva in February 1979 for informal "consultations" (not "negotiations") "to explore possible approaches to the

[8] Thus, El Salvador, combining various prior formulas, excluded from the jurisdiction of the International Court of Justice "pre-existing disputes, it being understood that this includes any dispute the foundations, reasons, facts, causes, origins, definitions, allegations or bases of which existed prior to this date [i.e., the date of the declaration], even if they are submitted or brought to the knowledge of the Court hereafter." Declaration of 26 November 1973, 1984-85 ICJ YB 73, 75. A similar clause is contained in the declaration of India of 15 September 1974, ibid. 77. This exception also appears in a reverse form, limiting the jurisdiction of the Court to disputes arising "after" a specified date, "with regard to situations or facts subsequent to the same date." See the declaration of the United Kingdom of 1 January 1969, ibid. 98. Article 27, paragraph (a), of the European Convention for the Peaceful Settlement of Disputes, of 29 April 1957, provides in a more general fashion that its provisions shall not apply to "disputes relating to facts or situations prior to the entry into force of this Convention as between the parties to the dispute," 320 UNTS 243, 256.

[9] The subgroup relied here on the Revised General Act for the Pacific Settlement of International Disputes, adopted by the General Assembly of the United Nations on 28 April 1949. Article 39, paragraph 2(c) of that Act allows the exclusion of disputes "concerning particular cases or clearly specified subject-matters, such as territorial status, or disputes falling within clearly defined categories," 71 UNTS 101, 122. See also article 35, paragraph 1 of the European Convention for the Peaceful Settlement of Disputes, supra note 8, at 258.

[10] For a complete list of these proposals, see Source 20; this informal paper was reintroduced at the resumed seventh session (1978) with annotations citing various precedents (see Source 21). For the conciliation proposal, see ibid., section E. It may be noted that the European Convention for the Peaceful Settlement of Disputes provided in article 35, paragraph 2, that "[a]ny reservation made shall, unless otherwise expressly stated, be deemed not to apply to the procedure of conciliation," supra note 8, at 258, 260.

[11] NG7/24 (1978, mimeo.). Reproduced in IX Platzöder 428, 430 (Chairman, NG7). See also statement at the 108th plenary meeting (1978) by the Chairman of NG7, paras. 41-42, IX Off. Rec. 100.

solution of existing differences." Two new papers were presented, by Ambassador Rosenne (Israel) and by Professor Sohn (U.S.A.).[12]

The Rosenne paper contained three alternatives, all applying only to delimitation disputes arising after the entry into force of the Convention. One of them applied to the dispute as a whole, giving the party making the declaration a choice among the procedures listed in article 287, but using "conciliation" rather than "arbitration" as the last-resort procedure. A similar alternative limited conciliation to questions outstanding between the parties "with respect to the specific circumstances, principles or methods which should be considered in resolving the dispute,[13] including the question whether the dispute has arisen after the entry into force of this Convention."[14] The simplest alternative would have entailed submitting the two categories of disputes listed in the second alternative to conciliation (without the necessity of making any choices under article 287).

The Sohn paper explored 28 combinations of five basic "building blocks," each combination including from one to four "blocks." The simplest combination would have excluded all delimitation disputes. Some would have been limited to future disputes, while others would also have included past disputes; some would have been limited to compulsory conciliation, while others would have accepted compulsory and binding third party settlement; and some would have limited the accepted procedure (as in the Rosenne proposal) to the preliminary questions regarding specific circumstances, principles or methods which should be considered in resolving the delimitation dispute, while others would provide for final delimitation. One combination thus might have provided, for instance, (i) for a settlement of future disputes through a two-stage process – a binding determination of the preliminary questions, to be followed by conciliation providing recommendations with respect to the final delimitation; and (ii) for settlement of past disputes by conciliation first with respect to preliminary questions, to be followed by conciliation providing recommendations with respect to the final delimitation.

During the informal consultations, additional building blocks were suggested which resulted in a redraft of the Sohn paper in which the number of variants was increased from 28 to 45 (see Source 22).[15] In addition, four

[12] See "Letter by the President of the Third United Nations Conference on the Law of the Sea dated 21 February 1979 addressed to the Heads of Delegations of States Participating in the Conference," UN Job No. 79-75557 (1979, mimeo.), which includes, *inter alia*, "Very Informal Paper" by Sh. Rosenne, at 25, and "Informal Working Paper" by L. B. Sohn, at 27. The Rosenne paper was reissued later as NG7/30 (see Source 23).

[13] This alternative is derived from the special agreements that submitted the *North Sea Continental Shelf* cases (F.R.G./Denmark; F.R.G./Netherlands) to the International Court of Justice, 1969 ICJ Reports 3, 6.

[14] The limited submission to the International Court of Justice of the separate issue of whether a dispute is arbitrable, occurred in the *Ambatielos* case (Greece v. U.K.), 1952 ICJ Reports 28, 46; for the sequel, see XII RIAA 83, 87 (1963) (submission to an arbitral tribunal by special agreement of the dispute which the Court found to be subject to an obligation to arbitrate).

[15] For an additional paper dealing with the question of when a dispute arises, see NG7/31 (1979, mimeo.). Reproduced in IX Platzöder 452 (Chairman, NG7).

supplementary provisions were suggested for inclusion in that paper: (1) reference of the dispute, by mutual consent, to a procedure entailing a binding decision, if the parties to the dispute cannot agree on how to implement the recommendations of the conciliation commission;[16] (2) strengthening the exception relating to "mixed" disputes involving both land and sea delimitation, namely, disputes "which necessarily involve a concurrent determination of any previously established conflicting claims to sovereignty over, or other rights with respect to, any continental or insular land territory";[17] (3) granting to the commission, court or tribunal to which the dispute has been referred the power to determine whether the dispute has arisen before or after the entry into force of the Convention;[18] and (4) making clear that the obligation to resort to conciliation does not apply to "any sea boundary dispute finally settled by an arrangement between all the parties to the dispute, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon these parties."[19]

In commenting on the February consultations, the Chairman of NG7 noted that the discussion centered on four items "considered essential in the process of dispute settlement," namely:

> (a) the question of the material scope of the dispute settlement provisions, i.e., whether or not they should embrace all types of maritime boundary disputes between adjacent and opposite States;
>
> (b) the question of the choice of procedure, notably whether or not compulsory procedures resulting in binding settlement might be employed;
>
> (c) the question of a potential distinction to be drawn between disputes that may have arisen prior to the entry into force of the Law of the Sea Convention and those which arose thereafter;
>
> (d) the question whether the settlement procedures should only be employed to examine preliminary questions concerning the basic principles to be considered in resolving a dispute or whether they should be applied to the final settlement of the dispute itself.

He concluded that the views expressed still diverged in certain important aspects, but that they "indicated [a] general willingness among the delegations to explore various avenues to reach the final compromises," such as the proposals by Ambassador Rosenne and Professor Sohn noted above.[20]

[16] This proposal was based on a suggestion by Bulgaria. See NG7/5 (1978, mimeo.). Reproduced in IX Platzöder 397.

[17] An earlier version of this proposal was included in the ICNT, article 297, paragraph 1(a) (Source 6).

[18] Supra note 14.

[19] This proposal was derived from article VI of the American Treaty on Pacific Settlement of Disputes ("Pact of Bogotà"), 30 UNTS 55; IOI, Vol. II.b-II.J, at II.E.1.c.

[20] For the report of the Chairman of NG7, see the President's Letter, supra note 12, at 21, 23. The two proposals were annexed to that report, ibid. 25 and 27.

298.24. At the eighth session of the Conference (1979), the Chairman of NG7 encountered great difficulties with respect to his main task – finding a consensus with regard to the delimitation criteria – as the group was largely composed of adherents of the two main criteria ("equidistance" and "equitable principles"); neither was there a solution yet available for the problem of settling sea boundary disputes. The situation was further complicated by the insistence of some of the negotiators that these two issues and the other unsolved problem – interim measures – should be treated as a "package," as the issues were closely related. Nevertheless, the discussions in the Negotiating Group helped to pinpoint the issues, and the Chairman prepared a detailed summary[21] for the benefit of the Informal Plenary, which contained the following information about the problem of settling sea boundary disputes:

> The re-drafting of sub-paragraph 1 (a) of Article 297 [later 298], relating to the optional exceptions, has proved to be difficult, because of the still relatively wide gap between the divergent opinions. The sub-paragraph, as it now stands, is not acceptable to States which traditionally are against third-party settlement of border disputes; many others, again, still support the widest application of compulsory and binding procedures. A compromise must be found between these two extreme alternatives.
>
> In order to explore the elements of such a compromise, Professor Sohn, Chairman of the unofficial group of experts, has prepared a list containing 28 possible combinations covering an area from complete exception of the disputes concerned from any compulsory procedure, to compulsory and binding third-party settlement. The negotiations have, however, clearly shown that the path leading to an acceptable compromise is very narrow and that most of the combinations contained in the list, do not seem adequately to reflect the basic idea of "optional exceptions" as one of the essential elements of the final consensus-package.
>
> According to the sub-paragraph mentioned above, the right of a State to make the declaration specified in Article 297, is subject to the condition that it accepts, when a dispute arises, another procedure. As to that condition, there appear two open questions interrelated to each other, namely:
>
> (1) whether the choice of another procedure should be free or compulsory; and
> (2) if compulsory, what kind of procedure the State has to accept.
>
> These two questions cannot be answered separately. A free choice of procedure means, in fact, no condition at all, and it has been pointed out that such a freedom might severely weaken the system of dispute settlement. On the other hand, the adoption of a compulsory system

[21] NG7/26 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 432, 434-36. Despite its length, much of the Chairman's summary is reproduced in the following pages.

presupposes that also the procedure to be accepted under sub-paragraph 1 (a) of Article 297 is to be identified. The choice made by the ICNT, which gives preference to the binding third-party procedure, has been criticized by a number of delegations. The latter have pointed out, correctly, that under existing international law there is no general obligation upon States to submit any disputes concerning maritime boundaries to a binding third-party settlement. To be concise and realistic: there doe not seem to be much prospect of finding the sought-after compromise on the basis of a rule which in one form or another provides for the acceptance of an alternative procedure entailing a binding decision.

During the seventh session of the Conference it became apparent that among the many possible combinations only those applying compulsory conciliation might offer prospects of a consensus. That possibility looks even more likely after the intersessional consultations in Geneva, where some concrete proposals based upon this alternative were discussed. Conciliation is, of course, not equal to a procedure leading to a binding decision, but where compulsory, it may be considered a more effective, and, for the weaker party, also a safer method for dispute settlement than that of the free choice of procedure, which, in practice, may stay at the level of negotiations only.

Compulsory conciliation is contained in 22 of the 28 possible combinations included in the list prepared by Professor Sohn, and appears therein both as a sole and as a subsidiary means of dispute settlement. Such a great number of combinations is a due consequence of the fact that there are different views with regard to the object of the settlement. The Group has remained divided as to the question, whether all or only "future" disputes should be submitted to compulsory conciliation. Moreover, there is no common understanding as to the problem, whether compulsory settlement should merely relate to preliminary questions concerning specific circumstances, principles and methods to be considered in resolving the dispute, or to be employed as a means of the settlement of the final delimitation itself.

As to the question of a distinction between "future" and "past" disputes, it should be borne in mind that the provisions of Part XV of the ICNT deal with disputes "relating to the interpretation and application of the ... Convention". If it were clear enough that disputes which have arisen before the entry into force of the Convention, never belong to that category and thus are not governed by the provisions of Part XV, including Article 297, an express distinction between old and new disputes would not appear necessary. The present formulation of sub-paragraph 1 (a), although it does not refer to conciliation, seems to reflect the same kind of thinking. Its wording, "when such disputes arise", relating to the time after the issue of the declaration specified in the Article[,] would seem only to refer to "future" disputes.

If, however, in the text of the Article concerned, an explicit distinction is made between the "past" and "future" disputes, with a view

of only submitting the latter to compulsory conciliation, a basic problem remains as to the determination of the criteria to distinguish between these two categories. Because every dispute may have some roots in the past, a clear distinction is not easy to be drawn. As to this difficulty, it was pointed out during the intersessional consultations last February that according to international jurisprudence and rules of jurisdiction there is a large discretionary element in the decisions about the so-called crucial date of when a dispute arises. A definition, either being based upon a distinction of the substantive factors to be considered in a specific dispute, or simply making a difference between disputes which have arisen before and after the entry into force of the Convention, is likely to render [it] open to various interpretations. This kind of uncertainty complicates the matter, by adding procedural controversy to the basically substantive point at issue.

As to the material question, whether only "future" sea boundary disputes should be sumitted to compulsory conciliation, obvious reasons may be cited both for and against such a restricted system. Delegations opposing the restrictive view do not find enough reason for the exclusion of "past" disputes from compulsory procedures and underline the difficulties caused by the vagueness of the criteria the proposed distinction would be based upon. On the other hand, those who prefer to limit compulsory conciliation to "future" disputes only, are afraid of the creation of a system which might incite States to reopen past disputes or revive old territorial claims, and in such a way to destabilize existing conditions. These views seem to get some support from the idea behind the last paragraphs of Articles 74/83. It was also pointed out by Ambassador Rosenne in his statement at the intersessional consultations in Geneva "that in all cases the *status quo* would and should be governed and protected in these matters by the United Nations Charter, including Article 33, and that Part XV of the new Convention, in whatever form it will eventually take, should only apply to the universally agreed innovations which the new Convention will introduce." In fact, the conclusion of the new Convention still pending, all delimitation disputes appear in principle in an equal position under Article 33 of the Charter, and if the Convention brought about the proposed change concerning "future" disputes, it would, at least, not impair the existing possibilities to settle "past" disputes.

Although far from being indisputable, the reasons supporting the exclusion of "past" disputes from compulsory conciliation seem to be important and worth noticing. If, however, an explicit rule providing for the said distinction is not acceptable, also in this case a more neutral formula, e.g., similar to the wording employed by sub-paragraph 1 (a) of Article 297 of the ICNT, might facilitate the endeavours to reach a satisfactory compromise.

The second choice to be made for the re-drafting of sub-paragraph 1 (a) of Article 297, refers to the question, whether the provision on compulsory conciliation should relate merely to specific circum-

stances, principles or methods which should be considered in resolving the dispute, or to the final delimitation itself. In both cases the parties to the dispute have to continue their efforts to negotiate an agreed delimitation on the basis of the report presented by the Conciliation Commission, but, obviously, the specific contents of the reports in the respective cases will differ from each other. In principle, however, the said difference is less an expression of divergent legal considerations than a reflection of opposing views on the scope of compulsory procedures. In practice there might appear some uncertainty as to the distinction between preliminary questions of procedure and the final delimitation itself. For that reason, and particularly because the determination of the object of the conciliation, if limited to the preliminary questions only, as well as this limitation itself, may unnecessarily complicate and delay the procedure, it might be more pragmatic to avoid the distinction concerned, and submit the delimitation dispute, as a whole, to compulsory conciliation.

Because conciliation is a procedure not entailing a binding decision, States parties to the dispute have, as mentioned above, to continue their efforts, on the basis of the report of the Conciliation Commission, for reaching an agreement. In his additional suggestions, made at the intersessional consultations last February, Professor Sohn has included a proposal adapted from the so-called Bulgarian formula (NG7/5). According to this proposal, which possibly might be added to the sub-paragraph concerned, the parties to the dispute should, if the negotiations do not result in an agreed delimitation within a fixed period, submit the question of delimitation, by mutual consent, to the procedures provided for in Section 2 of Part XV, unless the parties otherwise agree.

After further discussions, the Chairman of NG7 presented to the Informal Plenary a slightly more optimistic assessment, which, after outlining the difficulties, pinpointed the lines of a possible compromise:[22]

During its negotiations conducted so far the Group has not been able to reach an agreement on sub-paragraph 1 (a) of Article 297. In my statement of March 26, 1979 (NG7/26) I expressed the view that there does not seem to be much prospect of finding the sought-after compromise on the basis of a rule which in one form or another provides for the acceptance of a procedure entailing a binding decision. The discussions held during the present session have left me with the impression that no change in this regard has taken place. It is continuously clear that several delegations strongly advocate compulsory and binding procedures but it would seem similarly clear that a consensus which, of course, is the utmost objective of the work of our Group may not materialize, as based on compulsory and binding procedures. In this relation account must also be taken of the fact that

[22] NG7/33 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 453.

all the main issues subject to discussion in our Group are closely interlinked and have to be approached as parts of a "package."

To indicate a level of procedure, a minimum to some, a maximum to others, which might, as such or with some elaboration, prove acceptable to the members of the Group a provision could, perhaps, be envisaged according to which disputes concerning sea boundary delimitations between adjacent or opposite States, or those involving historic bays or titles would be excepted from compulsory settlement as referred to in the present context, provided that the State having made the declaration specified in Article 297 shall, when, thereafter, such dispute arises, at the request of any other party to the dispute, and where no result within a reasonable period of time is reached in negotiations between the parties, accept submission of the dispute to the conciliation procedure provided for in Annex IV; and provided further that such procedure shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory.

In this connection it has been considered by some delegations that the conciliation procedure should only relate to basic questions outstanding between the parties with respect to the specific circumstances, principles or methods which shall be considered by the parties concerned in resolving the issue in dispute.

After the Conciliation Commission has presented its report, the parties shall negotiate an agreement on the basis of that report. If these negotiations do not result in an agreement within a fixed period of time, the parties to the dispute shall, by mutual consent, submit the question to the procedures provided for in Section 2 of Part XV unless the parties otherwise agree.

As several members of NG7 complained that the 45 variants presented by Professor Sohn[23] made it difficult to evaluate the respective merits of various solutions, he reduced them to four alternatives, each of which provided some role for conciliation. Those alternatives were (a) a two-stage procedure for all sea boundary delimitation disputes – a binding decision with respect to the preliminary questions relating to the specific circumstances, principles or methods which shall be considered by the parties to the dispute, and conciliation with respect to the final delimitation if negotiations between the parties do not succeed in implementing the decision; (b) conciliation for all disputes, that may be followed (but only if the parties agree) by a procedure entailing a binding decision; (c) conciliation with respect to the preliminary questions for past disputes, and submission of future disputes (including the question of whether the dispute has arisen before or after the entry into force of the Convention) to a procedure entailing a binding decision, but only with respect to the preliminary question; and (d) the most narrow alternative that was limited to the

[23] Supra note 15.

submission to a procedure entailing a binding decision of only the preliminary questions involved in a future dispute, including the question of whether it is a future dispute).[24]

298.25. In his report to the Second Committee of the Conference, the Chairman of NG7, borrowing various elements from several proposals presented to that negotiating group, suggested the following compromise:[25]

> Disputes concerning sea boundary delimitation between States with opposite or adjacent coasts, or those involving historic bays or titles, provided that the State having made such a declaration shall, when thereafter such dispute arises and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the dispute to the conciliation procedure provided for in annex IV, and provided further that such procedure shall exclude the determination of any claim to sovereighty or other rights with respect to continental or insular land territory.
>
> After the Conciliation Commission has presented its report, the parties shall negotiate an agreement on the basis of that report. If these negotiations do not result in an agreement within a period of. from the date of the Commission's report, the parties to the dispute shall, by mutual consent, submit the question to the procedures provided for in part XV, section 2, unless the parties otherwise agree.

This proposal allowed complete exclusion of past disputes and abandoned the restriction of dispute settlement procedures to the basic questions relating to the specific circumstances, principles or methods which were to be considered by the parties concerned in resolving the issue in dispute. On the other hand, it extended to all future disputes the compulsory conciliation procedure, that is, a procedure which can be started "at the request of any party to the dispute," notwithstanding any attempt of the other party to the dispute to stop the procedure (as was originally envisaged by article 284, paragraph 3). Any further recourse to a procedure entailing a binding decision, however, can be made only "by mutual consent."

This compromise was immediately attacked by the representative of Chile, who contended that an "ample majority" supported a compulsory settlement system and objected to limiting the dispute settlement system to future disputes only. He also objected to allowing conciliation only after the parties have not reached an agreement within a "reasonable time," instead of fixing a specific time-limit for reaching agreement, as well as to excluding disputes pertaining to territories or islands, and that the compromise was not in keeping with three of Mr. Sohn's four proposed formulations. His delegation considered that the proposed text "should be re-

[24] See Source 24, which includes the full text of the four alternatives.

[25] Second Committee, 57th meeting (1979), para. 41, XI Off. Rec. 60. See also NG7/39 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 459, 461-63.

garded as non-existent for the purposes of future negotiations."[26] The delegate of Israel saw "no inherent difference between disputes over land frontiers and disputes over maritime boundaries," and was willing to consider only some form of compulsory recourse to nonbinding conciliation limited to future disputes. His delegation criticized the proposal by the Chairman of NG7, however, for not making it sufficiently clear that "it related only to disputes arising after the entry into force of the Convention between the parties to the dispute"[27] (a point that may be of considerable importance with respect to parties to the dispute that become parties to the Convention *after* the Convention has entered into force). Some delegations, however, were willing to support the Chairman's compromise solution for the settlement of disputes.[28]

298.26. Discussions on the settlement of delimitation disputes at the resumed eighth session of the Conference (1979) took as a point of departure the proposal presented by the Chairman of NG7 at the end of the first part of that session (see para. 298.25 above). While the proposal received fairly broad support, it was also objected to by a number of delegations advocating a more comprehensive system of dispute settlement. Taking into account a new proposal by the United States of America,[29] the Chairman presented a modified proposal to the negotiating group.[30] After further discussion, a few additional changes were made, and the Chairman presented the following text of article 298, paragraph 1(a), to the Conference (Source 25), allowing declarations excluding

> (i) Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in annex IV; and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory;

[26] Second Committee, 57th meeting (1979), para. 49, XI Off. Rec. 60. See also, at the 57th meeting, the statements of Spain, para. 59, ibid. 61; and Colombia, para. 75, ibid. 62. See further, at the 58th meeting, the statements of Peru, para. 4, ibid. 63; Greece, para. 11, ibid. 64; Malta, para. 13, ibid.; and Pakistan, para. 14, ibid.

[27] Second Committee, 57th meeting (1979), paras. 50 and 54, XI Off. Rec. 61. See also the statement by Turkey, 57th meeting, para. 70, ibid. 62; and Venezuela, 58th meeting, para. 8, ibid. 63.

[28] See, e.g., the statement by Bulgaria at the 58th meeting of the Second Committee (1979), para. 10, XI Off. Rec. 63-64.

[29] NG7/40 (1979, mimeo.) (U.S.A.). Reproduced in IX Platzöder 464.

[30] NG7/41 (1979, mimeo.) (Chairman, NG7). Reproduced in IX Platzöder 465.

(ii) After the Conciliation Commission has presented its report, which shall state the reasons on which it is based, the parties shall negotiate an agreement on the basis of that report; if these negotiations do not result in an agreement, the parties shall, by mutual consent, submit the question to one of the procedures provided for in section 2 of Part XV, unless the parties otherwise agree;

(iii) The provisions of this subparagraph shall not apply to any sea boundary dispute finally settled by an arrangement between the parties, or to any such dispute which is to be settled in accordance with a bilateral or multilateral agreement binding upon those parties.

At the same time, he indicated that as no agreement was reached on the final "package," he could not suggest that this proposal be incorporated in the next revision of the ICNT.

298.27. According to the Chairman of NG7, additional discussions at the ninth session of the Conference (1980) had "not added any new features to the consideration of this item." In his final report to the Conference, he simply reproduced his August 1979 draft (see para. 298.26 above), but noted that "only a proposal based upon the procedure of compulsory conciliation may prove consistent with a realistic view of the possibilities to reach a final solution on the question" (Source 10, paras. 6 and 7(e), and annex).

In commenting on this report, the delegate of the Federal Republic of Germany, while insisting on a compulsory judicial dispute settlement procedure, mentioned (in another connection) that his delegation would accept a compulsory recourse to conciliation procedure, but "only with reluctance."[31] The delegate of the Netherlands stressed the importance of a compulsory dispute settlement procedure, as "adjacent and opposite States needed the advice and help of an impartial body of persons" in solving sea boundary disputes.[32] He pointed out that if no agreement could be reached in that manner, each party to the dispute should have the right to request a final and binding determination by an international tribunal. His delegation opposed restricting the proposed procedures to disputes arising after entry into force of the Convention. The delegate of Italy considered that the formulation submitted by the Chairman of NG7, although far from perfect, "seemed likely to yield results given further consultations."[33] The delegate of Ireland, speaking on behalf of a group of States preferring the "equitable principles" solution of the delimitation issue, considered that if a provision for compulsory and binding settlement procedures were not adopted there was no justification for changing the substantive rule. He stated that "there was no such relationship between substantive and procedural provisions that would justify adjustment between them in pursuance of some artificial package."[34] The delegate of

[31] 125th plenary meeting (1980), para. 34, XIII Off. Rec. 9.
[32] Id., para. 43, ibid. 10.
[33] 126th plenary meeting, para. 43, ibid. 14.
[34] Id., paras. 48-49, ibid. 14-15.

Chile opposed restricting compulsory conciliation to future disputes, stating that "it should, at least, be applicable without exception in every case."[35] While he considered direct negotiations as the most suitable means of settling disputes, the delegate of Argentina "recognized that the negotiating group 7 proposal was regarded by many delegations as a more appropriate basis for negotiation than the existing [ICNT] formulation," and would, therefore, "not oppose its inclusion in a second revision of the negotiating text." He maintained, however, his delegation's reservation to subparagraph 1(a)(ii) "which could give rise to serious misinterpretation."[36] A similar view was expressed by the delegate of the Soviet Union, who considered article 298, paragraph 1(a), of the ICNT "totally unacceptable, as it envisaged compulsory arbitration of [sea boundary delimitation] issues irrespective of the wishes of the States concerned, which was an infringement of their sovereignty." The Soviet Union was convinced that "agreement on sea boundaries could only be achieved by negotiation or other methods agreed by the parties"; however, "as the wording proposed [by the Chairman of NG7] was a compromise formula which had achieved wide support at the Conference, his delegation would not oppose its inclusion in the second revision of the negotiating text."[37] This position was also supported by the delegate of Iran, who considered that compulsory recourse to conciliation "offered better prospects than the solution envisaged in the revised negotiating text, and would avoid the difficulties caused by having recourse to a third party."[38] The United States of America "recognized that the proposed amendment to article 298 was an important contribution to consensus."[39]

On the other hand, there was still some support for the retention of the provisions for the compulsory and binding settlement of delimitation disputes. The strongest statement against the new draft was made by the delegate of the United Arab Emirates,[40] who made the following points:

[35] Id., para. 70, ibid. 16.

[36] Id., para. 92, ibid. 17. See also Source 13 (full text of the Argentine statement), para. 23. The reservation at the end of that statement referred to the phrase in the proposal by the Chairman of NG7, that in case of no settlement by negotiations the parties "shall, by mutual consent" submit the question to one of the procedures entailing a binding decision. Some States considered that this phrase combined two incompatible elements, an obligatory "shall" and a consensual "by mutual consent." Others explained that the purpose of the phrase was to oblige the parties to the dispute to make a good-faith effort to select one of these procedures.

[37] 126th plenary meeting (1980), para. 110, XIII Off. Rec. 18. This view was supported by the delegate of the Byelorussian SSR, "although his delegation had difficulty in accepting the conciliation procedure for the settlement of disputes." Id., para. 165, ibid. 22. See also statements at the 127th plenary meeting (1980) by Viet Nam, para. 49, ibid. 28; Poland, para. 67, ibid. 29; the Ukrainian SSR, para. 85, ibid. 31; and Hungary 128th plenary meeting (1980), id., para. 6, ibid. 32.

[38] 126th plenary meeting (1980), para. 124, ibid. 19. See also the statements by Colombia 127th plenary meeting (1980), para. 42, ibid. 27; and Kenya, 128th plenary meeting (1980), para. 171, ibid. 44.

[39] 128th plenary meeting (1980), para. 154, ibid. 43.

[40] 126th plenary meeting (1980), paras. 156-161, ibid. 22. See also statements at the 127th plenary meeting by the United Kingdom, para. 18, ibid. 25; Turkey, para. 37, ibid. 27; Bangladesh, para. 54, ibid. 29; and France, para. 75, ibid. 30. See further the statements at the 128th plenary meeting by Guyana, para. 180, ibid. 45; and Bahrain, para. 248, ibid. 49.

First, many of the categories of disputes concerning sea boundary delimitation had been excluded from the settlement procedures specified in the convention contrary to the principal objectives of the convention.

Secondly, the resort to arbitration did not entail a binding decision regarding the subject in dispute. The present wording of the proposed text might lead to a prolongation and aggravation of disputes.

Thirdly, a balance must be established between the freedom to choose settlement procedures and the need to reach a binding settlement of the subject of dispute. That balance could be achieved by allowing the parties to resort to the settlement procedures specified in section 2 of part XV of the convention if agreement could not be reached within a reasonable period through negotiation and arbitration.

Fourthly, the acceptance of compulsory settlements was not incompatible with the principle of sovereignty since States would agree to negotiate and comply with procedures for the compulsory settlement of disputes in accordance with the provisions of the convention.

Fifthly, with regard to the expression "just principles" in connection with criteria for sea boundary delimination of the exclusive economic zone and the continental shelf, such principles should be interpreted and applied by international tribunals rather than by the parties to disputes. If such prinicples were to be included among the criteria for delimitation, the parties should be able to resort to the settlement procedures specified in the convention. Since the criteria and the settlement procedures were closely interrelated, his country could not accept the proposed text for paragraph 1(a) of article 298.

The delegate from Malta also made a strong plea for a stronger provision on dispute settlement. He pointed out that the Convention "would be of little practical value unless it included an effective system for settling conflicts and resolving disputes." He added that "it was difficult to credit the good faith of a country in signing a convention if it then refused to allow conflicts about the application of that convention to be settled by some independent organ or authority."[41]

On the basis of this discussion, the Collegium decided to incorporate the proposal of the Chairman of NG7 in the ICNT/Rev.2 (Source 12). The Chairman of the Second Committee, however, expressed reservations as to "whether it was justified or opportune" to include that text in the revision.[42]

298.28 At the resumed ninth session (1980), the President presented the results of the discussions in the Informal Plenary on the ICNT/Rev.2. He

[41] 127th plenary meeting (1980), para. 30, ibid. 26.

[42] See Source 12, at 18, Explanatory Memorandum by the President of the Conference, paras. 9-10. This reservation was directed primarily to the substantive part of the proposal (to which a large group of States objected), not to the dispute settlement part.

pointed out that no changes (except for some cross-references) should be made in article 298, paragraph 1(a), in view of the close link between that provision and the still controversial issue of delimitation, which required further negotiations. He noted that proposals to transfer, as general exclusions, the exclusions relating to past or existing disputes and to disputes relating to sovereignty over land or insular territories, from article 298, paragraph 1(a), to article 297, could not be accepted; and he felt that neither substantive nor structural changes should be made at that time in that paragraph.[43]

During the general debate on the ICNT/Rev.2 at the resumed ninth session, the delegate of Argentina emphasized that if compulsory conciliation was unsuccessful it would not be possible to resort to a procedure entailing a binding decision "without the consent of the parties to the dispute." He noted that this interpretation was strengthened by the proposed article 298 *bis* (later 299), which made it clear that any dispute excepted by a declaration under article 298 could only be submitted to such procedure "by agreement of the parties to the dispute."[44] The delegation of Somalia was "opposed to any compulsory third-party adjudication, for the settlement of disputes, but for the sake of compromise would lend its support to the new doctrine of compulsory conciliation provided for in article 298."[45] The delegate of the United Arab Emirates, however, urged one further step "if conciliation attempts failed or if it became clear that one of the parties refused conciliation," namely, the introduction in such a case of the right of a party to resort to a procedure entailing a binding decision, in order to "avoid the perpetuation of a dispute in cases where one of the parties was unco-operative and in effect rejected the application of the dispute settlement procedures embodied in the convention." He also expressed preference for applying the dispute settlement procedures "to all disputes and not only to those arising after the entry into force of the convention."[46]

298.29. The ICNT/Rev.3 (Source 15) included the President's proposals for reorganizing Part XV and Annex V in order to clarify the provisions relating to compulsory recourse to conciliation and to separate articles providing for compulsory recourse to conciliation (new section 3) from those relating to procedures entailing a binding decision (section 2) (see para. XV.16 above). No substantive changes were made in article 298, paragraph 1(a), though a few drafting changes were made.[47]

298.30. Taking into account the proposals of the Drafting Committee

[43] See Source 14, paras. 5-7; and Source 15, Explanatory Memorandum by the President, para. 12.

[44] 136th plenary meeting (1980), para. 101, XIV Off. Rec. 38. See also article 299 Commentary.

[45] 138th plenary meeting, para. 74, XIV Off. Rec. 56. See also the statements at the 139th plenary meeting (1980) by Ethiopia, paras. 16 and 21, ibid. 63; Mozambique, para. 30, ibid. 64; Mexico, para. 50, ibid. 65; and Nicaragua, para. 56, ibid. See further the statements at the 140th plenary meeting (1980) by Malaysia, para. 49, ibid. 79; and Turkey, para. 54, ibid.

[46] 139th plenary meeting (1980), paras. 69-70, ibid. 66.

[47] These changes reflected the subdivision of section 2 into sections 2 and 3, and the addition to Annex V of a new section concerning compulsory recourse to conciliation.

Annex 95

Note Verbale dated 5 July 1990 from Ministry of External Affairs and Emigration, Mauritius to British High Commission, No. 31/90(1197)

MINISTRY OF EXTERNAL AFFAIRS AND EMIGRATION
MAURITIUS

(641)

No.31/90(1197)

5th July, 1990

The Ministry of External Affairs and Emigration presents its compliments to the British High Commission and has the honour to refer to the Article in L'Express Newspaper of 3rd July, 1990 reporting the issue on 3rd May of a set of stamps titled British Indian Ocean Territory,. (Copy enclosed for ease of reference).

F.(636) _____

The Ministry wishes to seize this opportunity to reaffirm and reiterate the sovereignty of Mauritius over the Chagos Archipelago which had been detached from the territory of Mauritius in 1965 in contravention of the UN General Assembly Resolutions (1514(XV) and 2066(XX).

The Ministry of External Affairs and Emigration avails itself of this opportunity to renew to the British High Commission the assurance of its highest consideration.

The British High Commission
Severn Lodge
King George V Avenue
Floreal.

Copy to:-
Deputy High Commissioner, Mauritius High Commission, London
First Secretary, Mauritius Mission to the U.N., New York

DESPATCHED
ON 5/7/90

Annex 96

Letter dated 8 August 1990 from East African Department, UK Foreign and Commonwealth Office to British High Commission, Port Louis, transmitting Speaking Note

[redacted]

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01- 071 270 2890

JEB 0441/1
RECEIVED IN REGISTRY
13 AUG 1990

	DESK OFFICER	REGISTRY
	INDEX	FA	Action Taken

Your reference

Our reference

Date 8 August 1990

[redacted]
Port Louis

Dear Charlie

BIOT FISHERIES

1. We now have more detail about the Mauritian legal action against three Taiwanese fishing boats following fishing around the Chagos. The vessels are :

a) Yih Chuen No 1
Agent : [redacted]
Fined Rs 500,000 at the end of March

b) Yuh Chuen
Agent : Star Kist Mauritius
Fined unknown sum at the end of May

c) Shin I Chang
Agent : [redacted]
Fined Rs 300,000 in early June

Boats (a) and (b) had been fishing within 200 miles of the Chagos as detailed by ships' logs. Boat (c) had passed within 200 miles of the Chagos en route to Port Louis for bunkering and had fished for part of the journey. As disclosed in the vessel's log.

2. As you know, HMG protested when, in 1984, the Mauritians claimed a 200 mile EEZ around the Chagos Archipelago (attached). The Legal Advisers view is that we cannot accept that Mauritius has the right to prosecute foreign vesels for fishing within 20 miles of the Chagos Archipelago. We should therefore make our view known to the Government of Mauritius and thereby maintain our position on UK sovereignty over the BIOT. It is sufficient to register our protest by a call on an appropriate MFA official leaving a speaking note setting out HMG's view. I attach a speaking note for you to use. We shall take parallel action with the Mauritian High Commissioner in London.

ST1AYN [redacted]

[redacted]

3. As you know, we are considering the establishment of a BIOT 200 mile Exclusive Fisheries Zone. If Ministers should decide to go ahead our objection to Mauritian prosecutions of this kind would, of course, strengthen, particularly if the vessels concerned were fishing under a BIOT licence. A simple way to avoid the problem would be for licensed vessels to avoid Port Louis. But this would deprive Mauritius of any benefits of the industry. We have been consulting fairly widely on the various aspects of a BIOT EFZ so it is possible that news of our intentions may already have come to Mauritian notice.

4. It would be useful to have an early assessment of the likely probable Mauritian reaction to a declaration of a 200 mile fishing limit round BIOT. We envisage informing them of our intention in advance, possibly by a high level message. This would make it clear that it was in Mauritius' long term interest that we conserve fish stocks and the wider marine environment around the islands, which would otherwise be increasingly dispoiled. The question of loss of potential revenue could rankle with the Mauritians. We could respond by pointing out that the revenue would be used entirely in connection with the Territory and in particular in conserving its environment.

Yours ever

[redacted]

pp [redacted]
East African Department

ST1AYN/2

[redacted]

SPEAKING NOTE

1. The Government of the United Kingdom of Great Britain and Northern Ireland has no doubt as to United Kingdom sovereignty over the British Indian Ocean Territory. The British Indian Ocean Territory currently maintains a territorial sea of 3 miles and a fisheries limit of 12 miles around the Territory. Access by fishing boats to within the 12 mile limit is strictly confined by the BIOT authorities to Mauritian traditional fishing boats.

2. The United Kingdom does not recognise the Exclusive Economic Zone around the British Indian Ocean Territory which the Mauritian authorities purported to declare in 1984. A Note of protest regarding this declaration was sent by the British High Commission to the Ministry of External Affairs, Tourism and Emigration on 18 February 1985. The United Kingdom authorities are therefore concerned to learn that certain foreign fishing vessels have been prosecuted in the Mauritian Courts for fishing within 200 miles of the British Indian Ocean Territory.

3. The matter of an exclusive fishing zone around the British Indian Ocean Territory is for the United Kingdom to determine.

BRITISH HIGH COMMISSION

August 1990

063/1

JEB 0401

NOTE NO 005/85

The British High Commission present their compliments to the Ministry of External Affairs, Tourism and Emigration and have the honour to refer to the Maritime Zones (Exclusive Economic Zones) Regulations 1984.

With reference to the Second Schedule to the Regulations, the British High Commission have been instructed to state that the Government of the United Kingdom of Great Britain and Northern Ireland do not accept the implications of the schedule as to sovereignty over the Chagos Archipelago. Sovereignty over the Chagos Archipelago, which constitutes the British Indian Ocean Territory, is vested in the United Kingdom of Great Britain and the Northern Ireland. Maritime rights and jurisdiction in respect of the Chagos Archipelago are enjoyed and exercised by the United Kingdom in accordance with applicable legislation and the rules of international law.

The British High Commission avail themselves of this opportunity to renew to the Ministry of External Affairs, Tourism and Emigration, the assurance of their highest consideration.

BRITISH HIGH COMMISSION
PORT LOUIS

18 February 1985

Annex 97

Submission dated 17 September 1990 from East African Department, UK Foreign and Commonwealth Office to the Private Secretary to Mr. Waldegrave, "British Indian Ocean Territory (BIOT) Fisheries Limit"

[redacted]

32

TIER 0	
RECEIVED IN REGISTRY	
16 OCT 1990	
DESK OFFICER	REGISTRY
INDEX / PA	Action Taken

FROM : [redacted]

DATE : 17 September 1990

[redacted] Private

[redacted]

PS/Mr Waldegrave

cc : [redacted], AMD
[redacted] ECD(E):
[redacted] CD(I)
[redacted] NPDD
[redacted] CCD
[redacted] Legal Advisers
[redacted], Legal Advisers
[redacted], SAD
[redacted] ODA Fisheries Advise
[redacted], SEC(O)C, MOD

Minute to [redacted] 28/9

BRITISH INDIAN OCEAN TERRITORY (BIOT) FISHERIES LIMIT

BO 2/12/90
RW 30/10

Problem

1. Should we extend BIOT's fisheries limit?

Recommendation

2. The arguments in favour are :

(a) in line with international practice all other states and territories in the region have limits of 200 miles;

(b) not to do the same detracts from our sovereignty;

(c) fish stocks and the important ecological environment around the Territory will suffer irreparable damage without conservation measures;

(d) we could expect the raise useful revenue from licenses from Far Eastern and West European fishing fleets (Mauritians would not be charged for licenses) which might be sufficient to fund inter alia a BIOT patrol vessel.

The arguments against are :

(a) the possibility of a negative Mauritian reaction;

(b) enforcement (but see paragraph 10 below).

ST1BAW [redacted]

3. I recommend HMG extend the BIOT's fisheries limit to 200 miles, with provision for establishing a median line between the BIOT and the Maldives. AMD and Legal Advisers concur. We also established at the last Pol-Mil talks in May that the Americans have no objection, provided fishing is not allowed close to Diego Garcia.

Background

4. There is a three mile territorial sea around the islands of the Chagos Archipelago. A twelve mile fisheries zone was declared in 1969. Fishing within the twelve mile fisheries zone is limited to Mauritian fishermen who have access following an understanding with the Mauritians in 1965, whereby the UK undertook to permit access to Mauritians who had traditionally fished in the area, so far as was practicable. No fishing is undertaken around Diego Garcia itself. Since the creation of the BIOT, Mauritian fishermen have applied for licences to fish through the British High Commission in Port Louis even though Mauritius proclaimed a 200-mile EEZ in 1984.

Argument

5. Since its creation in 1965, the BIOT administration has done its best to conserve and protect the British Indian Ocean Territory environment. The Chagos Archipelago is of great interest to science, it remains the last unspoilt major coral reef ecosystem. It is the only uninhabited fully protected haven for marine turtles. The shallow coralline sea around the atolls in the archipelago and its dependant fish stocks are vulnerable to exploitation by commercial fisheries. The shallow seas round the atolls are unattractive to tuna fishermen who need deep sea, free of hazards before they can deploy their expensive fishing gear.

6. Apart from BIOT, all Indian Ocean island and littoral states have declared 200 mile EEZs or fisheries zones. Tuna species are the principal fish catch in the central and western Indian Ocean, and large scale industrial fishing by Japanese, Taiwanese, Korean and some EC fishing boats takes place, mainly centred on Seychelles. As interest in Indian Ocean fish increases, fishing fleets are more

regularly seen in the vicinity of the Chagos Archipelago, although there is no evidence yet of intensive fishing throughout a putative 200 mile limit; only on the north-western rim. Fish catch records indicate that a substantial proportion of the fish caught in the central Indian Ocean could well be taken from this area within 200 miles of the Chagos Archipelago. The presence of the US Naval Support Facility on Diego Garcia has tended to limit commercial fishing interest, fishing companies apparently assuming a 200 mile limit already exists. Recently a number of fishing companies have sought permission to fish within 200 miles of the Chagos Archipelago, and it now seems likely that the buffer zone around the Archipelago created by the presumption of the 200 limit will be lost as a twelve mile limit becomes more widely known.

7. There is a three-fold conservation argument in support of declaring a 200 mile fishing limit. Firstly, it will enable the BIOT to limit fishing access by a licensing regime. Fish landings (eg in Seychelles) during the 1990 Indian Ocean fishing season have for the first time recorded a decline in fish catches. Fishing nations blame the weather but coastal states blame overfishing. Fishing fleets currently active in the western Indian Ocean are showing more interest in the central Indian Ocean and the situation whereby few industrial fishermen come near to the BIOT seems unlikely to continue. A 200 mile limit would allow the BIOT administration in London to be selective of fishing access and to monitor closely fishing catches through specialist advisers eg the Renewable Resources Assessment Group from Imperial College (who act in a similar capacity for the Falklands and St Helena). Secondly, other Indian Ocean fishing regimes are already active in conservation of fish stocks through licensing and monitoring of fish catches. Because tuna species are migratory, unlimited access to waters around the BIOT reduce the effectiveness of conservation activities in the western Indian Ocean. In addition to unilateral fish stock conservation measures, Indian Ocean States plan to establish an Indian Ocean Tuna Commission and Far East fishing states. The BIOT, through the UK, could be represented in the IOTC.

The absence of any conservation of fish stocks in the Chagos Archipelago militates against successful conservation elsewhere in the Indian Ocean. Thirdly, by licensing vessels and monitoring fishing wider protection to vulnerable marine mammals and turtles can be provided.

8. There is no problem in creating a fisheries zone extending to 200 nautical miles around the BIOT under international law. There are precedents for the creation of similar zones around islands which have no indigenous populations. The absence of a 200 mile zone can be seen as an admission of uncertainty about sovereignty. We are certain about UK sovereignty over the BIOT so we should exercise it to the fullest extent permitted under international law. Mauritius may protest in order to avoid weakening its own claim to sovereignty and encourage some states to support the Mauritian position instead of ours. We would have to guard against this. Mauritius declared a 200 EEZ around the BIOT in 1984 following a 1977 declaration of a 12 mile territorial sea. The UK's sovereignty over the area was emphasised in a Note protesting about the declaration of an EEZ at the time.

9. Apart from Gibraltar, the Sovereign Base Areas in Cyprus and Hong Kong, where special situations apply, and the British Antarctic Territory, and South Georgia which are subject to international treaty arrangements, the only Dependent Territory without a fisheries zone is the BIOT. All other dependant territories have a 200 mile fisheries zone (150 miles in the case of the Falklands). France has a 200 mile exclusive economic zone around Réunion. and Tromelin?

10. As regards enforcement experience in Seychelles and Mauritius has shown that EEZs or fisheries zones can be to some extent self-administering. It is not necessary to have a comprehensive policing capability in place in order to ensure jurisdiction is respected. In the Indian Ocean states rely on relatively inexpensive licences to impose restraint on licensees out of

self-interest. However some form of minimum policing is desirable in order to remind licencees that their activities are under scrutiny. Aircraft from the US P3 reconnaisance wing and the Maritime Pre-positioning ships on Diego Garcia habitually report on fishing vessels and other craft encountered during routine patrols. We have established that they are willing to continue to do this. However, it is important to deploy the semblance of an enforcement policy; the existence of the defence facility and a presumption that the means are available to enforce licensing is probably sufficient. The regular visits to BIOT by HM ships and RAF Nimrods would provide some coverage, as would the monthly BRITOPS in waters closer to the islands. A hands-off policy also works if licenses are pitched at a reasonable level; there is no policing control or surveillance over the fishing zones around St Helena or Pitcairn although licenses to fish are granted.

11. Licencees will be required to report fish catches and enforce regulations on fishing gear in order to conserve fish stocks and protect marine mammals and turtles. These controls need not imply immediate resource implications to HMG although it strengthens the case for provision of a boat agreed by Ministers in May (Mr Edis' submission of 24 April 1990). Licence fees could meet the cost of a boat if a full scale licensing regime was established for tuna. As a first step, the declaration of a 200 mile limit will allow us to assess the potential demand from tuna fishers. Thereafter we can consider the level of licensing with technical advisers. The costs of obtaining this vital advice would be included in a licence fee (as in other Dependent Territories fishing regimes). Squid fishers, displaced from the South Atlantic are another source of licence revenue.

12. There is a possible political downside to extending limits. The declaration of a 200 mile fisheries limit could exacerbate bilateral problems with Mauritius given its claim to the Chagos Archipelago which they have threatened to take to the UN from time to time. We have made it clear to the Mauritians in the past that the BIOT gives no economic advantage to HMG. Licences for Mauritian fishermen are provided free and no rent is obtained from the

Americans for defence use of the Archipelago. If the BIOT began to license foreign industrial fishing boats, and collect licence fees, the Mauritians may well complain that we are "stealing" their revenues. It would be prudent to continue to license Mauritian fishermen on the same basis as hitherto, ie without costs, and to extend their access to BIOT waters in the new 200 limit. It will also help defuse criticism to underline that the new measures to protect fish stocks is in the interests of Mauritius as well as other Indian Ocean states. As we have made clear to Mauritius on many occasions, the UK will cede the BIOT to Mauritius when no longer required for defence use. It is therefore in Mauritian interest to protect fish stocks now. Whatever we do the Mauritians are likely to make a fuss, probably less so under a Labour/PMSD coalition, but our tactics will have to be carefully decided. It would be important to give the Mauritians advance warning of our intention to declare a 200 mile limit. Early notice to the Mauritians will also provide an opportunity to explain the long-term benefits expected from the expansion of BIOT fishing limits accruing to Mauritius.

13. ECD(I) confirm that BIOT is an "Annex IV" territory to which Article 132 (Part IV) of the Treaty of Rome applies. This requires BIOT to apply any trade arrangements it may have with the UK to other EC Member States and to their Annex IV countries and territories. For example, if BIOT enters into a fisheries agreement with the UK allowing UK fishermen free licences to fish in a BIOT fishing zone it must also allow other EC Member States and their Annex IV countries and territories the same free access. This does not affect the question of licensing (be it free licensing or not) for Mauritian, Far-East or any other non-EC fleets to fish in a BIOT fishing zone.

14. In the 1976 Anglo-US exchange of Notes, it was agreed that the UK would not permit commercial fishing around Diego Garcia unless it was agreed that such activities would not interfere with the defence use of the island. This undertaking has been interpreted since then as applying to the area immediately around Diego Garcia within the twelve mile fisheries zone. The Americans have since confirmed at

[redacted]

the meeting of the Diego Garcia Sub-Group of the Pol-Mil Talks, held in Norfolk, Virginia on 23-24 May, that they do not object to the declaration of a 200 mile limit, nor any consequential licenses fishing beyond the twelve mile limit. Access to areas near Diego Garcia brought under control by a 200 mile limit would be excluded from any licensing.

15. The BIOT is less than 400 miles from the southerly tip of the Maldives so an agreed boundary between the two will need to be established in due course. A line equidistant between the nearest base points (a median line) would be best. The Maldives has already declared a rectangular EEZ which extends beyond the median line. We do not accept the Maldives claim, which departs from the rules of international law on EEZ limits. Until an agreed boundary is established, an interim limit should be declared in BIOT legislation. We propose this should be median line and that we should inform the Maldives Government in advance signalling our readiness to talk.

16. As regards timing, the current fishing season in the area is ending and we would wish to avoid provoking the Mauritians during the UN General Assembly. This points to an announcement at the end of the year in good time before the next fishing season.

[redacted]

[redacted]

East African Department
K322A 270-2890

ST1BAW/7 [redacted]

overleaf

[redacted] has done an excellent job in producing this thorough and well thought-out submission on an issue which has previously been left in the "too difficult" tray. We need to take a view on this. I do not think we should be too timorous.

[redacted] 18/9

Annex 98

Note Verbale dated 7 August 1991 from Ministry of External Affairs, Mauritius to British High Commission, Port Louis, No. 35(91)1311

No. 35(91)1311 7th August, 1991

The Ministry of External Affairs presents its compliments to the British High Commission and, with reference to the Note No. 043/91 of 23 July 1991 from the Foreign and Commonwealth Office concerning the declaration of the Commissioner of the British Indian Ocean Territory on 7 August 1991 of his intention to extend from 12 to 200 miles the fishing zone around the British Indian Ocean Territory, has the honour to inform the High Commission that the Government of Mauritius does not accept the said declaration.

The Ministry wishes to remind the High Commission that the Government of Mauritius considers that the Chagos Archipelago, referred to as the British Indian Ocean Territory in the note under reference, is an integral part of the territory of Mauritius, and that the Government of Mauritius has reaffirmed its sovereignty over the Chagos Archipelago and its maritime rights in respect of the Chagos Archipelago through the publication of Government Notice No. 199 of 1984. A copy of the Government Notice was forwarded to the High Commission by Note Verbale of 9 September 1985.

The Ministry furthermore wishes to point out that, in the light of the above, the Government of Mauritius does not ipso facto accept the validity of the offer of free licences for inshore fishing.

The Ministry of External Affairs avails itself of this opportunity to renew to the British High Commission the assurances of its highest consideration.

British High Commission,
King George V Avenue
Floreal

Annex 99

Internal telegram dated 31 August 1991 from Chalker, UK Foreign and Commonwealth Office to Port Louis, Mauritius, "BIOT: Extension of Fisheries Zone"

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YOUR TELNO 164. BIOT: EXTENSION OF FISHERIES ZONE

1. THE MAURITIAN NOTE SEEMS TO BE A FORMAL RESERVATION OF THEIR POSITION AND AS SUCH PREDICTABLE AND LOW KEY.

2. THE SENTENCE QUOTE THE GOM DOES NOT IPSO FACTO ACCEPT THE VALIDITY OF THE OFFER OF FREE LICENCES FOR INSHORE FISHING UNQUOTE IS UNCLEAR, ESPECIALLY AS MAURITIAN FISHING COMPANIES HAVE APPLIED FOR AND RECEIVED SUCH LICENSES FOR YEARS. HOWEVER, WE SEE NO POINT IN SEEKING CLARIFICATION.

3. YOU WILL NO DOUBT BE TELLING INFORMALLY THE MAURITIAN FISHING COMPANIES WHICH TRADITIONALLY FISH AROUND BIOT OF OUR INTENTIONS. YOU CAN ASSURE THEM THAT AS FAR AS THEY ARE CONCERNED THIS IS LIKELY TO MAKE NO DIFFERENCE TO THE PRESENT ARRANGEMENTS FOR INSHORE FISHING.

CHALKER

YYYY

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Annex 100

Letter dated 15 November 1991 from M.E. Howell, British High Commissioner to Mauritius, to [name redacted], East African Department, UK Foreign and Commonwealth Office

[redacted]

JEB 0448

26 NOV 1991

(13)

British High Commission
Port Louis
15 November 1991

Please copy to [redacted] and R&R (new Mauritius file).

[redacted]
East African Department,
FCO.

Dear [redacted]

MAURITIUS/BIOT: FISHING LICENCES

In a triumph of hope over experience, I am writing for today's bag to try and dissuade EAD from taking yet another step that will further sour our relations with Mauritius. And this time open to charges of more than insensitivity. The problem is that I do not see how a convincing case can be made for charging Mauritian vessels for licences to fish in BIOT waters, and I fear that in the process, we risk making ourselves look rather shabby. The main points are:

(i) Our 1965 obligation. The key documents are in the public domain here, they all appear in the Mauritius Legislative Assembly Report of the Select Committee on the Excision of the Chagos Archipelago (Paper No 2 of 1983). The Memorandum by the Chief Secretary to the Council of Ministers dated 4 November 1965 states in para 2:

"2. The proposals that eventually emerged from these discussions are as follows:-

(i) The Chagos Archipelago should be detached from Mauritius and placed under British sovereignty by order in Council;

(ii) .....(v)

(vi) The British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;

(a) navigational and meterological facilities;

(b) fishing rights;

.....

4. The Secretary of State has now asked for early confirmation that the Mauritius Government is willing

/to agree ...

[redacted]

to agree that the British Government should now take take the necessary legal steps to detach the Chagos Archipelago on the conditions enumerated in paragraph 2 above"

Whatever view the Legal Advisers take it is clearly against the spirit of that agreement to charge Mauritian vessels on the same basis as all other vessels. You know it. I know it. The Mauritians will know it. And Jugnauth will have a field day, claiming his cheating charge vindicated.

(ii) Our recent fisheries extension. Our Note to the GOM advising them of this extension stated: "In view of the traditional fishing interests of Mauritius in the waters surrounding BIOT, a limited number of licences free of charge have been offered to artisanal fishing companies for inshore fishing. We shall continue to offer a limited number of licences free of charge on this basis."
If we have offered inshore licences free of charge in recognition of the traditional fishing interests of Mauritius in the waters surrounding BIOT, why not outshore (if that is the correct term)? And our most recent démarche, in your telno 153, states "We had given Mauritius ample notice of our intention to declare a 200 mile fishing zone around BIOT and we gave preferential access to Mauritian vessels to fish in BIOT waters" What did we intend by the inclusion of that reference to preferential access in that context? If we meant simply that we had issued a limited number of inshore licences free in the past, what was the relevance of that in the extension context?

(iii) Reflagging. It simply will not wash to say that we must charge because to do otherwise would risk seriously undermining the viability of the new fishing regime. Clearly reflagging represents a potential problem, but why do we assume, without any discussion, that the GOM is unable and/or unwilling to cooperate in refusing to register foreign companies under the Mauritian flag? Or, if we have to charge all vessels in order to avoid abuse, why not consider arrangements to refund licence fees to genuine, authenticated vessels? As there is a problem, why not discuss it? No one more than seconds out of the funny farm could consider that a derogation from sovereignty. MRAG's interests are not necessarily those of HMG; ours go alot wider than the easiest and most profitable way of administering a fishing régime.

/If we ....

If we do this, I fear it will look shabby and it will look greedy. It may be a quicker way to raise the money for the patrol vessel, but it is no way to conduct foreign relations. It seems to me. Can we please think again?

Yours ever,
Mike.

M E Howell

Annex 101

UK Foreign and Commonwealth Office, African Research Group Research Analysts Paper, "BIOT/Mauritius: Fishing Rights", 11 October 1996

covering [redacted]

CS 17/10

(2) [redacted] AD(S)

BIOT/MAURITIUS: FISHING RIGHTS

1. I attach a paper on this issue, as requested.

2. I suggest you treat it as a working draft. Some aspects of the topic are new to me and I am not confident of my grasp of all of them.

3. Perhaps Mr Dauris in AMD, and Mr Christie of Legal Advisers, to whom I am copying the paper (without all the attachments) could let me know if they spot any obvious errors or misconceptions?

4. I am happy to leave this paper as it is, or amend it, subject to comments.

11 October 1996.

[redacted]

[redacted]
AfRG, Research Analysts
OAB 2/63 210-3765

cc [redacted] AMD
Legal Advisers.
WALTON

[redacted]

BIOT/MAURITIUS: FISHING RIGHTS

HMG's 1965 undertaking

1. Negotiations in 1965 to elicit Mauritian Ministers' consent to the excision of the Chagos Archipelago took place at side-meetings during constitutional talks at Lancaster House. At a meeting on 23 September 1965 with the Mauritian Prime Minister, Sir Seewoosagur Ramgoolam, the Colonial Secretary (Mr Greenwood) gave a confidential undertaking that the HMG would use their good offices with the US Government to ensure that certain facilities, including fishing rights in the Archipelago, would remain available to the Mauritius Government as far as was practicable; this was written into the agreed record of the meeting.(A)

2. Sir Bruce Greatbatch, who was then Commissioner of the BIOT (and Governor of Seychelles) issued a Proclamation in 1969 establishing a 9-mile fisheries zone contiguous to the 3-mile territorial sea of the BIOT. Subsequently, in 1971 a Fishery Limits Ordinance was passed which provided that any fishing boat other than one owned wholly by a resident in the BIOT committed an offence if it fished within the fishing limits established by the Ordinance.(Annex I) The only exemption was under Section 4, which read:

"for the purpose of enabling fishing traditionally carried on in any area within the contiguous zone to be continued, the Commissioner may by order designate any country outside the Territory and the area in which and descriptions of fish or marine product for which fishing boats registered in that country may fish."

This was framed with Mauritian boats in mind. It was the Commissioner's expressed intention to use his powers under Section 4 of the Ordinance to officially designate Mauritians as traditional fishermen in Chagos waters. Indeed, the Mauritius Government was informed in 1971 that such an Order had been made. However, by some oversight none was then made and gazetted.

Introduction of a licensing system

3. A slight increase in surveillance of BIOT waters in July/August 1983 brought to light illegal intrusions by two Mauritian vessels, the Romaya and the Nazareth, to collect coconuts on Peros Banhos and to fish in the adjacent sea respectively. A consequent review of FCO policy towards Mauritian fishing access to the BIOT (during which it was discovered that Mauritians had not actually been designated traditional fishermen, contrary to what the Mauritian Government had been told) decided upon regularising the existing situation by making a designating Order, drafted in such a way as to exclude boats of other countries which might attempt to circumvent the restrictions of the 1971 Fishing Ordinance.

4. In 1972 and 1977 respectively, Japanese and Korean companies

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had asked for permission to fish within the BIOT's twelve mile limits, and on both occasions these requests were turned down; the Japanese were told that "no fishing can be allowed within the fishing limits of the Territory except for fishing by Mauritian fishermen who have traditionally fished in the area". However, by late 1982, when a request was received from the French Embassy in London for four fishing vessels belonging to the French Consortium for the Development of Fisheries to carry out fisheries research on tuna in Chagos waters, opinion had shifted: doubtless both the Falklands conflict and the Law of the Sea Conference contributed to this shift. Legal Advisers pointed out that HMG's 1965 undertaking to the Mauritians did not necessarily mean that no-one else could fish in BIOT waters; much would depend on the scale of Mauritian fishing in relation to fish stocks, and the location of that fishing as well as that of whatever might be proposed. (They minuted of the French approach that it was "useful in terms of the possible growing sovereignty dispute with Mauritius...since it implicitly recognises our rights. It would be as well for this to be noted on the sovereignty file.")

5. The Legal Advisers proposed a licensing system for the BIOT, like that in other Dependent Territories. To introduce such a system, designed to permit limited and conditional access to Mauritian fishing boats, was, it was accepted, no more than to legitimise activities which had previously passed unobserved. It received Ministerial approval, despite recognition that our surveillance capacity was inadequate. (B) The then BIOT Commissioner, Nigel Wenban-Smith, noted that a risk of infiltration of Ilois onto the islands would remain, but this was a function of our general political relations with Mauritius. In October 1983, therefore, Mauritian Ministers were informed that HMG had approved access by Mauritian vessels to the outer islands of the BIOT and their territorial sea; so too were the owners of the Romaya and Nazareth.

6. When issuing free licences to Mauritian fishermen was under consideration in 1982-3 it was purely in the context of inshore fishing. The BIOT Commissioner's initial response was therefore negative to a request in late 1983 concerning a Mauritian purse-seine vessel, which was in the Chagos vicinity after fishing tuna in the Pacific. Mr Allan, the High Commissioner in Port Louis, was advised that arrangements for Mauritian fishing in BIOT waters were elaborated against the background of traditional activities, so that the Lady Sushil should not purse-seine within the 12-mile limit. The BIOT Administration advised that revision of the BIOT civil code then underway would include the 1971 Fishing Ordinance:-

Ord 11 of 1984

"We will of course be designating Mauritius under Article 4 and adding licensing and control powers and some alternative penalties to the Ordinance. Our view is that permissable traditional fishing should not automatically include purse-seining and that we will need to have the discretion to forbid it on conservation grounds."

7. However Dr Tarbit, the ODA's senior fisheries adviser, was consulted and saw no harm in letting the Lady Sushil purse-seine

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in BIOT waters. He commented that the boat had fished widely in the Indian Ocean since 1979. Its operations would be aimed at migratory tuna and would be very unlikely to interfere with the stocks of fish caught by the traditional fishermen of Mauritius utilising lines and traps around the coral reefs. Nor would tuna stocks be likely to suffer over-exploitation as a result of the transfer of effort of the Lady Sushil from without to within the 12 mile limit. Furthermore, he advised that another definition of 'traditional fishing rights' referred to the established right of a nation to fish a certain area, achieved by fishing that area before the imposition of an Exclusive Economic Zone (EEZ). This should also be considered, in view of our 1965 undertaking to Mauritius. It could present a problem to the Mauritians when they eventually got the Chagos islands back because of the activities of French tuna fishing within 200 miles of the BIOT. He advised seeking a further proposal from the Lady Sushil's owner, and if it signified the intention to exploit only tuna, there seemed little reason why it should not be approved.

8. Consequently the Mauritian purse-seiner was licensed to operate in BIOT waters under Section 5 of the new Fishery Limits Ordinance (Annex II) which came into effect 12 August 1984.

Extension of fishing limits under consideration

9. The extension of fishery limits around the BIOT to 200 miles was brought up fitfully, but was inhibited by lack of resources to police it. An initiative emanating from the BIOT Administration in early 1985 envisaged a licensing system administered from London, under which individual boats would apply to the Commissioner to fish within the zone for a fixed period of time. It was inspired by the Pitcairn islands (who had set a 200 mile fishing zone and a licensing system, but without any means of enforcing it) but met with a withering response from the MOD, who were sounded out about the possibility of the occasional detour in the direction of the BIOT by ships of the Armilla patrol. It was therefore shelved. Even under the existing regime, however, the lack of surveillance capacity was acute. In mid-1985 the Royal Navy Liaison Officer (RNLO) in BIOT complained of the absence of an offshore patrol vessel to conduct surveillance of the increasing number of Mauritian fishing boats licensed to fish in the Chagos; later he reported illegal fishing by a South Korean vessel and was instructed by FCO to warn off unauthorised fishermen "if an easy opportunity arises during your routine patrols."

10. While Mauritian boat-owners continued to apply to the British High Commission for their free licences, 1986-89 saw a new approach to BIOT fisheries in the FCO. This followed the Foreign Secretary's announcement on 29 October 1986 that HMG had decided to establish an Interim Conservation and Management Zone of 150 miles radius from the Falkland Islands, on urgent conservation grounds (he also declared the entitlement of the Falklands, under international law, to a fisheries limit of 200 miles, subject to delimitation with Argentina). But the need for new thinking arose from the steady growth in tuna fishing in the western Indian Ocean by vessels of many nations, and was focussed by plans to establish

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an Indian Ocean Tuna Commission (IOTC) under FAO auspices. Moreover, France was represented on the existing regional organisation for economic cooperation, the Indian Ocean Commission (IOC) along with Mauritius, Seychelles and Madagascar, by virtue of the membership of Reunion (a French Overseas Departement). The UK, and the BIOT, were not.

11. In early 1987 the BIOT Administration noted that fishing for tuna in the seas around Chagos had increased dramatically in recent years from 2,000 to over 100,000 tonnes a year, largely by French registered boats based in the Seychelles and Reunion. From the British point of view the increase took place in the high seas, while for the Government of Mauritius it fell within the 200-mile Exclusive Economic Zone (EEZ) which they had declared around the Archipelago in 1984 (to formal British protest). This promised to cause difficulties for us in the context of evolving regional arrangements for the management and control of tuna fishing, for under any IOC plan:-

"Mauritius could hardly be expected to exclude the EEZ it has claimed around the Chagos and we would be bound to object. Yet we wish the IOC well...and will not wish to get in a fight with them. Moreover, any fishing is likely to include fishing conducted by EC vessels under an EC/IOC or EC/Mauritius fisheries agreement, and could create problems with France and Spain if we attempted to block it".

Therefore it was felt that the FCO should reconsider its position on the exploitation of fishery resources around the Chagos islands, in the light of the need both to conserve and to manage the resources rationally, as well as the Mauritian interest in their exploitation arising from our 1965 undertaking.

Extension of fishing limits planned

12. Apart from the projected IOTC, there were a few local issues pertaining to BIOT fisheries which arose during 1989-1992. They included imposition of fines by the Mauritian courts on three Taiwanese boats (in March, May, and early June 1990) who had been fishing around the Chagos, as shown by ships logs. The High Commission in Port Louis registered our protest with the PS at the Ministry of External Affairs and Emigration in August, leaving behind a speaking note.(C) Later that year the High Commission responded to illegal lagoon fishing by a Mauritian boat - which was nonetheless licensed to fish in BIOT waters - by devising more impressive permit documents, setting out all the restrictions and conditions required of holders (hitherto, permission had been granted by letter, usually from the DHC, and the High Commission admitted that they had not always brought it to the attention of applicants that fishing in the lagoon was forbidden).

13. Meanwhile, the BIOT Administration in London were embarked on an in-house study of factors to be taken into account in deciding whether to declare a 200-mile fisheries protection zone around the BIOT. The first draft of their think-piece was strong on conservation (sea mammals, turtles) and enthusiasm for this was

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only mildly dampened by advice from Dr Tarbit that tuna schools are rarely associated with mammals in the Western Indian Ocean, and so the environmental aspect of tuna purse seining was less than in the Eastern Pacific, while the perils to turtles was also "not significant". The other new strand in FCO thinking, however, was to consider an extended fishing zone within the overall context of existing (tuna) fishing within 200 miles of the Chagos Archipelago.

14. Following delay due to the Gulf crisis, a submission (aimed initially at Mr Waldegrave) went up to Mrs Chalker and was approved in May/June 1991. It recommended declaring a 200 mile fishing limit on conservation grounds:- to enable the BIOT to limit fishing access by a licensing regime and monitor catches through the Marine Resources Assessment Group (MRAG); to allow for representation on any regional tuna conservation and management organisation; and to play a part in protecting vulnerable species eg.turtles, by prohibiting drift-nets. A necessary concession would be to continue to issue free licences to Mauritian fishermen, and to extend their existing access to BIOT inshore waters in the new 200 mile limit. The regime, it was recognised, would be essentially unpoliced, and would depend upon pitching the licence fee at a level which would encourage rather than deter compliance. Mrs Chalker raised the question of an ODA-funded Fishery Protection Service similar to that operating off Sierra Leone, and was advised that this was not feasible for BIOT, where the costs of an enforcement fleet of four ships to cover 150,000 square miles would be prohibitative: purchase of a patrol vessel for BIOT was envisaged, but it would be largely of symbolic value and could not provide an adequate policing service.(D)

15. A problem which was encountered during the drafting of the new Ordinance (**Annex III**) was how to prevent eg. the Taiwanese from attempting to register their boats in Mauritius in order to obtain the same benefits as the artisanal fishermen. While the Ordinance does not specify that the licences are issued free quite intentionally (to avoid publicising the fact), that was spelt out in the note handed to the Mauritian Foreign Minister, de l'Estrac, when the High Commissioner called to forewarn him of HMG's intention to extend the fisheries zone around the BIOT from 12 to 200 miles with effect from 1 October 1991. The text of the note (E) left deliberately vague, however, whether Mauritian tuna fishing companies would be charged for licences within the 200 miles: while the BIOT Administration wished to extend free or subsidized licences to the Mauritians, they also recognised the practical difficulties likely to be caused by interested companies seeking to register in Mauritius. In the event, though, re-examination of HMG's 1965 undertaking on fishing ruled out any alternative. The BIOT Commissioner (Tom Harris) later confirmed in writing to MRAG that free licences would be extended to Mauritian tuna fishing vessels:-

"We are, however, looking...into how to deal with the possibility of additional vessels reflagging in Mauritius to qualify for the free licences. Meanwhile we will not publicise this concession."

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[redacted]

The Anglo-Mauritian Joint Fisheries Statement

16. There was a muted Mauritian reaction to the British intention to establish a Fisheries Conservation and Management Zone (FCMZ) of 200 miles around the Chagos Archipelago. The MEA issued a low key note formally reserving their position on sovereignty (F). Perhaps they were reluctant to say anything to worsen the already poor Anglo-Mauritian relations in the immediate aftermath of the 1991 CHOGM, when Prime Minister Jugnauth had offended John Major with an attack on British policy towards the BIOT in plenary and threatened to take the dispute to the UN: in response we postponed scheduled bilateral aid talks and cancelled signature on three aid projects. Jugnauth however signalled a desire to improve matters in early 1992, and was pleased by a letter from the British High Commissioner in July summarising HMG's policy over the BIOT which reiterated our recognition that Mauritius had first claim on the islands when we ceded sovereignty. He referred to the letter in Parliament, further declaring that Mauritius would no longer seek international support for their sovereignty claim. Subsequent Mauritian addresses to the UN were conciliatory.

17. During various bilateral exchanges we emphasised our wish to lay aside the question of sovereignty over the BIOT and to develop a more constructive relationship. The Mauritians responded in early 1993 by proposing a Joint Fisheries Statement covering the conservation of fish stocks in the area of interest to both parties. It was subsequently developed after the model of the UK/Argentine understanding over Falkland waters, in which differences over sovereignty are set aside (and in associated written texts each side's chosen name for the area - Falklands/Malvinas, Malvinas/Falklands - appear in reverse order in different versions). Progress on the negotiation was blocked for a while by Mauritian insistence that the Statement should cover joint management of fish stocks in BIOT waters, and as management implies jurisdiction this was unacceptable to HMG. However, the new Mauritian Foreign Minister, Dr Kasenally, called on the Secretary of State in October 1993 and later wrote suggesting a suitable compromise form of words, which we agreed. The High Commission in Port Louis regarded the new formulation as a genuine attempt by the Mauritians to bridge the gap between the British stance and local expectations about management of resources within Chagos waters. (G) Mr Anderson, 2nd Legal Adviser, minuted however on the draft, as duly amended, that he saw no legal objection to the formula but:

"In general, The Dept will have to be v.careful if the present draft is accepted to avoid rapid progress towards a condominium over the BIOT EFZone. Perhaps they do not mind that."

The Statement was signed in London on 27 January 1994 (H): in the Mauritian version, the words "British Indian Ocean Territory (Chagos Archipelago)" appear in reverse order.

18. One benefit for HMG of accepting the Mauritian proposal for a Joint Statement was to smooth the way for British participation,

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on behalf of the BIOT, at IOTC meetings, for the Mauritians now agreed that the membership clause of the IOTC could be suitably drafted so as to set aside the sovereignty issue.

The British-Mauritian Fisheries Commission (BMFC)

19. The BMFC was established with the aim of promoting conservation and scientific research, and to provide a means for the two Governments to exchange information on the enforcement of fishing regulations in the region. Comprising officials and fisheries experts from both countries, it was tasked with receiving and analysing data and recommending coordinated conservation measures. Its first meeting in Port Louis (26-28 April 1994) went well, although no agreement was reached on the "defined area", which the Mauritians wished to confine to BIOT waters while the British side argued that the Commission should cover a large box around Mauritius/Chagos. In the end, however, the Mauritians agreed that the Commission would talk about fisheries around both sets of islands without actually defining the area in terms of latitude and longitude: there was also agreement that there would be no reference to this in the published portion of the Agreed Minutes.

20. A second meeting of the BMFC held in London 16-17 March 1995 did, however, agree to recommend to their respective governments that the 'area of waters of concern' to the Commission should be based on the area within certain specified points of latitude and longitude, but excluding the EEZs of neighbouring countries. The area thus defined included the FCMZ of the BIOT (Chagos Archipelago) and the Mauritian EEZ and intervening international waters. Therefore it was the Mauritian side which conceded most.

21. One issue which came under discussion at both meetings was the licensing of joint venture Mauritian purse seiners. This was the kind of problem which had been foreseen in the new arrangement - see para.15 - but proved elusive of resolution. The British side expressed disquiet about boats in recent joint venture with the Japanese, and to whom the free licensed access to BIOT waters originally allowed Mauritian artisanal fishing vessels had been previously extended. (Specifically it concerned the free licences issued on a six-monthly basis to the MV Cirne, the Lady Sushil, and the Lady Sushil II, whose total catch value for the tuna taken in BIOT waters during 1993/4 was some £1.7m.) Mr Cairns of the BIOT Administration made clear at the first meeting of the BMFC in 1994 that the MV Cirne, which had been chartered to Mitsubishi for one year, would no longer be granted a free licence. However, he also gave a private assurance that he would not pursue the matter of licence fees for the other two vessels at that stage, but would take the matter up again at the next Commission meeting. In the meantime he asked the High Commission to obtain information on the joint venture arrangement in force with the Japanese, and particularly on the percentage split, since this would guide thinking on any licence fees which might be applicable. (The Mauritius Tuna Fishing & Canning Enterprises Ltd (MTFCE) owned the two Lady Sushils and acted as agents for the Cirne (owned by the New Cold Storage Co Ltd.))

[redacted]

[redacted]

22. In the event, the second meeting of the Commission in 1995 decided to leave matters as they stood. The `Agreed Confidential Minute' recorded that:

"The current arrangements for licensing the vessels Lady Sushil I and Lady Sushil II (or for replacement of these vessels by Mauritian flagged vessels of equivalent size) will continue for the time being."

The record of the third meeting of the Commission (19-20 March 1996) is silent on this issue, merely noting in the Joint Communique that:

"8. The proposed arrangements for licensing of offshore tuna fishing vessels in the Area of Concern to the Commission during the 1996/97 season were described by each delegation."

The licensing issue

23. Agreement on the elements of the January 1994 Joint Statement on fisheries was delayed, as we saw earlier, by Mauritian wishes to write into it some provision for joint management of fish stocks in the waters of the BIOT. (para.17) The question of fishing licences was touched on at the BMFC meeting in April 1994 and was also the subject of PQs by Paul Berenger (I), but the central point made concerns the legitimacy of allowing the British authorities to issue licences to Mauritian ships to fish in what are claimed to be Mauritian waters. However in October 1994 the British High Commission came to learn that under a new licensing system the Ministry of Fisheries and Marine Resources had issued a licence permitting the Noor Fishing Co.to fish on the Chagos Bank (that is, in BIOT waters). They were instructed to approach the Mauritian Ministry of External Affairs about this, and to protest, pointing out that BIOT licences are issued free to Mauritian fishing companies but we would not hesitate to prosecute any vessel fishing illegally; they were also to say that a fisheries protection vessel would be on patrol in BIOT waters from that month.

24. Yet contrary to first impressions, this action of the Ministry of Fisheries in no way represented a conscious challenge related to sovereignty. Rather it was a technical matter associated with the introduction of a quota catch system in Mauritius. A report of early 1995 by MRAG (contracted to manage the BIOT fisheries regime on behalf of the BIOT Administration) clarifies matters (and incidentally illustrates the benefits of handling a potentially contentious area at the level of practical cooperation between technical experts). It commented:

"The imposition of quotas by Mauritius for the banks fishery, including Chagos was drawn to our attention during 1994. Questions were raised about Mauritian motives in relation to Chagos and in relation to how the quotas were fixed.

- Total allowable catches (TAC) were set by Mauritius for the Nazareth, St Brandon and Saya de Malha banks. My understanding of the quota for Chagos and the associated correspondence to BIOT administration, is that having limited the

[redacted]

[redacted]

catch from the Mauritian banks there was the possibility that the effort would be switched to Chagos once the quotas were completed. This was indicated to the BIOT administration in order that such a quota could be considered when issuing licences. Effectively the proposal is a step towards collaborative management of the banks fishery resources of the region. Whilst joint management may not be the original intention of collaborative research, there is merit in their proposal in that the BIOT authorities could potentially receive additional requests for licences once Mauritian quotas are completed."

25. In the context of the introduction of the Banks fishing quota, PQs in the Mauritian Parliament made the link with Mauritius' claim to sovereignty over Chagos, and to the need for controls over the licences accorded by the UK to foreign purse-seiners. For example, in November 1995 Paul Berenger asked rhetorically of the Prime Minister:-

"Does he realise that this is our `*or blanc*'? 220,000 tons of tuna at $1,500 per ton go under our nose and that of our friends of the Seychelles. Does he consider it proper to allow the British to give to Spanish and French purse seiners up to 44 tuna licences? Will he see to it that this is brought under control through the UK/Mauritius Joint Fisheries Commission?" (J)

Our response to the Mauritians on the narrower question of licensing revenue is, of course, to point out that it is used solely for the administration of the BIOT and its environmental conservation (which will eventually be to the benefit of Mauritius when the Chagos islands are no longer required for defence purposes and are ceded to them).

Comments

26. The system of free licensing of Mauritian boats to fish in Chagos waters has never been abused by them in pursuit of their sovereignty dispute (eg.by seeking to infiltrate Ilois, or attract publicity by causing incidents on the islands). Therefore HMG's interpretation of its 1965 undertaking on fishing has tended towards a liberal, or permissive, interpretation - as in the licensing of Mauritian purse-seiners. It has doubtless been reinforced by the co-operative attitude of the principal Mauritian fishing company with whom the High Commission or the BIOT Administration has had dealings, run by the Talbot brothers (this comes across in all the papers through the years). That it is the same interests now in joint venture with the Japanese in respect of the two Lady Sushils doubtless contributes to a reasonably favorable interpretation of whether they continue to qualify for free licences. (To illustrate this continued cooperation, the Talbots have recently volunteered facilities on their various boats for MRAG observers on fisheries research surveys).

27. The Mauritians have sought benefits for the Ilois from Chagos, some of whom crew Mauritian fishing boats, and at the last BMFC (the third) on 19-20 March 1996 asked about the possibility of using part of BIOT's licensing revenue to assist Mauritian fishermen and help out with Ilois projects. They were told that

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we had no spare funds available but it was in any event HMG's firm policy to use BIOT licence money only for the administration of the Territory, and in particular for conservation and fisheries management. But the High Commissioner was able to offer assistance from his Heads of Mission Gift Scheme.

28. With regard to the sovereignty issue, the Mauritians continue to try to `slip a fast one', in a legalistic sort of a way, but the BMFC appears a fairly innocuous arena for this sport. The `new ruse' described by David Smith, who attended the March 1996 BMFC meeting in Port Louis for the BIOT Administration, was to propose that the Commission be mandated to report on behalf of BIOT/Chagos in regional and international fisheries fora such as the IOTC: "we quickly saw through this and said we could only consider it if [it] was mandated to report on the whole area of concern to the Commission (ie.both the BIOT FCMZ and Mauritius' EEZ)."

29. In response to a PQ concerning fisheries, Deputy Prime Minister and Minister of External Affairs Paul Berenger told the Mauritian Parliament about six months' ago that the Government was considering new initiatives in relation to the Chagos Archipelago. There is as yet no indication of what precise shape these `new initiatives' will take.

11 October 1996.

African Research Group
Research Analysts

[redacted]

Annex 102

Inshore fishing licences issued to Mauritian fishing vessels by the Director of Fisheries on behalf of the Commissioner for the "British Indian Ocean Territory" in 1997, 1999 and 2006

Kgsty Pl Kk ny Talbot III

(137)

BRITISH INDIAN OCEAN TERRITORY

INSHORE FISHING VESSEL LICENCE

Issued by

the Director of Fisheries

on behalf of the

Commissioner for the British Indian Ocean Territory

Pursuant to section 4 of the Fisheries (Conservation and Management) Ordinance 1991

I, LOUISE SAVILL Director of Fisheries, hereby authorise the fishing vessel:

TALBOT III (BIOT Inshore Fishing Notification No: MU / INF / 103)

to fish within the British Indian Ocean Territory fishing waters under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER: INF 039

START OF VALIDITY OF THIS LICENCE: 30 / 04 / 97

END OF VALIDITY OF THIS LICENCE: 13 / 07 / 97

PERIOD OF VALIDITY OF THIS LICENCE: 75 DAYS

AREA COVERED BY THIS LICENCE: CONDITIONS OVERLEAF

DATE 9/4/97

Director of Fisheries

BRITISH INDIAN OCEAN TERRITORY SECRETARIAT

All communications concerning this licence should be addressed to:
The Director of Fisheries
c/o Marine Resources Assessment Group Limited
47 Prince's Gardens, LONDON SW7 2QA, UK
Tel: +44 171 594 9868 Fax: +44 171 823 7916

02 MAY 1997

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BRITISH INDIAN OCEAN TERRITORY

INSHORE FISHING VESSEL LICENCE

issued by

the Director of Fisheries

on behalf of the

Commissioner for the British Indian Ocean Territory

Pursuant to section 4 of the Fisheries (Conservation and Management) Ordinance 1991

I, LOUISE SAVILL Director of Fisheries, hereby authorise the fishing vessel:

TALBOT IV (BIOT Inshore Fishing Notification No: MU / INF / 012)

to fish within the British Indian Ocean Territory fishing waters under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER:	INF 049
START OF VALIDITY OF THIS LICENCE:	10 / 05 / 99
END OF VALIDITY OF THIS LICENCE:	18 / 07 / 99
PERIOD OF VALIDITY OF THIS LICENCE:	70 DAYS
AREA COVERED BY THIS LICENCE:	SEE CONDITIONS OVERLEAF

DATE 19/4/99

Director of Fisheries

BRITISH INDIAN OCEAN TERRITORY SECRETARIAT

All communications concerning this licence should be ...

c/o Marine ... 47 Prince's ... United Kingdom

Tel: +44 171 ... 7216

BRITISH INDIAN OCEAN TERRITORY

INSHORE FISHING VESSEL LICENCE

Issued by
the Director of Fisheries
on behalf of the
Commissioner for the British Indian Ocean Territory

Pursuant to section 4 of the Fisheries (Conservation and Management) Ordinance 1991, I, Tony Humphries, Director of Fisheries, hereby authorise the fishing vessel:

TALBOT IV [BIOT Inshore Fishing Notification No: MA / INF / 01]

to fish within the British Indian Ocean Territory fishing waters under the terms and conditions attached to this licence.

FISHING VESSEL LICENCE NUMBER: INF 067

START OF VALIDITY OF THIS LICENCE: 10 / 08 / 2006

END OF VALIDITY OF THIS LICENCE: 08 / 10 / 2006

PERIOD OF VALIDITY OF THIS LICENCE: 90 days.

AREA COVERED BY THIS LICENCE: SEE OVERLEAF.

Tony Humphries DATE 03/08/06

Director of Fisheries

All communications concerning this licence should be addressed to:
The Director of Fisheries
c/o Marine Resources Assessment Group Limited
18 Queen Street, LONDON W1J 5PN, UK
Tel: +44 (0)207 255 7755 Fax: +44 (0)207 499 5388

Annex 103

Boyle, A.E., "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction" (1997) 46 International and Comparative Law Quarterly

DISPUTE SETTLEMENT AND THE LAW OF THE SEA CONVENTION: PROBLEMS OF FRAGMENTATION AND JURISDICTION

ALAN E. BOYLE*

I. INTRODUCTION

THE entry into force of the 1982 United Nations Convention on the Law of the Sea ("UNCLOS"), on 16 November 1994, is probably the most important development in the settlement of international disputes since the adoption of the UN Charter and the Statute of the International Court of Justice. Not only does the Convention create a new international court, the International Tribunal for the Law of the Sea ("ITLOS"), it also makes extensive provision for compulsory dispute-settlement procedures involving States, the International Seabed Authority ("ISBA"), seabed mining contractors and, potentially, a range of other entities. Implementation of the Convention has spawned a number of inter-State disputes to add to the cases already before the International Court. The initiation of the ITLOS not only opens up new possibilities for settling these disputes but it also has implications for the future role of the International Court and *ad hoc* arbitration in the law of the sea and more generally. It contributes to the proliferation of international tribunals and adds to the potential for fragmentation both of the substantive law and of the procedures available for settling disputes. Judges Oda and Guillaume have argued that the ITLOS is a futile institution, that the UNCLOS negotiators were misguided in depriving the International Court of its central role in ocean disputes and that creation of a specialised tribunal may destroy the unity of international law.[1] The law of the sea, both judges argue, is an essential part of international law and any dispute concerning the application and interpretation of that law should be seen as subject to settlement by the International Court. Although they accept that more specialised bodies may be more appropriate for certain types of dispute, such as those involving technical expertise or the application of equity, their conception is essentially one in which a single judicial body—the International Court—

* Professor of Public International Law, University of Edinburgh. This is a revised version of a paper delivered at the Annual Conference of the British Branch of the ILA in Edinburgh in 1996. I am grateful to His Excellency Judge Dolliver Nelson for some very helpful comments but the views expressed here are mine alone.

1. S. Oda, "The ICJ Viewed from the Bench" (1993) 244–II Hag.Rec. 127–155, and "Dispute Settlement Prospects in the Law of the Sea" (1995) 44 I.C.L.Q. 863; G. Guillaume, "The Future of International Judicial Institutions" (1995) 44 I.C.L.Q. 848. See also E. Lauterpacht, *Aspects of the Administration of International Justice* (1991), pp.20–22.

exercises responsibility for the integrated development of a single system of international law. The purpose of this article is to consider how far these fears of fragmentation are justified and, in a more practical vein, how the new and quite complex system instituted by the 1982 UNCLOS will affect the litigation of law of the sea disputes, and what the role of the new ITLOS is likely to be.

II. THE UNCLOS DISPUTE-SETTLEMENT SCHEME

A. The Role of Compulsory Dispute-Settlement in UNCLOS

The emphasis placed on dispute-settlement procedures in the 1982 UNCLOS—and in particular on compulsory binding procedures—reflects the three central objectives of the negotiations which led to its adoption.[2] It is worth recalling what these were.

First, the Convention was intended to be a comprehensive code for the law of the sea as a whole, covering all relevant issues in a single text. Second, it was intended to be universal in character, a code which could obtain the widest possible support from States and which would as far as possible represent a consensus of views. Third, the Convention text was intended to be an integral whole, a "package deal", which could be ratified only in full, without reservations, or not at all. Since the Convention deals with much that had been in dispute, much that is new and much that remains unresolved, it inevitably represents a complex balance of interests, and contains many inherently uncertain or ambiguous articles. In this context binding compulsory dispute settlement becomes the cement which should hold the whole structure together and guarantee its continued acceptability and endurance for all parties. Without such provision the Convention would inevitably be interpreted and applied differently by different States, even when acting entirely in good faith. As Sir Ian Sinclair has explained: "What is important—what is indeed crucial is that there should always be in the background, as a necessary check upon the making of unjustified claims, or upon the demand of justified claims, automatically available procedures for the settlement of disputes."[3] Thus the principal purposes of the Convention's provisions on dispute settlement are to provide authoritative mechanisms for determining questions relating to the "interpretation or application" of the treaty, to guarantee the integrity of the text, and to control its implementation and development by States

2. See UNGA Res.2750 XXV(1970) and 3067 XXVIII(1973); Final Act, 3rd UN Conference on the Law of the Sea (1982); B. de Zulueta, Special Representative of the Secretary-General, in UN, *Official Text of the UN Convention on the Law of Sea*, Introduction; H. Caminos and M. Molitor, "Progressive Development of International Law and the Package Deal" (1985) 79 A.J.I.L. 871; B. Buzan, "Negotiating by Consensus" (1981) 75 A.J.I.L. 324.

3. I. Sinclair, *The Vienna Convention on the Law of Treaties* (2nd edn, 1984), p.235.

parties.[4] From this point of view compulsory dispute settlement is designed to prevent fragmentation of the conventional law of the sea.

A further purpose, and one of the main reasons for having a separate Seabed Disputes Chamber, is to ensure that a forum exists which can handle cases involving both States and other actors.[5] The powers and responsibilities conferred on the International Seabed Authority made it desirable that that body should be able both to bring contentious proceedings against States to enforce certain provisions of the treaty and to be sued by States or by seabed contractors if it exceeds or misuses its powers. The Seabed Disputes Chamber is thus unique among international courts in the range of parties over which it exercises compulsory jurisdiction. But the ITLOS, too, has a broader jurisdiction *ratione personae* than the International Court. Although in compulsory cases it remains confined to hearing disputes between States, it also possesses a general consensual jurisdiction which potentially extends to other entities including international organisations and possibly even non-governmental organisations.[6] Thus in generally broadening the range of parties which may be involved in international litigation the Convention can again be seen as seeking to avoid the fragmentation of disputes, and as promoting unity, integrity and inclusiveness.

Yet a closer examination of other aspects of the Convention's scheme shows that in a variety of different ways fragmentation is part of the price of securing consensus on compulsory, binding dispute settlement. Thus we face not merely a theoretical problem about the unity of international law but also a severely practical problem about the handling of complex disputes within a structure which, as we have seen, envisages significantly more extensive resort to compulsory settlement. These problems arise from two features which characterise Part XV of the Convention: the "cafeteria" approach to modes of settlement, and the "salami-slicing" of legal issues, requiring a sometimes arbitrary categorisation of different kinds of dispute, with different consequences for the mode of settlement and for the possibility of compulsory jurisdiction.

4. See generally L. Sohn, "Settlement of Disputes Relating to the Interpretation and Application of Treaties" (1976) 150–II Hag.Rec. 195, and "Settlement of Disputes Arising out of the Law of the Sea Convention" (1975) 12 San Diego L.R. 495, 516; B. Oxman, in A. Soons (Ed.), *Implementation of the Law of the Sea Convention through International Institutions* (1989), p.648; A. O. Adede, *The System for Settlement of Disputes under the UN Convention on the Law of the Sea* (1987), p.241; C. Chinkin, "Dispute Resolution and the Law of the Sea", in J. Crawford and D. Rothwell (Eds), *The Law of the Sea in the Asian Pacific Region* (1995), p.237; J. Merrills, *International Dispute Settlement* (2nd edn, 1991), chap.11; A. E. Boyle, "Settlement of Disputes Relating to the Law of the Sea and the Environment" (1996) Thesaurus Acrosaurium (forthcoming).

5. Adede, *idem*, chap.9; L. Sohn, "Settlement of Law of the Sea Disputes" (1995) 10 Int.J. Marine and Coastal L. 205.

6. See *infra* Part III.

B. The "Cafeteria" Approach

The essential problem here is the range of possible forums for compulsory settlement under the Convention. During the negotiations disagreements on the most acceptable and appropriate process were such that no single forum could be given general compulsory jurisdiction.[7] The Soviet bloc continued to oppose any form of judicial settlement but would accept arbitration. Many developing States, and a few Western States such as France, would not accept the International Court, but some would accept a differently constituted specialist tribunal for the law of the sea, which eventually became the ITLOS. The opposition to the International Court thus meant that it could not be the only or even the primary forum for settlement of law of the sea disputes, as it had been under the 1958 Optional Protocol to the Geneva Conventions. Other States, while not opposed in principle to any particular procedure, did not believe that the widely differing range and character of disputes likely to arise under the Convention could all be accommodated satisfactorily in only one mode of settlement.

The solution, embodied in the so-called "Montreux formula", was to opt for flexibility to choose one or more of four different procedures for compulsory settlement under Part XV.[8] The four procedures in this "cafeteria" approach are:

(1) the International Tribunal for the Law of the Sea;
(2) the International Court of Justice;
(3) arbitration;
(4) special arbitration.

A declaration indicating their preferred choice of compulsory procedures can be made by States parties at any time and revoked or modified on three months' notice. If no declaration is made, which at present is the case for most parties to the Convention, or if the parties to a dispute have made different choices, arbitration becomes the residual procedure, unless the parties otherwise agree.[9] A simpler way of describing this system is to say that arbitration is compulsory unless the parties to a dispute have consented in advance or *ad hoc* to have it settled in some other way.

What this analysis shows is actual or potential fragmentation in two senses: there is no single forum for disputes arising under the Convention and there is no mechanism for ensuring uniformity in the outcome of similar cases before different tribunals. But neither problem is novel. Since 1958 the International Court has decided on their merits seven cases

7. Adede, *op. cit. supra* n.4, at pp.242 *et seq.*, and "Settlement of Disputes Arising Under the Law of the Sea Convention" (1975) 69 A.J.I.L. 798.
8. Art.287.
9. For details see Adede, *op. cit. supra* n.4, at pp.53 *et seq.*; Sohn, *op. cit. supra* n.5.

dealing principally or partly with the law of the sea;[10] in the same period there have also been seven international arbitral awards on the same subject.[11] Most of these cases have been about maritime boundaries or fishing. The jurisprudence on the law of the sea has certainly been developed over this period; it may be arguable whether it has improved, but it does not appear to have noticeably fragmented. Although the views of courts on issues such as the interpretation of Article 6 of the Continental Shelf Convention or the juridical nature of the shelf have certainly changed, there has been no overt conflict between the decisions of the International Court on the one hand and of arbitration tribunals on the other. The jurisprudence may not be a seamless web, but it is more impressive for its continuity than for its discord. There is plausibility in the proposition that competition has if anything strengthened the jurisprudence and been healthy for the legal process.[12]

Judge Oda's fears for the unity of international law arising from the proliferation of tribunals and the "cafeteria" approach to selection of modes of settlement may seem from this perspective overstated. It is far from obvious that the International Court will cease to play a prominent role in deciding law of the sea cases, or that these cases will necessarily go to the ITLOS rather than to arbitration. What is clear is that the parties to the 1982 UNCLOS do have a very real choice of forum in which to settle their disputes. If the volume of cases grows significantly, and results in fuller use of the whole cafeteria, problems of consistency and continuity in the jurisprudence may result. For the present, however, it does seem that other forms of fragmentation—notably the "salami-slicing" of disputes—may be more problematic.

C. "Salami-Slicing" of Disputes

The problem we have just considered is one in which the same kind of dispute may come before four different kinds of tribunal, but in all cases will lead to a binding judgment. We now turn to a more complex and

10. *North Sea Continental Shelf Case* I.C.J.Rep. 1969, 3; *Fisheries Jurisdiction Cases* I.C.J.Rep. 1974, 3 and 175; *Tunisia/Libya Continental Shelf Case* I.C.J.Rep. 1982, 18; *Gulf of Maine Case* I.C.J.Rep. 1984, 246; *Libya/Malta Continental Shelf Case* I.C.J.Rep. 1985, 13; *Land, Island and Maritime Frontier Case* I.C.J.Rep. 1992, 35; *Jan Mayen Case* I.C.J.Rep. 1993, 38.

11. *Beagle Channel Arbitration* (1977) 52 I.L.R. 93; *Anglo-French Continental Shelf Arbitration* (1978) Cmnd.7438; *Sharjah/Dubai Boundary Arbitration* (1981) 91 I.L.R. 543; *Guinea/Guinea-Bissau Maritime Boundary Arbitration* (1985) 35 I.L.M. 251; *Franco-Canadian Fisheries Arbitration* (1986) 90 R.G.D.I.P. 151; *Guinea-Bissau/Senegal Maritime Delimitation Case* (1989) 83 I.L.R. 1; *St Pierre and Miquelon Arbitration* (1992) 95 I.L.R. 645.

12. J. Charney, "The Implications of Expanding International Dispute Settlement Systems: The 1982 Convention on the Law of the Sea" (1996) 90 A.J.I.L. 69. Cf. Guillaume, *op. cit. supra* n.1, at pp.861–862.

subtle problem in which we are required to categorise and separate different kinds of dispute, some of which will lead to binding compulsory settlement, others of which will not. This is almost bound to make settlement of some disputes—especially compulsory settlement—more difficult if not impossible. The categories we are most concerned with here are certain exclusive economic zone ("EEZ") disputes, maritime boundaries, historic titles and deep seabed disputes. With the exception of seabed disputes these categorisations do not have a functional basis. They are not, in other words, treated differently because some other way of dealing with them is more appropriate, although in some cases it may be, but because they concern subjects which proved politically sensitive and where many of the rules involved are open-textured and flexible, such as delimitation based on equitable principles. The reluctance of some States to commit themselves to binding settlement in most of these cases was strong and understandable, particularly with regard to fisheries and boundaries, but it does seriously diminish the overall integrity of the Convention.

1. EEZ disputes

These present the most complex problems for dispute settlement. The practical effect of Article 297 of the Convention is that there is binding compulsory settlement for EEZ disputes which relate to navigation or protection of the environment, but not for disputes which relate to the coastal State's exercise of its discretionary powers over fishing and marine scientific research within the EEZ. To complicate matters further, some, but not all, fisheries disputes excluded from binding compulsory settlement are subject instead to non-binding compulsory conciliation. Finally, under Article 298 States have the option of excluding from compulsory settlement certain disputes concerning law enforcement in the EEZ with regard to fisheries or scientific research.

The inclusion of navigation and protection of the environment within compulsory settlement was intended to restrain coastal State claims to "creeping jurisdiction" over shipping within the EEZ, and it reinforces a balance established by Parts V and XII in favour of freedom of navigation.[13] But the exclusions from binding compulsory settlement are equally far-reaching and significant and do little for the already limited claims of States to fish or conduct research in the EEZ of another State. Such rights for other States as Articles 62, 69, 70 and 246 do create are exercisable only by agreement and, in the case of fishing, only on heavily qualified terms involving subjective judgments about conservation, harvesting capacity and total allowable catch. The dispute-settlement

13. See P. W. Birnie and A. E. Boyle, *International Law and the Environment* (1992), chap.7.

provisions for the EEZ reflect the reality that the management of EEZ resources is very much a matter for coastal State discretion,[14] a point reinforced by Articles 297(2) and 297(3), which respectively prohibit a conciliation commission from questioning a coastal State's discretion over research, or from substituting its own discretion for that of the coastal State in fisheries matters.

In contrast, disputes over high seas fisheries and research are fully within the Convention's provisions on binding compulsory settlement. Thus, as regards fish, the crucial question is whether the dispute involves high seas freedoms or coastal State sovereign rights in the EEZ. But what if it involves both? Most of the more intractable fisheries disputes occur because the stocks in question straddle one or more EEZs, or straddle the EEZ and the high seas. This is true in particular of the Canada–Spain dispute in the Northwest Atlantic, and also of the North Pacific/Bering Sea.[15] In most of these disputes it makes little sense to separate the question of high seas fishing from the management of fish stocks in the adjacent EEZ. Overfishing or poor management in one area will necessarily have an impact on the other. This is very clear in the Canada–Spain dispute. While Canada arguably has a good case for complaint with regard to fishing of the high seas by Spain and other EU States, and such a dispute is subject to compulsory settlement, Canada itself has accepted that its own management of the Canadian EEZ has resulted in overfishing.[16] Yet this aspect of the dispute does not appear susceptible to compulsory settlement under the Convention. The consequence is that the parties have two options:

(1) make an *agreed* submission of all the issues in dispute to a tribunal of their choice;
(2) submit only the high seas issues to compulsory settlement.

The weakness of the former is precisely that it requires agreement, and of the latter that it fails to deal comprehensively with the dispute and is almost bound to fail for that reason. This may be simply another manifestation of the unsatisfactory nature of the Convention's treatment of fisheries, but that is little consolation for the fish. Nor does the 1995 Convention

14. See Arts.55–75, 192–262; W. T. Burke, *The New International Law of Fisheries* (1994), pp.59–80; B. Kwiatkowska, *The 200 Mile EEZ in the New Law of the Sea* (1989); D. Attard, *The Exclusive Economic Zone* (1987); F. Orrego-Vicuna, *The Exclusive Economic Zone* (1989).

15. See E. Meltzer, "Global Overview of Straddling and Highly Migratory Fish Stocks: The Non-Sustainable Nature of High Seas Fisheries" (1994) 25 O.D.I.L. 255; Burke, *ibid*; G. Ulfstein, P. Andersen and R. Churchill, *The Regulation of Fisheries: Legal, Economic and Social Aspects* (1986).

16. See P. Davies "The EC/Canadian Fisheries Dispute in the Northwest Atlantic" (1995) 44 I.C.L.Q. 927. In 1995 Canada and the EC concluded an Agreed Minute on the Conservation and Management of Fish Stocks: see (1995) 34 I.L.M. 1260.

on Straddling and Highly Migratory Stocks resolve the dilemma, since it mainly refers back to the dispute-settlement provisions of Part XV of UNCLOS.[17]

2. Maritime boundaries

Here the position is also complex. Maritime boundary disputes are in principle subject to compulsory binding settlement, even where they also involve disputed sovereignty over islands or other land territory. However, Article 298 allows States to make a declaration opting out of one or more of the four compulsory procedures with respect to disputes which concern delimitation of the territorial sea, EEZ or continental shelf, or which involve historic bays or titles. Where this right to opt out is exercised, an obligation arises to submit the dispute to non-binding conciliation unless it necessarily involves disputed sovereignty over islands or land territory, when no compulsory process of any kind is required. Thus the first problem is simply that some States will and others will not be subject to compulsory jurisdiction in boundary disputes, but admittedly that is no worse than the present position under general international law.

The second problem arises from the combination of Articles 297 and 298. Take a dispute involving EEZ claims around a disputed island or rock, such as Rockall, and the exercise of fisheries jurisdiction by one State within this EEZ. How do we categorise this dispute? Does it relate to the exercise of sovereign rights and law enforcement within the EEZ, excluded under Articles 297 and 298 from compulsory jurisdiction? Is it a maritime boundary dispute concerning the interpretation or application of Article 74 and excluded from binding compulsory jurisdiction under Article 298 if one of the parties has opted out under that Article? Does it necessarily involve disputed sovereignty over land territory so that even compulsory conciliation is excluded? Or is it a dispute about entitlement to an EEZ under Part V and Article 121(3) of the Convention? If it is the last, it is not excluded from compulsory jurisdiction under either Article 297 or 298. Much may thus depend on how our hypothetical dispute is put. If it is misuse of fisheries jurisdiction powers within the EEZ then it will surely be excluded under Article 297. But if it is an invalid claim to an EEZ contrary to Article 121(3) then it would appear not to be excluded. But suppose, instead, that it is reformulated as a claim that on equitable grounds the island or rock should be given no weight as a basepoint in a delimitation under Article 74? *Prima facie* this appears to be caught by Article 298(1). It is not necessary for present purposes to answer these questions, but they should suffice to show that everything turns in practice

17. Arts.27–32. Art.30 is summarised *infra* n.24. Art.32 imports the same exclusions from compulsory jurisdiction as are found in Art.297(3) of the Convention.

not on what each case involves but on how the issues are formulated. Formulate them wrongly and the case falls outside compulsory jurisdiction. Formulate the same case differently and it falls inside. So much for Lord Atkin's forms of action clanking their venerable chains to ensnare the unwary.[18]

The third problem arises at the outer margins of maritime boundaries. Suppose Canada and France are in dispute over their continental shelf boundary, as they were in the *St Pierre and Miquelon Arbitration*. Suppose further that their dispute extends beyond 200 miles to the outer limit of the geological shelf where it abuts on the deep seabed. Although it is for each State to determine for itself where the outer limit of the shelf lies, the Convention requires this to be done on the basis of recommendations made by the Commission on the Limits of the Continental Shelf.[19] It further provides: "The actions of the Commission shall not prejudice matters relating to delimitation of boundaries between states with opposite or adjacent coasts."[20] The precise effect of these provisions is a matter of debate, but the possibility does exist of a State making a shelf claim which does not comply with Article 76 of the Convention or with the recommendations of the Commission on the Limits of the Continental Shelf. The possibility also exists of another State also claiming some of the same area as part of its shelf. Is this a maritime boundary dispute between two States subject potentially to compulsory jurisdiction of a court or tribunal under Part XV of the Convention unless either party has opted out under Article 298? Or is it a dispute concerning the boundary between the shelf and the deep seabed and involving two States and the international community? In the *St Pierre and Miquelon Arbitration* the tribunal refused to delimit the maritime boundary between Canada and France beyond 200 miles on the ground that it was not competent to carry out a delimitation affecting the rights of a party which was not before it—i.e. the international community as represented by the ISBA[21]—and it confined itself to dealing

18. *United Australia Ltd* v. *Barclays Bank Ltd* [1941] A.C. 1, 29: "When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred."

19. Art.76(8) and Annex II, Art.7.

20. Annex II, Art.9. See also Art.76(10) and Art.134(4). "The phrase 'matters relating to delimitation of boundaries' emphasizes that the Commission is not to function in determining, or to influence negotiations on, the continental shelf boundary between states with overlapping claims ... It also indicates that the Commission is not to be involved in any matters regarding the determination of the outer limits of a coastal state's continental shelf where there is a dispute with another state over that limit. The Commission's role is to make recommendations on the outer limits of a coastal state's continental shelf, not to be involved in matters relating to delimitation of the continental shelf between States": M. Nordquist (Ed.), *UNCLOS 1982 Commentary*, Vol.II (1993), p.1017.

21. (1992) 95 I.L.R. 645, paras.75–82.

only with the bilateral issue of delimitation between the two States within the 200-mile EEZ. But where the deep seabed begins is not an abstract question: it can be answered only by reference to the outer limit of the continental shelf, which itself is determined by criteria which may include distance from the coastal State. The question then is: which coastal State? Only a delimitation will answer that issue where two States are potentially in contention. Thus where the deep seabed begins may depend first on how the shelf is delimited.[22] Since neither the ISBA nor the Commission on the Limits of the Shelf has any competence to delimit the boundary between the shelf and the seabed, it may well be erroneous to say, as in the *St Pierre and Miquelon Arbitration*, that there are in effect three parties to this sort of dispute. But, if there are three parties, who has jurisdiction over them? The ISBA cannot be a party to compulsory jurisdiction proceedings in the International Court or the ITLOS under Part XV and cannot intervene in such proceedings regardless of the forum, because it is not a State. It can be a party, as can States, to a case under the Seabed Disputes Chamber's compulsory jurisdiction, but the Chamber has no compulsory jurisdiction to effect a maritime boundary delimitation or to determine the outer limit of the shelf, because neither matter involves the interpretation or application of Part XI.[23] At most the Chamber could be asked to give an advisory opinion under Article 191 on those aspects of the dispute which fell within the scope of the Seabed Authority's activities. Thus, if put in three-party terms this is not capable of being a compulsory jurisdiction case at all: it can be dealt with in all its aspects only by consent of all parties either in arbitration or before the ITLOS.

D. Compulsory and Consensual Jurisdiction: the Reality of UNCLOS

From what we have seen so far the reality of UNCLOS is that its provision for compulsory binding settlement of disputes is less impressive and comprehensive than it might seem at first sight. The most significant areas where the commitment to compulsory settlement is unequivocal are freedom of navigation and protection of the marine environment. The former is consistent with the Convention's general treatment of navigation interests and the strong lobbying of the maritime powers. The latter remains a novelty among even the most ambitious of environmental treaties, where compulsory conciliation is usually the most the parties are prepared to agree on. However, the main reason for such a strong regime in this

22. For analysis of this problem see D. M. McRae, "The Single Maritime Boundary: Problems in Theory and Practice", in E. D. Brown and R. Churchill (Eds), *The UN Convention on the Law of the Sea: Impact and Implementation* (1987), p.225.

23. Art.187. However, it might possibly be argued that the ISBA would have authority to bring proceedings by virtue of Art.187(b)(i), on the basis that a shelf claim which does not comply with Art.76 is a violation of Art.137 of Part XI.

Convention is once again the need to protect navigation from excessive interference on environmental grounds by coastal States, so this novelty is perhaps also less than it seems.

Elsewhere, and especially on those issues where disputes have been most numerous—fisheries and boundaries—we can see that the fragmentation resulting from the salami-slicing of issues leaves a largely empty shell which can be filled only if the parties agree on consensual submission of the dispute to whatever forum they choose. This does not mean there will be no cases on the Convention before international tribunals—all the arbitrations and most of the International Court's cases which have dealt with law of the sea issues until now have been cases of consensual, not compulsory, jurisdiction. Rather, it does remind us not to exaggerate the significance of compulsory jurisdiction in the judicial settlement of disputes. But it points also to a further level of fragmentation into compulsory and consensual forms of jurisdiction. The consequences of this can be seen clearly when we turn to the ITLOS.

III. THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

A. Consensual Jurisdiction of the ITLOS

Given that its compulsory jurisdiction is limited and that there is little prospect of seabed mining, some critics, including Judges Guillaume and Oda, have suggested that the Tribunal will have little to do. Nevertheless, it is important to remember that, although its primary purpose is to exercise compulsory jurisdiction over questions of interpretation and application of the 1982 Convention and other related agreements,[24] the ITLOS is not confined to deciding such matters. Because it also possesses a consensual jurisdiction, the possibility also exists of it taking on other matters. How broad this consensual jurisdiction may be is an unsettled question which can be answered in practice only by the Tribunal itself. Article 21 of the Statute of the Tribunal merely provides: "The jurisdiction of the

24. Related agreements under which compulsory jurisdiction may exist include the 1995 Agreement on Straddling and Highly Migratory Fish Stocks, Art.30 of which applies the provisions of Part XV of the Convention *mutatis mutandis* to disputes concerning interpretation and application of the Agreement or of any subregional, regional or global fisheries agreement relating to straddling or highly migratory stocks; and the 1994 Agreement on the Implementation of Part XI of the UNCLOS 1982, Art.2 of which provides for the Convention and the Agreement to be read as a single instrument and by implication would seem to import the dispute settlement procedures of Part XI. Ss.6 and 8 of the Agreement also do so explicitly for those matters to which they relate.

Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal." This can be read as a broad basis for consensual jurisdiction, whether under other treaties, or by *ad hoc* agreement of the parties to a dispute, but how broad depends on which among several possible interpretations is preferred.

1. UNCLOS and related disputes

Article 21 of the Statute should certainly be sufficient to enable the parties to refer any dispute concerning the 1982 Convention and related agreements to the Tribunal, including those which fall wholly or partly outside the provisions on compulsory jurisdiction. This conclusion is reinforced by Article 280, which emphasises the freedom of parties to agree at any time to settle a dispute concerning the Convention by any peaceful means of their own choice, and Article 299, which preserves the right of the parties to agree to submit to the Convention's procedures matters otherwise excluded from compulsory jurisdiction by Article 297 or 298. In practice, as we have seen, it is quite likely that many fisheries and boundary disputes will have to be or will be more satisfactorily dealt with by consent before the ITLOS or some other forum rather than under compulsory jurisdiction, because of the problem of "salami-slicing" referred to earlier. Moreover, Article 22 of Annex VI also allows parties to treaties already in force and which concern the subject matter of the Convention to submit disputes arising under these treaties to the Tribunal by agreement. Such treaties would include the 1972 London Dumping Convention and the 1973/78 MARPOL Convention. Both the 1995 Straddling Fish Stocks Agreement and the 1993 Agreement on Compliance by Fishing Vessels also allow the parties by agreement to refer disputes to the ITLOS, the International Court or arbitration.[25]

2. Law of the sea cases

The Tribunal's consensual jurisdiction also appears broad enough to include disputes concerning the law of the sea that are governed by customary law rather than by the Convention. Although the Tribunal is required by Article 293 to apply the Convention and other rules of international law not incompatible with it, unless the parties agree that the case be decided *ex aequo et bono*, this applies only to the Tribunal's

25. Art.9 of the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Vessels on the High Seas provides for parties to a dispute to refer it by agreement to ITLOS, the ICJ or arbitration. The possibility of consensual references under the 1995 Agreement on Straddling Fish Stocks would seem to be implicit in Arts.27–32 of that Agreement.

compulsory jurisdiction and does not determine the applicable law in consensual cases. In arbitration, and before the International Court, the parties already possess significant freedom to determine their own choice of law and there is no obvious reason why a similar freedom should not exist for cases taken to the Tribunal by agreement of the parties. Nor can it be suggested that the judges of the Tribunal will lack the requisite expertise to decide cases based on customary law. There is thus no obvious reason why it should not function as a specialised court for all law of the sea cases, if that is what the parties to a dispute desire.

3. General international law disputes

Can the Tribunal do more? Has it the power to decide issues having nothing to do with the law of the sea? Although it might be argued that it was never intended for the Tribunal to be a court of general jurisdiction, the Convention provides little warrant for confining the Tribunal's consensual jurisdiction to law of the sea cases. It is true that Article 288 limits compulsory jurisdiction to cases concerning the interpretation or application of the Convention or of any "*international* agreement related to the purposes of the Convention", but no comparable restriction is found in the Statute of the Tribunal (Annex VI). There, as we have seen, in addition to matters provided for in the Convention, Article 21 confers jurisdiction on the Tribunal over all matters provided for in "any other agreement". The implication of this difference in wording appears to be that an "agreement" need neither be a treaty nor need it relate to the purposes of the Convention. Moreover, even in compulsory jurisdiction cases, the Tribunal may have to decide matters of general international law that are not part of the law of the sea, and Article 293(1) allows for this.[26] Nor is there any neat division between a law of the sea case and other types of dispute. In some cases the delimitation of a maritime boundary may necessarily require a decision concerning disputed sovereignty over land, for example where an island is used as a basepoint for an EEZ or continental shelf claim. While parties to the Convention do have the option of excluding such disputes from compulsory jurisdiction under Article 298(1), the implication must be that, where this option is not exercised, a tribunal, including the ITLOS, may if necessary deal with both the land and the maritime dispute. If this is so in compulsory cases, there is no reason why the same should not also hold true in consensual cases, where the parties may also wish to have a land and maritime boundary delimited in the same proceedings, as in the *Land, Island and Maritime Frontier Case* or the *Dubai-Sharjah Arbitration*. If they can do so before the

26. "A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention."

International Court or in arbitration, why should they not also have the ability to use the ITLOS instead?

Thus, the broadest view of the Tribunal's consensual jurisdiction is that it may hear any case brought to it by the parties to a dispute, regardless of whether any law of the sea issue is involved. It is worth reiterating that nothing in the Statute prevents the Tribunal's jurisdiction evolving in this way, nor does the concept of admissibility provide any necessary limits to the type of case it may decide. While it might be argued that to allow the Tribunal to decide cases under general international law is to encroach on the International Court's primacy as principal judicial organ of the United Nations, the implication of a hierarchical relationship between the two courts finds no explicit echo in the Convention. Once again one has to pose the question: if the parties to such a dispute wish to take it to the ITLOS, rather than to the Court, why should they not be allowed to do so? The potential does exist therefore for the ITLOS to become a real competitor with the Court, not merely in law of the sea cases but more generally. Merely because there may be no seabed mining disputes, or no compulsory jurisdiction cases, does not mean that it need have no work. That being so, it is important to consider what factors might influence the parties to a dispute in their choice of judicial forum and, in particular, why they might prefer the ITLOS.

B. Why Choose the ITLOS?

There are three main factors which may influence a choice between the ITLOS and the International Court. Most obviously, the composition of the Tribunal is different. The judges must have "recognised competence in the field of the law of the sea".[27] They may thus have greater expertise in that area than some judges of the Court; equally some of the ITLOS judges may carry less weight as general international lawyers, but both points will depend entirely on who is elected to each body. It is evident from the first ITLOS election, held in August 1996, that the geographical basis of the Tribunal's membership and the greater number of judges have given developing States more prominence than they possess in the Court.[28] This difference in composition might affect the Tribunal's outlook and the outcome of cases, but this possibility is essentially speculative

27. Annex VI, Art.2.

28. Annex VI, Art.2(2) provides for representation of the principal legal systems and equitable geographical representation. At the first election it was decided that 5 seats would be allotted to Africa, 5 to Asia, 4 to Latin America and the Caribbean, 4 to Western Europe and others, and 3 to Eastern Europe. Judges elected in 1996 are: Akl (Lebanon), Anderson (UK), Caminos (Argentina), Eiriksson (Iceland), Engo (Cameroon), Kolodkin (Russia), Laing (Belize), Marotta (Brazil), Marsit (Tunisia), Mensah (Ghana), N'Diaye (Senegal), Nelson (Grenada), Park (South Korea), Rao (India), Treves (Italy), Vukas (Croatia), Warioba (Tanzania), Wolfrum (Germany), Yamamoto (Japan), Yankov (Bulgaria), Zhao (China).

at present. The suggestion of different outcomes may also do less than justice to the influence of judges from developing States in the present Court and to that Court's general sensitivity to the interests of developing States.

A second possible comparison is procedural, but here the advantages are more doubtful. In many respects, including the power to sit in chambers, to hear third-party intervention, and to grant interim measures of protection, the Tribunal is very similar to the International Court.[29] The Tribunal's judgments are binding in the same way as the Court's,[30] but they are not enforceable under Article 94(2) of the UN Charter. The possibility that the Tribunal will hear more cases and decide them more quickly than the Court has so far been able to do is again a speculative potential advantage, which depends entirely on how the Tribunal organises its business and the resources available to it. With 21 judges, of whom all save the President are part-time, it may not be easy for it to act more expeditiously than the full-time Court.

Third, in consensual cases there is potentially wider access to the Tribunal than to the Court, where contentious cases can involve States only and where international organisations are subject to judicial review only in advisory proceedings which they have initiated, or indirectly in the course of inter-State cases.[31] Access is probably the most significant difference between the Court and the ITLOS: precisely who has standing before the Tribunal is a controversial question, however, and is considered below.

These comparisons do show that in contentious cases the ITLOS will enjoy some advantages over the Court; clearly where the parties are not States the Court is not an option at all. In other situations the benefits, if any, will become apparent only after the Tribunal has begun to operate.

C. *Access to the ITLOS: Jurisdiction* Ratione Personae

As Sir Robert Jennings has observed elsewhere,[32] the International Court's narrow jurisdiction *ratione personae* reflects a conception of participation in the international legal system that is now 75 years old, increasingly anomalous, and out of step with contemporary international society. Other international tribunals, including those concerned with human rights,[33] commercial and investment disputes,[34] international

29. Art.290 and Annex VI, Arts.15, 25, 31, 32.
30. Annex VI, Art.33.
31. ICJ Statute, Art.34.
32. R. Y. Jennings, "The ICJ After 50 Years" (1995) 89 A.J.I.L. 493.
33. European Convention on Human Rights and Freedoms, Art.25; American Convention on Human Rights, Art.44.
34. 1965 Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

claims,[35] or the European Community have adopted broader rules on access and allow participation by private parties and, where necessary, international organisations. The same is true of the International Tribunal for the Law of the Sea, although here the position is more complex and the answer to the question who may be involved in proceedings before the Tribunal will vary according to the context. Three categories of disputes must be distinguished.

1. Proceedings before the Seabed Disputes Chamber under Part XI

As we have seen it proved necessary to give the Seabed Disputes Chamber compulsory jurisdiction over the wider range of entities potentially involved in disputes concerning Part XI of the Convention: States, State enterprises and private contractors involved in seabed mining, and the ISBA.[36]

2. Proceedings before a court or tribunal under Part XV

The procedures provided for in Part XV are, unlike Part XI, open only to States parties, as provided in Article 291, but it should be noted that the term "States Parties", as used throughout the Convention, is given an extended definition by Article 1(2)(2).[37] In addition to States, it also includes those self-governing associated States and territories entitled to participate in the Convention under Article 305, and those international organisations whose participation is made possible by Annex IX, principally the European Community. All these entities are therefore entitled to be parties to proceedings before the ITLOS, or arbitration. For the European Community this is a significant advantage, since it remains unable, even within the terms of the Convention, to participate in cases before the International Court.[38]

3. Proceedings before the ITLOS under other agreements

Article 20(2) of Annex VI provides that:

> The Tribunal shall be open to entities other than States Parties in any case expressly provided for in Part XI *or in any case submitted pursuant to any other agreement* conferring jurisdiction on the Tribunal *which is accepted by all the parties to that case* [emphasis added].

35. See D. Caron, "The Nature of the Iran–US Claims Tribunal and the Evolving Structure of International Dispute Resolution" (1990) 84 A.J.I.L. 104; W. Mapp, *The Iran–US Claims Tribunal* (1993); J. Crook, "The UN Claims Commission" (1993) 87 A.J.I.L. 144 and 1992 UN Claims Commission Report (1992) 31 I.L.M. 1018.

36. See Art.187.

37. See also Art.1(2) of the 1995 Agreement on Straddling and Highly Migratory Fish Stocks.

38. See Annex IX, Art.7.

Significantly, and unlike Article 291, this provision does not limit access only to States parties. Nor, when used in Article 20 of the Annex, is the term "entity" defined only by reference to those listed in Article 187 of Part XI, as it is when used in Article 37 of the Annex (dealing with access to the Seabed Disputes Chamber).

Moreover, like Article 21 of the Annex,[39] Article 20(2) uses the word "agreement" without further qualification, suggesting not only that it need not be a treaty, but that the parties to it do not have to have the capacity to conclude treaties.

Herein lies the basis for believing that the ITLOS is open to a potentially wider range of parties, including international organisations, non-governmental organisations, and other entities which are not States or whose international status is doubtful, such as Taiwan. Indeed, there seems no reason why "fishing entities", to which the 1995 Agreement on Straddling and Migratory Fish Stocks[40] applies, should not fall under the terms of Article 20(2). On this reading of Article 20, access to the Tribunal in non-compulsory jurisdiction cases is primarily a matter for the parties to the dispute to determine; provided they can agree on giving it jurisdiction, the Tribunal will have the necessary competence, unlike the International Court, to hear whatever parties choose to appear before it.

Views may differ on whether this is a strained reading of Annex VI or whether it corresponds with the intention of the drafters. But it does make considerable sense to allow the Tribunal to accept cases which parties to the dispute want it to hear, even if they are not States. This is already possible in arbitration,[41] and before other international tribunals. Given that the International Court cannot hear such cases without amendment of its Statute, and that this seems unlikely to happen soon, however desirable it may be in theory, it would be a beneficial advance for the Tribunal to be more broadly accessible. Indeed, in the case of "entities" such as Taiwan, the advantages of broader access are obvious, since this would provide a means of enabling Taiwan, or other disputed entities, to appear before an international tribunal without having to resolve the question of their Statehood or legal status, and without any implied recognition by the other party.

In contrast, it is difficult to see what would be gained by constraining the Tribunal's general jurisdiction to an outmoded view of participation in the

39. *Supra* Part III.A.3.

40. Art.1(3).

41. Even NGOs can be parties to international arbitration with States: see the *Rainbow Warrior Arbitration* (*Greenpeace* v. *France*). For details see C. Gray and B. Kingsbury, "Developments in Dispute Settlement: Inter-State Arbitration Since 1945" (1992) 63 B.Y.I.L. 104, n.39.

international legal system. It could not plausibly be argued that a narrow definition of access is necessary to give effect to the purposes of the Convention; on the contrary, as we saw at the beginning of this article, a more inclusive view of participation in the legal process will help reduce the risks of fragmentation and maintain the unity of international law. From this perspective the International Court's narrow jurisdiction *ratione personae* may be seen to pose more of a risk of fragmentation than does the proliferation of tribunals.

IV. CONCLUSIONS

IT is evident both that States do have a wide choice of forum for the settlement of disputes arising under the 1982 UN Convention on the Law of the Sea and that the creation of the International Tribunal for the Law of the Sea has significantly widened the choice for the settlement of disputes in general international law, not only for States but for other entities also. It remains too early to assess how far competition between different international tribunals will promote the settlement of disputes, or whether it will fragment either the substantive law of the sea or international law in general. While there is a risk in the proliferation of international tribunals, the evidence so far suggests that a choice of forum is more beneficial than harmful.

It is also clear that while in certain respects the integrity of the 1982 UNCLOS as a universal code for the law of the sea is to some extent protected by the Convention's provisions on dispute settlement, the exceptions from the general principle of compulsory jurisdiction are such that procedural fragmentation is inevitable and will lead in practice to greater emphasis on consensual rather than compulsory settlement. In many of the most contentious cases likely to arise under the Convention the practical situation is thus little different from what prevails at present. Those who have to advise governments on the settlement of complex maritime disputes governed by the 1982 Convention will thus find that a certain amount of ingenuity may be needed to formulate a case that falls squarely within any form of binding compulsory jurisdiction.

Annex 104

Edis, R, Peak of Limuria – The Story of Diego Garcia (Reprinted Edition, 1998) (Extract)

PEAK OF LIMURIA

The Story of Diego Garcia

Foreword by
HRH the Duke of York

Richard Edis

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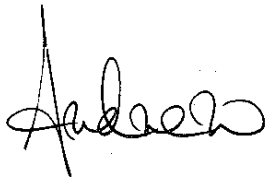
Contents

BUCKINGHAM PALACE

I was delighted to be given the opportunity to read this excellent book about Diego Garcia by Richard Edis who was Commissioner for the British Indian Ocean Territory from 1988 until 1991. It makes fascinating reading for anyone who has sailed the Indian Ocean and especially for those who have been fortunate enough to visit the island, as I was when I was serving in HMS Edinburgh in 1988.

I can testify to the remoteness of the Chagos Archipelago and to the low profile of its coast line. When bound for Diego Garcia and after a few days at sea it is a testing moment for a young navigation officer of a warship when confirmation of the accuracy of his work is received barely an hour before the established time of arrival. The low lying terrain is never quite able to express itself as an island paradise but there are rich compensations in the abundance of marine and birdlife. And I am glad to say that the expansion of the military facilities, while adding immeasurably to the strategic role and economy of the island, has not been allowed to interfere with the precious balance of nature.

The sea and maritime affairs have always been and always will be the prime factors in shaping the island's destiny. It is now over twenty five years since the birth of the British Indian Ocean Territory and Richard Edis' eloquent account of the history of Diego Garcia is a timely and informed contribution to the island's records.



Preface

The idea for this book came to me when I was out for a run, a practice I have pursued with pleasure along jungle paths on my frequent visits to Diego Garcia. During such visits I found among the people who were working there an appetite for knowledge about the island's past, which I hope that this modest study will help to satisfy. I hope it will also serve as a souvenir of time spent there for the thousands of men and women who have lived on or visited the island. Now that the name Diego Garcia has become known internationally because of the present military facility, there may be wider interest too.

It might be assumed that, apart from the area developed as a naval facility in recent years, the Chagos Archipelago is a paradise largely untouched by human hand. While it is true that the reef and marine life surrounding the islands is uniquely rich and unspoiled, the land itself and the wildlife on it have been altered drastically by human agency over several centuries. From the dawn of the modern age the islands, and Diego Garcia in particular, have been washed by the tide of world events and touched by the ebb and flow of empires. Not surprisingly in view of their location it has been

the sea, maritime expansion and naval power which have shaped the island's story, as this book will show.

Originally I had in mind only a short booklet but I soon became absorbed in the surprisingly rich amount of original material available about this small island, especially in the archives of the Foreign and Commonwealth Office and the India Office Library, and decided to produce a more comprehensive work. Essential for anyone who wants to go deeply into the history of the area as a whole is Sir Robert Scott's beautifully written book *Limuria*, which was published in 1961 in Britain and reprinted in the USA in 1974. Sadly it is now out of print but should be available in good reference libraries.

Although my book touches only briefly on natural history, the bibliography mentions several works on this subject, an appreciation of which can considerably enhance enjoyment of the island. The most comprehensive of these is *The Geography and Ecology of Diego Garcia* by Stoddart and Taylor. Although not specifically about Diego Garcia, David Bellamy's *Half of Paradise* about two scientific expeditions to other islands in the Chagos Archipelago is very readable.

This study is dedicated to all those whose lives have been touched in some way by this wonderful island. The proceeds from the sale of this book will go to the protection and promotion of Diego Garcia's natural and historical heritage.

RICHARD EDIS

June 1993

I

A Laurel on the Sea

Diego Garcia is the largest of more than 50 islands that make up the Chagos Archipelago, which constitutes the present extent of the British Indian Ocean Territory (BIOT). The Territory is the sole remaining dependency of the Crown in the region and is situated near the geographical centre of the Ocean from which it takes its name.

The Chagos Archipelago is one of the most far-flung areas of the globe outside the polar regions. Diego Garcia lies roughly 7 degrees south of the Equator and 72 degrees east of Greenwich. The Chagos are separated from the nearest land by huge expanses of ocean, 'utterly lost in the great water wastes: star land in sea space', as the writer Alan Thompson poetically described them.[1] The southernmost Maldives lie 400 miles to the north, the Cocos-Keeling islands 1500 miles to the east, the Seychelles 1000 miles to the west and Mauritius 1200 miles to the south-west. Over 2000 miles to the south lie the bleak windswept islands of Amsterdam and St Paul. All these islands are themselves outposts in the immensity of the Indian Ocean.

The remoteness of the Chagos is best appreciated when the approach is made by sea. Yachtsmen, fishermen and the crews of warships and supply vessels still make the trip.

Whether by sail or steam this involves a voyage of many days with nothing but ocean and only seabirds, dolphins and flying fish for occasional company. Another vessel is a rare sight indeed. Otherwise, there is only the long swell, the approaching squall and the theatre of sunset and sunrise to break the monotony.

A dozen or so miles from Diego Garcia a low line is scarcely discernible which gradually comes into focus as a fringe of coconut trees and a white line of breakers on the reef. From the north, the only entrance to the lagoon, Diego looks like a string of small islets, each with its crown of high trees. The scene has scarcely changed today from the sketches made by eighteenth-century naval officers to guide future mariners making their landfall. As a vessel approaches the Main Pass, it becomes apparent that there are three small islands masking the mouth of the lagoon and that what appear to be two other islands are the embracing arms of a huge atoll. The air is full of frigate birds, boobies and terns. The vast lagoon, 13 miles long by $4^1/_2$ miles across, stretches far away into the distance, forming a small inland sea, a little world turned in on itself.

Describing the scene in 1885 in terms that remain true to this day, the naturalist Gilbert Bourne said:

> On a fine day, the varied colours of the still waters of the lagoon, the low-lying strip of land covered with vegetation of a vivid green, the dazzling strip of white sand which borders the shore and the clear sunny sky, will afford a picture which will not easily be forgotten.[2]

The sea was the traditional way to approach Diego Garcia. Nowadays the more usual way is by air from the Gulf, Singapore or Mauritius. Although crossed infinitely more swiftly, the vastness and emptiness of the ocean still impress and intimidate through the aeroplane window. Massive, towering clouds make stately progress like the billowing sails of galleons. The sea below is an opaque dark blue. Suddenly there is the excitement of sighting land after many hours over

nothing but water. 'A laurel on the sea, a circle of bursting, startling green', a Second World War soldier-poet described it.[3]

Indeed what the traveller notices at once from the air is the dramatic shape of the thin necklace of land, which appears little more than an outline of a pencil mark on the ocean. Of all the atolls in the Chagos Archipelago, Diego Garcia is the most perfect, forming a shaky V-shape extending about 15 miles from north to south and with a distance of about 35 miles around the circumference from tip to tip. Visitors have called forth various images to describe its shape. The early nineteenth-century Mauritian historian, Charles Grant, the Viscount of Vaux, described it as being 'in the form of a serpent bent double'.[4] The eighteenth-century French cartographer, Abbé Rochon, said more prosaically that it 'resembled a horseshoe'.[5] Its more recent, late twentieth-century American residents have likened it to the outline of a footprint in the sand, with the islets at the mouth of the lagoon forming the toe-marks.

From the air, the vivid contrast between the varying blues of the lagoon, lighter, and with more green, than the dark blue indigo of the surrounding ocean, is apparent. It is also possible to make out on the upper western arm of the island the wide apron of the airfield, neatly arranged low-lying buildings, antennae in extensive aerial farms, ships at anchor in the lagoon and, as the plane makes its final approach, the roofs of the old plantation buildings peeping out of the vegetation on the eastern side.

Travellers arriving today in Diego Garcia, whether by air or by sea, must first be processed by British India Ocean Territory Customs, in their smart and functional sand-coloured uniform of desert boots, long socks, shorts, shirt and beret with the Crown and palm tree badge. The red telephone box at the airport entrance is a further reminder that this is British territory. However, the drive along the fine road leading from the airport or the fleet landing jetty to the Downtown area on the north-west tip of the island is

reminiscent of the Florida Keys and a reminder that the present residents are predominantly American.

The road runs through immaculately groomed grass verges, past the civilian workers' accommodation, the British Club, the sports fields and other recreational facilities, the fire station and the Cable and Wireless building with its satellite dish, to the impressive, white, headquarters building overlooking the lagoon, outside which the Union Jack and the Stars and Stripes fly side by side. Not far away stands the BIOT police station with its traditional blue British police lamp and the distinctive wavy blue and white BIOT flag flying outside.

The Downtown area, containing the quarters of the military personnel, has all the facilities of a small town, including an interdominational place of worship, shops, eating-places, a swimming pool, a bowling alley and a bus service. Everything is beautifully laid out with ample lawns and carefully planted decorative trees and shrubs. Incongruously, broods of wild chickens peck their way nonchalantly between the buildings, and the occasional feral cat is to be seen padding about. Madagascar fodies flit from tree to tree, red-capped if in mating plumage. The human residents, American, British, Filipino and Mauritian, military and civilian, male and female, make their way about on buses, bicycles and on foot, in the last case often in jogging kit. Near the northern tip is Cannon Point, where two 6-inch guns still point out to sea, as they have done since 1942.

As you drive south down the island beyond the airfield, the buildings and facilities begin to thin out. A poignant reminder of the past is the well-maintained cemetery near the old settlement of Point Marianne, containing the resting place of earlier islanders as well as graves from the Second World War. It now contains a monument to those who fell in a more recent conflict, that of the Gulf in 1991. The thick vegetation that lines the road on either side conceals the narrowness of the land and lends a deceptive air of spaciousness as the ribbon of the road unfolds. There are only occasional glimpses of the calm waters of the lagoon on the

one side and the breakers on the reef on the ocean side, even though these are at some points separated by only 100 yards. Large land crabs scuttle across the road, which is scattered with the shells of those who lost the game of chicken with vehicles.

Half way down the western side, beyond the Donkey Gate, which is designed to keep the animals clear of the runway, wild donkeys, alone or in groups, begin to appear. They are especially numerous in the extensive grassland areas around the transmitter antennae near the southern bend of the island, looking for all the world like game on the African plains. Near the transmitter site is Turtle Cove, where small lemon sharks and turtles can be seen swimming in the clear water of the narrow channel leading from the lagoon to a large, enclosed, swampy area known as Barochois Sylvaine.

The road becomes unpaved coral as it leaves the area set aside for military purposes near the bottom of the eastern arm. It passes at first through fairly open coconut groves but the vegetation thickens markedly as it approaches the old plantation area at East Point.

East Point is a completely different world from the Downtown Area. Here are the remains, which the British authorities are trying hard to preserve, of a plantation society which lasted for two centuries. The manager's elegant *château*, recently restored, dominates the plantation square and faces the old jetty, cross and flagstaff by the lagoon shore. Around it stand the plantation chapel, itself also recently restored, the jail, the blacksmith's shop, the store, the hospital, copra mills and the remains of the copra drying sheds. The orange blossoms of a flame tree and pink and white ground flowers add colour to the scene. On the shore lies the remarkably intact wreck of a Second World War Catalina flying boat, still shining silvery in the sun. Farther up there is the morgue and behind it a macabre 'bleeding stone' where corpses were drained of their blood, around which the moss seems to grow with especial luxuriance. Nearby is the old graveyard with tombs from far back into the nineteenth century. The last

burial, that of a small child, dates from 1971 just before the evacuation of the plantation.

Beyond East Point the road becomes no more than a track, heavily encroached on by the vegetation. After the brooding remains of the old settlement of Minni Minni, now almost lost in heavy vegetation and thick with moss and ferns, the track reaches Barton Point. This is the extreme north-east tip of the island and is a distance of about 37 miles by road from the north-west tip at Simpson Point. There is a fine beach of white sand between Barton Point and Observatory Point, studded with shells of all shapes and sizes, many of them occupied by small hermit crabs, and pieces of white, pink, green and blue coral. In the waters offshore, the coral heads of the reef are host to a myriad of fish.

Opposite Barton Point lies East Island, the largest of the islets at the mouth of the lagoon. It is designated as a nature reserve and is the home of large numbers of red-footed boobies which roost in the vegetation, and ferocious-looking giant crabs, which lurk in holes in the interior. The remains of buildings and machinery from the coaling station era are also in evidence there. Middle Island has a small interior lagoon of murky water from which you half expect some sea monster to erupt as a tidal surge makes itself felt.

Beyond the extensive reef around Middle Island, known as Spurs Reef, lies the deep-water channel of the Main Pass, on the other side of which is the small scrap of West Island and so back to Eclipse Point. There are few finer places to be on a clear, balmy night under the palm trees, the dark-blue velvet sky alight with stars, and the waves breaking translucent white in the moonlight on the reef.

II

Takamakas, Turtles, Corals, Coconut Crabs, Shearwaters and Sharks

Diego Garcia is a low-lying tropical atoll with an average elevation of only 6 feet above sea level. The maximum natural elevation is around 25 feet in dunes near Point Marianne. If the greenhouse theory of atmospheric warming with a consequent rise in sea level is valid, the Chagos group, like the neighbouring Maldives, must be one of the places in the world most vulnerable to its impact. So far, however, there is no sign of significant encroachment by the sea and indeed the land area has shown considerable stability since it was first mapped accurately more than 200 years ago.

The surface area of Diego Garcia is not much more than 10 square miles. The island is composed entirely of coral rock. Some pumice rock found near Barton Point is likely to be debris from the explosion of the Mount Krakatoa volcano in the East Indies (now Indonesia) in 1889. There is a layer

of poor soil which in places barely covers the underlying coral but in more heavily vegetated areas has a depth of a couple of feet of peaty earth. The typical profile across the island starts on the ocean-side reef with a wide, eroded, sea-washed platform of dangerously sharp rock, a scattering of boulders and a narrow, sandy beach. There is a steep ridge at the edge of the land which then slopes gently downward to a less pronounced ridge and another sandy beach on the lagoon-side. In places the land is indented on the inside rim by depressed areas with narrow entrances which flood and drain on each tide and are known as 'barochois'. Particularly extensive barochois are found in the south and south-east, such as Barochois Maurice and Barochois Sylvaine.

Diego Garcia is the wettest tropical atoll in the Indian Ocean and experiences average rainfall of over 100 inches a year. Gilbert Bourne, visiting in 1886 observed: 'it would be scarcely beside the truth to say that rain may be expected every day; that at least was my experience.'[1] If not quite true, it is rare for there to be periods of more than a few days without rain, which comes in short, intense downpours, which race as squalls across the lagoon. There is consequently a high water-table of surprisingly unbrackish water, taking into account the proximity of the sea on every hand. The explanation, which was discovered quite recently, is that there are extensive 'water lenses' in Diego Garcia, caused by fresh water, with its lower specific gravity, floating on top of the sea water which permeates the ground at a lower level. These fresh-water lenses are readily tapped by shallow wells. There are few natural bodies of standing fresh water above ground but rainwater gathers sufficiently after the frequent downpours to provide adequate drinking water for wildlife.

The climate of Diego Garcia was described by an early visitor Charles Pridham, in 1846, in the following terms: 'there is almost continually a delightful freshness and softness in the atmosphere, and although very hot in the sun, the air where there exists any shade is cool and the nights invariably very pleasant.'[2] Temperatures generally range between the upper seventies and the mid-eighties Fahrenheit (25°–28°C).

There is a high level of humidity but it is ameliorated by frequent breezes and is less stifling and enervating than elsewhere in comparable latitudes. The island is also mercifully free of unpleasant tropical manifestations such as malaria.

There are distinct if marginal variations of season in Diego Garcia which are governed by changes in the predominant winds, which in turn govern the direction of the currents. From December to March the wind blows mainly from the north-west under the influence of the monsoon, which brings hotter temperatures (an average of 85°F/28°C) and heavier rainfall (a mean of over 12 inches in January). In April and May there is a transition in the prevailing wind from the west to the south-east. From June to September the south-east trade winds blow and the weather is cooler (79°F/26°C) and relatively drier (6 inches of rain in June). October and November is another period of transition, with variable wind directions. Diego Garcia is fortunate to lie between the northern and southern cyclone belts in the Indian Ocean, so avoiding the storms which periodically devastate Mauritius, Reunion and Rodrigues to the south and the coast of the Indian sub-continent to the north. However, the tail of a cyclone will occasionally clip the island, usually during the period of the south-east trades.

Behind the rhododendron-like 'scavvy' thicket (*Scaevola tacada*) which fringes the shores, the vegetation of the island is now dominated by coconut trees, either of self-sown 'cocos bon dieu' (God's coconuts) or the cultivated variety established in the plantation era. Early historical accounts suggest that this was not always so and that much larger areas were covered by broadleaf trees. Impressive varieties of the latter which survive individually or in clumps around the island are the white wood tree (*Hernandia sonora*), the rose or mapou tree (*Barringtonia asiatica*) and the takamaka tree (*Calophyllum inophyllum*). The white wood tree can grow to a height of 60 feet and has small, cream-coloured flowers. The rose tree is even taller and has a massive girth. It has leaves 18 inches long and its flower of four white petals, with a mass of slender pink stamens protruding from the centre, gives

off a heavy scent. The flowers last only from dusk to dawn of a single night but when fallen they spread a fragrant carpet round the tree. The seed husk of the rose tree has a characteristic square shape, designed, like a coconut, to be waterborne. The takamaka grows slowly into a giant oak-shaped tree and is supported by a widespread network of roots above ground. It has shiny leaves with fine parallel veins, a small, delicate flower with a clump of yellow stamens at the centre and fruit like a large gooseberry. The wood of the takamaka is excellent for boat-building and has been used as such around the islands of the Indian Ocean to construct traditional craft such as pirogues.

A number of other impressive trees were introduced in the old plantation areas, such as the giant fig trees at Point Marianne and Minni Minni and the breadfruit trees at East Point. It is not clear when the ironwood tree (*Casuarina*), with its needle-like leaves and pine-like appearance, was introduced. Its seeds are very resistant to sea-water and it is possible that they arrived originally on drifting branches. However, it is now spreading widely in the areas where construction has taken place because of its liking for disturbed soil. Its ability to extract and fix nitrate from the soil gives it an advantage over other vegetation. Numerous other exotic flora – fruit trees, shrubs, flowers, vegetables and grasses – were introduced in the plantation era and more recently for decorative and dietary purposes. Both the amateur and professional botanist will find Diego Garcia a happy hunting ground.

Diego Garcia also holds delights for the ornithologist. At least 35 species of bird have been identified. The bird population has been subject to vicissitudes over the years. Before the arrival of man there were probably enormous colonies of seabirds and also possibly some native species of landbird. Human activity had a devastating effect on the bird life. The vegetation was, as we have seen, transformed by the cutting down of much of the natural broadleaf woodland and its replacement by coconut trees. Worse still, predators were introduced in the form of rats, cats, dogs and, of course,

man himself, for whom birds were a source of meat, eggs and feathers.

The closing of the plantations and the rigorous conservation policy of the BIOT administration may well have led to a revival of a number of species which had become rare or disappeared from the island altogether. Today, long-standing winged inhabitants of Diego Garcia which can be termed indigenous include various sorts of terns, noddies, boobies, frigates and green herons. The island is also a staging post for migratory birds such as shearwaters, turnstones, plovers, sandpipers, whimbrels and perhaps storm-petrels on their way between breeding areas and wintering areas around the Indian Ocean. Land birds introduced from Madagascar, Mauritius, Seychelles and India since the nineteenth century include fodies, Madagascar turtle doves, cattle egrets, barred ground doves, mynahs and the domestic fowl which now run wild. Many of the birds of Diego Garcia are beautifully portrayed on the 1990 definitive set of British Indian Ocean Territory postage stamps.

There are no indigenous mammals in Diego Garcia and no sign that any ever existed. Of those introduced in the plantation era, which included horses, cattle, sheep, pigs and dogs, only donkeys, cats and rats have survived and thrived. The wild donkeys could perhaps in due course evolve into a distinctive breed, the Diego donkey. An imaginative proposal to introduce the endangered Rodrigues fruit bat to the island has, for the moment at least, been abandoned.

If Diego Garcia has a native 'king' species it should surely be the giant coconut or robber crabs. Their Creole name is *cipaye* or *sipaille*. The coconut crab has a mottled purplish appearance and can grow to 3 feet across. Their enormous pincers can rip open a coconut husk. They are nocturnal creatures but can be found in the day skulking in holes in the ground or under fallen vegetation. They should be treated with great respect – a writer in 1802 noted that their pincers could snap off the iron tips of walking sticks – but if approached from the right direction (the rear), can be picked up. This, however, requires strong nerve. Other crabs,

the land crab and the fiddler crab, energetically excavate sandy areas, including in the barochois. On the beach, most shells on examination are found to be occupied by hermit crabs and immature coconut crabs.

There are a couple of types of lizard or, more accurately, geckos on the island, at least one species of toad, but no snakes. Despite the presence of African bees, hornets, several variety of spider and one of scorpion, the main hazard when walking or jogging in the jungle of Diego Garcia is not creepy-crawlies but being hit on the head by a falling coconut. Five per cent of the identified insect specimens, including a butterfly, are unique to the island and there are doubtless more still to be discovered.

If land fauna on Diego Garcia is admittedly fairly limited, marine life is exceptionally rich. As Gilbert Bourne wrote in 1886, 'to describe the immense and varied marine fauna that abounds around this island requires a paper on natural history'.[3] Spectacular visitors to the shore are two varieties of large marine turtle, the green and the hawksbill. Their life span is 150 years and they only start breeding when they are 50. After mating at sea the females come ashore on the high tide in different seasons according to species, the hawksbill during the north-west monsoon and the green during the south-east trades, and lay their numerous eggs, which look like table-tennis balls, in the sand. The turtles were formerly hunted for their flesh and their shells by the islanders but they are now protected by law and it seems likely that these endangered species are increasing in numbers around the Chagos. Appropriately, the green and hawksbill turtles are supporters on the BIOT coat of arms. Smaller species of turtle live permanently in the lagoon, especially at the southern end.

The deep ocean beyond the reef supports dozens of species of fish. There are 14 types of shark alone, including the white, grey, tiger, hammerhead, white tip, black tip, nurse and sand shark. Tuna, especially the big eye, yellowfin and skipjack varieties are present in huge quantities. Prized game fish such as the wahoo, marlin, swordfish, kingfish, sunfish,

mahi mahi, bonito, dorado and barracuda are commonly found. The BIOT administration took steps in 1991 to conserve fish stocks in what is probably the least exploited area of the Indian Ocean by introducing a licensing regime in a 200 mile zone around the Chagos. Sperm whales, which breed to the west of the islands, and dolphins receive specific protection.

Richest of all from an ecological point of view is the reef, which teems with a vast variety of life. The living coral itself is Diego Garcia's chief natural glory and indeed the cause of its very existence. The Chagos Archipelago constitutes one of the great reef systems of the world and probably the most pristine. About 100 species of coral, some very rare, have been identified around Diego Garcia and in its lagoon.

The coral animal itself is a primitive organism known as a polyp. It is akin to a sea anemone and the calcium it extracts from sea-water gradually builds up into a variety of remarkable shapes and sizes. The evocative names given to the differing structures formed give a good idea of their appearance: staghorn, organ-pipe, brain, table, mushroom, moss and so on. The shape of coral rock formed is influenced by the depth at which it grows. The range of colours – yellow, green, pink, blue, violet, brown and grey – is derived from the minute plants which live inside the polyps.

Reef-building corals are delicate and choosy organisms. They are found in a belt around the world in the Indian Ocean, the Pacific and the Caribbean 30 degrees either side of the Equator where the sea temperature is below 100°F (37°C) and above 68°F (20°C). Corals need the right amount of oxygen and salinity in the water. They cannot grow above water and because they need light will not grow much below 150 feet in depth. They like water that is somewhat disturbed but not rough. Consequently, the reef corals are less luxuriant on the south-east side of Diego Garcia which is most exposed to storms.

There are living coral reefs both around and inside the lagoon of Diego Garcia. These are alive with literally hundreds of varieties of small, brilliantly coloured tropical

fish such as are found in aquariums all over the world, as well as the larger grouper, snapper, jack, emperor, trevally, moray eel, sting ray and manta ray. Seaweeds in a multiplicity of forms, sea cucumbers, octopuses, crabs, lobsters and small turtles add to the variety. Underwater swimming is a constant delight in Diego Garcia, although in addition to watching out for sharks an eye must be kept open for the sinister stone fish and the scorpion fish with their poisonous spines.

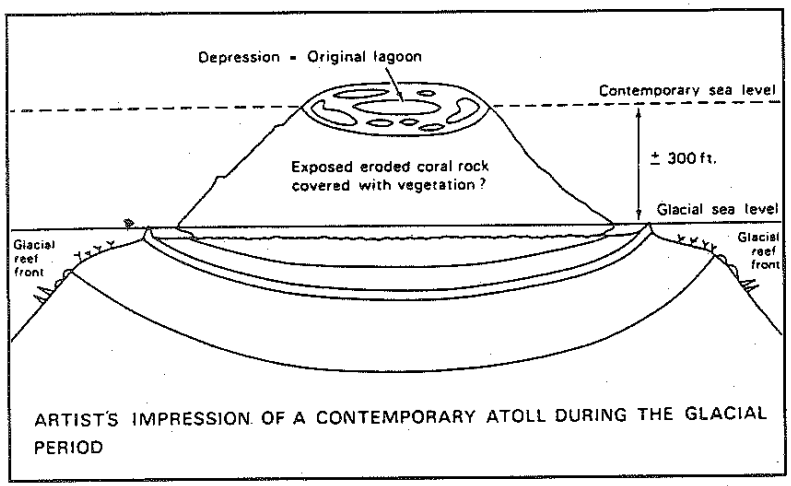
III

From out the Azure Main

Diego Garcia and its sibling islands comprise all that remains above sea-level of huge underwater mountains of volcanic origin which rear dramatically from the ocean bed 10,000 feet or more below. The romantic appellation for these islands is the 'Peaks of Limuria'.

Limuria is the name given to the ancient continent which used to exist in the middle of the Indian Ocean, a sort of Indian Ocean Atlantis. This lost continent was probably created as a result of apocalyptic volcanic activity 130 million years ago as the land mass of what is now India gradually drifted away from Africa. Even now seismic activity is common in the area. A severe earthquake is reported to have occurred in Diego Garcia in 1812 and there was another major one elsewhere in the Chagos Archipelago in 1913. An earthquake measuring as high as 7.6 on the Richter Scale struck Diego Garcia in November 1983. Although causing limited damage to buildings, it ruptured some of the underground fuel lines. Earthquakes of 6.0 or above on the Scale occur regularly. There have been a dozen such occurrences since 1940. Luckily the lack of a wide surrounding platform of shallows precludes the building of tidal waves as a result of seismic activity.

It seems likely that over the aeons of time the sea level in the Indian Ocean waxed and waned as a result both of uplift and subsidence, and of the periodic ice ages which locked up water in the icecaps. Because of the sea level changes during this period, the underlying peaks of basalt became overlaid with coral limestone to a depth of as much as a mile. Only 17,000 years ago, at the end of the last ice age, the sea level was 300 feet lower than at present. This would have meant that, where there are now only banks and atolls, a vastly larger area of dry land would have existed, including the whole of the present Chagos Bank and large adjacent islands.



ARTIST'S IMPRESSION OF A CONTEMPORARY ATOLL DURING THE GLACIAL PERIOD

(From book Half of Paradise by Professor David Bellamy)

We cannot know what type of vegetation flourished then or what sort of wildlife roamed the land because, as the Polar icecaps melted, the sea swept in like Noah's flood. The land may well have been entirely submerged. As Lord Tennyson wrote as he came to grips with dawning scientific reality in his poem *In Memoriam,*

> There rolls the deep where grew the tree,
> Oh earth what changes hast thou seen![1]

Certainly no trace of pre-Holocene, that is before the last ice age, flora and fauna remains, in contrast to the larger land masses in the Western Indian Ocean now comprising Madagascar, Mauritius, Reunion and Seychelles, which had sufficient elevation to avoid being totally engulfed. In these places weird and unique forms of life such as the lemur and, until hunted to extinction, the dodo survived. In fact, the limited range of land flora and fauna in the islands of the Chagos Archipelago suggests that in their latest form they emerged from the sea perhaps only a couple of thousand years ago. Like Britain in the song 'Rule Britannia', Diego Garcia literally 'at heaven's command arose from out the azure main'. Given no further significant changes in sea level during this period and the lack of evidence of major movements of the earth's crust in the area, how could this happen?

The solution to the mystery was first put forward by no less an authority than Charles Darwin, the great nineteenth century natural scientist and author of *The Origin of the Species* which fundamentally altered man's view of the world. In 1842 Darwin published a work called *The Structure and Distribution of Coral Reefs,* which was based on the observations he carried out during his epic four-and-a-half year voyage around the globe on HMS *Beagle.* One of the *Beagle*'s missions was to take soundings around coral islands and to determine if the atolls sat on the summits of extinct volcanoes. Darwin and the *Beagle* visited the Cocos-Keeling Islands and Mauritius in the Indian Ocean but, impatient to return home after such a long voyage, did not call at the Chagos group. However, Darwin drew extensively in his book on coral reefs on a thorough scientific survey of the Chagos, and Diego Garcia in particular, carried out in 1837 by Captain Robert Moresby. As he acknowledged in the preface:

> I must most particularly express my obligations to Captain Moresby, Indian Navy, who conducted the survey of the archipelagos of low coral islands in the Indian Ocean.

According to Darwin's theory, as the sea level rises, the living coral grows up too, keeping pace with and just below the surface of the water. On to this submerged platform wash boulders of dead coral and sand, forming a bank which builds up above high water. Once a dry bank is established it begins to be colonised by seeds of plants and trees borne on the ocean currents. The predominant current washing the Chagos Archipelago is the Malabar current coming from the direction of South-East Asia. It is therefore not surprising that most of the indigenous flora on the islands is of Asian origin. Of these, the key to stabilising the newly emergent islands will have been *Scaevola tacada*, commonly known as 'scavvy' in Diego Garcia, which thrives in sand and does not mind some contact with salt water. It forms a strong and impenetrable thicket along shorelines just above high water. Because of their buoyant water-borne husks the coconut and the rose tree will have been among early trees to establish themselves. Ironwoods and the creeper *Caesalpina bonduc* may have arrived as sea-borne seeds floating on vegetal debris. Birds, which can migrate huge distances across the ocean, will also have been the agents of colonisation by bringing seeds on their bodies. And their droppings, forming guano, will have helped enrich the poor mixture of sand and coral and thus encouraged further growth of vegetation, which in decay also fertilised the ground.

As Darwin recognised, Diego Garcia is unusual as an atoll in that almost the whole reef around the lagoon has been converted into land, 'an unparalleled case, I believe, in an atoll of such large size', he observed.[2] It seems likely that the present island is the result of the merging of a number of smaller islands that established themselves on the reef. The narrowness of the land at various points and the undeveloped nature of the vegetation, especially on the eastern arm of the island north of Minni Minni, suggests that some of the various individual islands which originally existed were joined up only comparatively recently. This could eventually happen between Eclipse Point and West Island. And a new island is forming at the mouth of the lagoon to the west of Middle

Island at the north-western end of Spurs Reef. This islet was given the name Anniversary Island in honour of the 25th anniversary of the establishment of the British Indian Ocean Territory in November 1990. If it survives, it will be interesting to see how quickly it is colonised by 'scavvy' and coconuts.

Darwin's theory of the origin of atolls is still accepted, although he seems to have been misled by some of Moresby's data to conclude that the Chagos was a dying group of coral atolls sitting on top of subsiding submarine mountains. He does not appear to have taken into account the effect of rises and falls in sea level because of periodic ice ages. He later acknowledged Gilbert Bourne's work on the subject and conceded that in the case of Diego Garcia there was no evidence of subsidence.

The fact that a minute marine creature could be responsible for the creation of solid land can still amaze today as much as it did the great scientists who discovered the phenomenon. Darwin wrote:

> Everyone must be struck with astonishment when he first beholds one of those vast rings of coral rock, often many leagues in diameter, here and there surmounted by a low verdant island with dazzling white shores, bathed on the outside by the foaming breakers of the ocean, and on the inside surrounding a calm expanse of water which from reflection is generally of a bright but pale green colour. The naturalist will feel this astonishment more deeply after having examined the soft and almost gelatinous bodies of those apparently insignificant coral polypifers, and when he knows that the solid reef increases only on the outer edge, which day and night is lashed by the breakers of an ocean never at rest.[3]

Bourne echoed the same sentiment on visiting Diego Garcia itself in 1885:

> The most unimaginative person will not fail to be struck with wonder that the vital activity of animals so low on

the scale as coral polyps has been sufficient to raise up this island above the waves and to maintain it there in spite of the increasing wear and tear to which it is subject from the restless waves of the great southern ocean.[4]

IV

Discovery

The Chagos islands may well have been untouched by human footprints from their formation until the dawn of the modern era. It is possible that the Malagasy may have visited the islands as they made their way around the Indian Ocean from present-day Indonesia to their future home in Madagascar in the early days of the Christian era. It has been suggested that it was they who introduced the coconut and that the old Maldivian name for the islands was of Malagasy origin.[1] The Arabs who reached the Laccadive and Maldive islands immediately to the north in the ninth century may have had some inkling of islands to the south. And a remarkable Chinese expedition during the Ming Dynasty commanded by Cheng Ho, the Great Eunuch of the Imperial Palace, would have sailed close to the Chagos in 1413–15. However, if any of these intrepid voyagers did visit the islands, we shall never know for they left no mark or record.

What is certain is that the Portuguese sighted and named the islands in the early sixteenth century. In the course of the fifteenth century, the traditional route through the Eastern Mediterranean, the Red Sea and the Persian Gulf to the Asian sources of luxuries which Europe sought was blocked

by the expansion of the war-like Ottoman Turks. Driven by a mixture of crusading zeal and mercantile enterprise, the Portuguese pioneered an alternative sea route around Africa to India and the Spice Islands in the later fifteenth and early sixteenth centuries. Their route lay across the Indian Ocean.

The actual discoverer of the islands was probably Pedro Mascarenhas, after whom the Mascarene group of islands comprising Mauritius, Reunion and Rodrigues is named. It was the custom of the Portuguese explorers to call newly discovered islands after either captains of vessels or saints' days. There were fleets to the Indian Ocean in 1509 and 1512 commanded by Diego Lopes and Garcia de Naronha respectively. It is tempting to assume that some combination of these names was applied to the largest of the islands that they stumbled on in their caravels and *nãos* far out in the Indian Ocean. According to another account, a Spanish navigator actually named Diego Garcia visited the island in 1532.[2] However, the origin of the name can be no more than speculation. Early maps give a variety of other names including Gratia, Graciosa, Don Garzia and Chagos island. The existing name only became definitive towards the end of the eighteenth century. The Portuguese names for other groups in the Archipelago also stuck, Peros Banhos, and Three Brothers, which is a translation of the Portuguese 'Três Irmãos'.

The only evidence found in Diego Garcia of Portuguese visits are the roof tiles brought up by divers from the floor of the lagoon in Rambler Bay. It was the custom to carry such items on the outward voyage from Portugal as ballast which could be put to good use on arrival before loading up with spices, calicoes, muslins and chinaware for the return trip. There may well be Portuguese wrecks in other parts of the Archipelago. One fairly well-documented case is that of a *não* (a type of sailing ship of about 500 tons, named the *Conceição* (*Conception*) which was outward bound from Lisbon to Goa in India with a cargo of jewels, gold and silver in 1555 when it ran aground on the reefs of Peros Banhos.[3] The captain Francisco Nombre and other officers appropriated

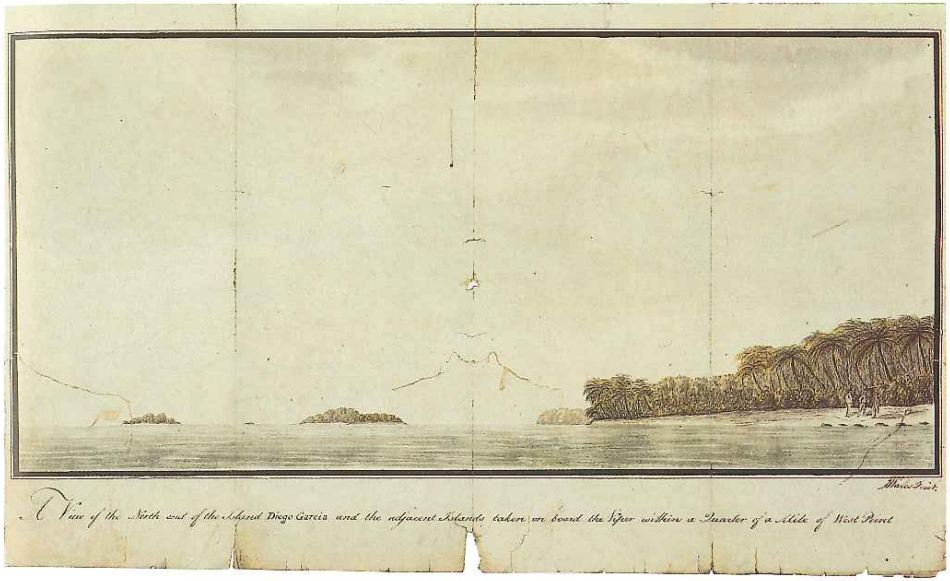
East Point chapel. *(NSF Fotolab, Diego Garcia)*

Lagoon just before sunset. *(Dan Layman)*

A coconut crab. *(Dan Layman)*

A family of red-footed boobies. *(Dan Layman)*

A sixteenth-century Portuguese map of the Indian Ocean. *(The British Library)*



View of the north end of Diego Garcia; 1786; watercolour by Lieutenant Wales.
(India Office Collection, British Library)

The settlement at East Point, 1819; Dutch print by Lieutenant Verhuell.
(Mr K. Dirkzwager)

Six-inch naval guns at Cannon Point, installed in 1942. *(NSF Fotolab, Diego Garcia)*

the only undamaged boat, filled it with as much treasure as it could carry and set out for India, leaving 350 crew and passengers to fend for themselves. Of these 50 eventually managed to reach India in improvised craft but the rest perished from hunger and exposure. It is possible that remains of the *Conceição*'s equipment and cargo could still be found.

Among the rare references to the Chagos in this period is the claim to them made by the Christian King of the Maldives, Dom Manuel, who was installed by the Portuguese in the mid-sixteenth century. The islands were called 'Folovahi' in the Maldivian language Divehi, which means something like 'ten islands'. However, two attempts by the Maldivians to colonise the islands failed when they could not locate them.

The discovery of the Chagos Archipelago was a minor incidental by-product of the opening up of the seaway from Europe to the Indies. The islands were not on the main route, which followed the African coast to around the latitude of present-day Kenya and then struck out towards India. Accordingly they were not regarded as of any value as way-stations for water and fresh supplies. On the contrary, the Chagos Archipelago with its network of dangerous reefs was seen as a peril to be given a wide berth. The inaccuracy of the charts, which scattered islands, many of them imaginary, over a wide area increased the uncertainty of navigation in the central Indian Ocean.

The English, along with the French and Dutch, began to follow the route pioneered by the Portuguese to the lucrative *entrepôts* of the East in the later sixteenth century. The experience of the captain of one of the first English fleets to penetrate the Indian Ocean graphically illustrates the perils posed to early navigators in the seas around the Chagos. Setting out from Agalega Island north-east of Madagascar in the direction of India in late March 1602 Sir James Lancaster found himself two weeks later trapped within the reefs of the Chagos Bank. For several days the ships tried to find a way out of the maze or 'pound' (enclosure) as Lancaster called it. Eventually, led by a small boat from which constant sound-

ing of the depth was made, the fleet was able, 'thanks be to God', to nose gingerly out of the reefs to the open ocean to the north and continue its voyage.

Although Lancaster did not land on any of the islands in the Chagos he left a vivid account of his earlier landfall at Agalega, an island which shares many of the same characteristics:

> As we coasted along this island, it seemed very fair and pleasant, exceeding full of fowl [birds] and coconut trees; and there came from the land such a pleasant smell as if it had been a garden of flowers.[4]

For a further century and a half, after Lancaster's inadvertent visit, although the Dutch established themselves from 1639 in Mauritius and the French from 1654 in Reunion, the Chagos remained in a sort of limbo, vaguely in the consciousness but rarely visited by the European nations contending for the upper hand in the Indian Ocean. If pirates, who in the early eighteenth century established a shortlived stronghold in eastern Madagascar and bases in the Seychelles, ever used or visited Diego Garcia, there is no record of this but the intriguing possibility cannot be discounted. An eighteenth century cannon-ball was discovered in the jungle on the eastern arm of the island in 1989. And a mid-nineteenth century ordinance reserved to the Crown any buried treasure found on Diego Garcia.

As time went on, the contest in the Indian Ocean became increasingly one between Britain and France, with India as the prize. The five wars fought by the two countries in the course of the eighteenth century spilled over into eastern seas. Meanwhile the French were assidiously island-hopping. In 1722 they took over Mauritius which the Dutch had abandoned in 1703, and renamed it the Ile de France. They also colonised Rodrigues 300 miles to the east in 1742.

From the 1740s the French began systematically to survey the islands to the north and the north-east of their principal base on Mauritius. Up to this point these islands remained

inaccurately fixed, still unknown, or even figments of the imagination, as was the case in their rendering in the chart the 'English Pilot' published in 1755. The co-ordinator of this effort was the renowned French cartographer Après de Mannevillette who embodied his findings in his famous map of the Indian Ocean 'Neptune Oriental', published in 1780. Much of this effort of filling in the gaps on the map was directed towards the north where Mahé in the Seychelles group was first formally possessed in 1756 and then colonised in 1768. However, several expeditions visited the Chagos. In 1770 a Monsieur la Fontaine in the vessel *L'Heure du Berger* surveyed the northern part of the lagoon at Diego Garcia and produced the first detailed map of the island. This ship also achieved the feat of sailing the dangerous passage between East Island and Barton Point. Subsequently a British ship, the *Hampshire*, was wrecked attempting the passage in 1793. Elsewhere in the Archipelago, in 1777, the French ship *Salomon* visited and named the islands of that name in the northern Chagos.

The British, from their bases in India, were also showing an interest in the islands. In 1760 the *Egmont* visited the islands which bear its name. In 1763 the *Speaker* and the *Pitt* surveyed the banks named after them and also visited Diego Garcia, producing a rough sketch from the north which may be the first known pictorial rendering of the island. In 1772 the *Eagle* called at the island of the same name. And in 1774 the *Drake* visited Diego Garcia and carried out a detailed survey of the entrance to the lagoon, including detailed sketches by a Joseph Mascall which show West, Middle and East islands, which were named respectively Red Beach, Black Beach and White Beach islands on the picture. This expedition left sheep, goats and pigs on the island as fresh provisions for future expeditions.

On the British side, the driving force in mapping the islands of the Central Indian Ocean was Scotsman Alexander Dalrymple, the Hydrographer of the East Indian Company, who published in 1786 a *Memoir concerning the Chagos Archipelago and the Adjacent Islands.* Dalrymple sent orders from

London to the Company's base in Bombay to despatch vessels:

> to ascertain the numerous shoals and islands in the Southern Passage from the Maldives to Madagascar as an accurate knowledge of these hitherto much neglected Seas is essential to the security of the Navigation of the Company's ships.[5]

As a result of these instructions, a comprehensive exploration of the Archipelago was undertaken by Lieutenant Archibald Blair of the East India Company Marine in 1786 and 1787. He was given orders that:

> for facilitating the more particular survey of the island afterwards, he was to leave a distinguishing mark on all the principal points, which should terminate his angles, or form stations, to enable those points to be found at any future time.[6]

Accordingly, in May 1786, Blair carried out a survey of Diego Garcia, setting up flag staffs at key places to act as reference points. Although he was given only a couple of weeks for the undertaking, Blair produced a highly accurate map which would pass muster today. He also observed the eclipse of Jupiter's moons, which no doubt accounts for the names Eclipse and Observatory Points at the entrance to the Diego Garcia lagoon.

The transformation in knowledge about the Chagos resulting from these systematic surveys meant that, in future, mariners would avoid the experience of James Horsburgh, who later succeeded Dalrymple as the East India Company Hydrographer. In May 1786 he was wrecked on Diego Garcia in the *Atlas* on the point on the east coast which bears his name:

> The charts on board were very erroneous in their rendering of the Chagos Islands and Banks and the Commander trusting too much to dead reckoning was steering with confidence to make Ady or Candy (islands which turned out not to exist) . . . but unfortunately, a cloud over Diego Garcia prevented the helmsman from discerning it (the officer of the watch being asleep) till we were on the reef close to the shore; the masts, rudder and everything above deck went with the first surge; the second lifted the vessel over the outer rocks and threw her in toward the beach, it being high water and the vessel in ballast, otherwise, she must have been dashed in pieces by two or three surfs on the outer part of the reef and every person on board have perished.[7]

The survivors from the ill-fated *Atlas* were rescued by the expedition described in the next chapter.

V

Settlement

A Monsieur Dupuit de la Faye was given a grant of Diego Garcia by the Governor of Mauritius in 1778 and there is evidence of temporary French sojourns. However, the first systematic attempt to colonise the island was made by the British. In 1786 the East India Company, the great commercial corporation which established and ran Britain's Empire in the East for 250 years, decided that it was now feasible to establish a victualling station where, as Dalrymple put it:

> ships might be enabled to get refreshments after their long voyage from Europe before they came into the low latitudes where the light winds and tedious passages consequent to them, had so often proved fatal to the lives of the seamen before they could reach India.[1]

It was also hoped that Diego Garcia could be a base for further exploration of the islands of the central Indian Ocean, as well as in future wars against France.

The aim was that the new settlement should be self-sufficient. According to the reports available, Diego Garcia had good water, soil which would support 'legumes' (vegetables)

and an abundance of fish, turtles and 'land lobsters'. The latter 'fed on coconuts and are very good, their tails very fat'.[2] The expedition was to take with it boatloads of soil and to experiment with the growing of grain, fruit and vegetables. It was also to bring cattle and poultry.

After meticulous planning, the expedition set out from Bombay on 15 March 1786 in four ships, the *Admiral Hughes*, the *Drake* and the survey ships *Viper* and *Experiment*. Richard Price and John Smyth, senior officials of the East India Company, were respectively first and second in command. Price was appointed 'Resident of Diego Garcia', effectively the first British representative. The civilian element included carpenters, smiths, bricklayers, coopers, stockmen, gardeners, bakers, butchers, tailors and two doctors as well as 50 servants. An engineering officer Captain Sartorius commanded the military element, who were all volunteers. This consisted of 64 Indian infantry sepoys and 2 bandsmen, 24 Indian engineer pioneers and a number of marine surveying officers led by Lieutenant Blair, mentioned in Chapter IV. They also took with them one field piece and 6 or 8 pieces of smaller artillery.

The expedition sailed with sealed orders to be opened at sea in order to keep its destination secret from the French. The instructions included contingency plans in case any French were encountered on the island. If 'beyond all expectations . . . a regular settlement . . . who cannot be removed by force were found, new orders were to be sought. However, if only 'straggling French' were present these were to be 'deemed to be there without authority and not any impediment to occupying the island and establishing a settlement'.[3] In fact when the expedition entered the lagoon of Diego Garcia on 27 April 1786, they were surprised to see a canoe set out from the shore with five men on board who produced papers from a Monsieur Le Normand about his establishment on the island, which consisted of 'a dozen huts of the meanest appearance'. The British expedition chose not to regard this as evidence of a proper French title to the island and on 4 May 'took formal possession of the island of

Diego Garcia and all its Dependencies in the name of His Majesty King George the Third and in the name and for the use of the Honourable United Company'.[4] The hoisting of the British flag was saluted with three volleys of musketry. The East India Company's own flag, on which the American Stars and Stripes was modelled, will also have been flown by the expedition. The Frenchmen found on the island left for Mauritius to report this turn of events.

Meanwhile, the expedition got down to its task of laying out a settlement, building a fort, planting crops, measuring temperatures and winds and surveying the land and the lagoon. A Lieutenant Wales produced charming water-colour sketches of the island, one of which showed three men in broad-brimmed hats and knee-breeches strolling on the shore among the crabs near Cannon Point, and another of two of the expedition's ships sailing across the mouth of the lagoon. The settlement was established on the site of the present East Point, which was named Flag Staff Point. The climate was found to be quite healthy and few men fell sick. Temperatures taken over a four week period between early May and early June showed a range of 73°F to 87°F (approximately 23°C to 31°C), which is remarkably consistent with present-day readings. However, the agricultural experiments were disappointing. Vegetables such as potatoes and grain would grow but the amazing swarms of rats caused problems. Most of the turkeys and ducks died and the cattle sickened. There were also disagreements over whether the island was militarily defensible and who was responsible for surveying the lagoon.

The reports from Price and Smyth to the Council in Bombay sowed doubts about the settlement's viability. The Directors of the East India Company in London also became concerned when they learned of the expedition's 'magnitude and unnecessary cost.'[5] A further problem was that the French were exercised by the establishment of the settlement. The Governor of Mauritius, the Vicomte de Souillac, sent a letter of protest to Bombay. An international incident seemed likely to develop. Accordingly the Bombay Council decided in August 1786 'to entirely withdraw the settlement from

Diego Garcia'. A letter from Bombay Castle signed by Governor Rawson Hart Boddam (after whom Boddam island in the Salomons is named) instructed Price and Smyth that 'on receipt of this letter you will immediately issue the necessary orders for the embarkation of the stores, ammunition and provisions and for evacuating the island'.[6] The expedition sailed away in October 1786, leaving Lieutenant Blair to complete his survey of the rest of the Archipelago.

The French authorities in Mauritius were sufficiently alarmed by news of the British settlement to send the frigate *Minerva* to enforce their claim and eject the interlopers. However, by the time the French ship arrived, the British had already left. The French none the less put up a stone pillar proclaiming their sovereignty. A similar marker decorated with fleur de lys survives at Mahé in the Seychelles but that on Diego Garcia has disappeared; perhaps it still lies somewhere on the island awaiting discovery.

The British incursion led the French to take a more active interest in the islands. In the later 1780s businessmen in Mauritius were granted concessions to gather coconuts. A petition to operate in one of the islands reads 'this desert island uninhabited up to the time of writing, can nevertheless hold out prospects to an industrious and enterprising man.'[7] The first named individual to receive this concession in Diego Garcia was the same Monsieur Le Normand whom the British encountered in 1786. A Sieur Dauguet was also granted fishing rights. It is not clear whether these concessions involved the setting up of permanent establishments or merely limited visits. The French in Mauritius also seem to have begun using Diego Garcia as a leper colony, apparently in the belief that turtle meat helped to cure this condition. According to one account, a British ship anchored off Diego Garcia in 1792 and sent ashore two Lascars or Indian seamen to look for water. These encountered a small party of lepers. When they reported the fact on coming back on board, such was the fear of leprosy in those days that the ship's master put the Lascars ashore to fend for themselves – a nightmare story if true.

In 1793, a Mr Lapotaire of Port Louis proposed to the French authorities that instead of loose coconuts being brought back to Mauritius from Diego Garcia for processing, a 'factory' be established to extract copra and oil from them on the island. Lapotaire sent out two ships with 25 to 30 men in each and a complement of slaves to set up the enterprise, which could be termed Diego Garcia's Jamestown, and seems to have been based at the north-west corner of the island. By the next year, Lapotaire was exporting a considerable amount of oil to Mauritius. According to Baron d'Unienville, salted fish, and rope made of coconut fibre were also exported, and sea slugs to the Far East, where they were a sought-after delicacy among the Chinese.[8]

There was good profit in the extraction of coconut oil which was used for a variety of purposes including lamps, cooking and soap. In the 1790's France was again at war with Britain and Mauritius found itself increasingly cut off from longer distance trade by the British blockade, leading among other things to a steep rise in oil prices. It is therefore not surprising that other businessmen from Mauritius began to follow Lapotaire's example and to set up their own establishments in Diego Garcia, as well as in other islands of the Chagos Archipelago. On Diego Garcia two brothers, Paul and Aimé Cayeux established themselves at East Point and Minni Minni.

While Lapotaire and the Cayeux seem to have had no problems in dividing the island between them, in the early 1800s they united against two newcomers, Messrs Blévec and Chepé, whom they accused of wasteful exploitation of the coconuts. However, in 1809 the French Captain General of Mauritius, De Caen, settled the dispute by assigning eastern parts of the island to Blévec and Chepé, while forbidding the manufacture of oil in Diego Garcia on the grounds that this would attract British raids. Readiness to accept lepers sent from Mauritius was a condition of the concessions.

But French rule in the Indian Ocean was about to be snuffed out at its heart. Exasperated by French privateer attacks on British shipping, a British expeditionary force from

India captured Rodrigues and Reunion and finally Mauritius itself. The capitulation signed on 3 December 1810 marked 'the surrender of the Isle of France (Mauritius) and all its dependencies (including the Chagos) to the arms of His Britannic Majesty'. The Treaty of Paris signed in May 1814 formally ceded 'the Isle of France and all its dependencies . . . to the dominions of the British Crown'. The Chagos Archipelago has remained British territory ever since.

Although the formal period of French rule on Diego Garcia was quite short, by the time it ended the pattern of a plantation society based on exploitation of the coconut, which was to last more than another century and a half, was well established. A contemporary Dutch print of East Point dating from 1819 is the first known depiction of the settlement.[9] It was probably made by a naval officer called Verhuell who was a survivor of the crew of the Dutch warship *Admiral Evertsen*, which was carrying home from Java spices, some 'boxes with curiosities' for the King of the Netherlands, senior officials of the Dutch East India Company and an admiral. The ship foundered off Diego Garcia on 9 April 1819 and the 340-strong crew were rescued by the American brig *Pickering*, a vessel of 154 tons from Plymouth, Massachusetts,[10] which is shown at anchor in the print. Two hundred of the rescued sailors spent many weeks on the island before another ship arrived to take them off.

The Dutch print shows manually driven copra mills, simple buildings and huts, loin-clothed slaves carrying between them a turtle, fish and baskets, and overdressed Europeans promenading with walking sticks. Dogs (one appears in the print), cats, pigs, poultry, bees, new plants and vegetables would have been introduced by this point. Rats had also been inadvertently introduced from visiting ships at an early stage and soon became a menace to bird life, which had not previously experienced predators.

The population in 1826 was 275, made up of 6 Europeans, only one of whom was female; 14 freemen, four of whom were female, and 9 were children; 218 slaves, of whom 17 were female and 13 children; and 37 lepers, 5 of whom were

female and 2 were children.[11] Most of the slaves would have been brought from Mozambique and Madagascar either directly or through Mauritius and Seychelles. As a *lingua franca* they would soon have adopted Creole, a dialect of French with African overtones, whose use was universal in France's tropical possessions and is still spoken by Mauritians working in Diego Garcia today.

In the tiny society of the islands and far from assistance in Mauritius, it does not seem from contemporary accounts that the overseers actively mistreated the slaves. The historian Charles Pridham, who visited the island soon after the abolition of slavery, noted that their set tasks involving the collection and preparation of coconuts were relatively light and their rations of rice and rum could be supplemented by what they could catch or raise for themselves. According to d'Unienville, the latter included fish caught at night by torchlight, birds knocked from their perches by long sticks, *cipaye* crabs, and of course coconuts. As elsewhere in slave societies the considerable imbalance between the sexes and the lack of a religious or moral framework gave rise to considerable promiscuity. Their overseers seem to have provided little better example. As Pridham priggishly remarked, 'Frenchmen when removed from the public eye, have a strong tendency to degenerate into savages'.[12]

VI

Abolition of Slavery

Especially in an age of *laissez-faire* or self-regulation, the new British administration in Mauritius might have been content to leave the planters to their own devices in far off Diego Garcia had it not been for the issue of slavery. The slave trade in the British Empire had been abolished in 1807. Sir Robert Farquhar, the first British Governor of Mauritius and its dependencies, made it clear to the new subjects of the Crown in a proclamation of 1815 that 'no doubt should exist that Acts of Parliament for the abolition of the Trade in Slaves extend to every, *even the most remote and minute portion*, of the Possession, Dominions and Dependencies of His Majesty's Government'.[1] Complete abolition of slavery was already in the wind because of pressure from public opinion in Britain.

Nevertheless, despite the attentions of the Royal Navy, slaving to the islands directly from the East African coast probably persisted surreptitiously for some years. At the time of emancipation in the mid-1830s, there were still 33 slaves in Diego Garcia declared as having been born in either Mozambique or Madagascar.

It was unrest on the island because of problems between the planters, the slaves and the lepers (who were still being

sent there) which led to the appointment of the first British official, a Mr Le Camus, in Diego Garcia in 1824. Le Camus was also charged with managing the anchorage at Diego Garcia and establishing a quarantine station for seafarers with infectious diseases on one of the islands at the mouth of the lagoon. For his services over a five-year period, Le Camus was granted the concession formerly held by Lapotaire, from whom he bought slaves, stock and buildings.

As in the rest of the British Empire the institution of slavery was formally abolished in Mauritius and its dependencies in August 1834. For a six-year transitional period, so that both masters and slaves could get used to the new situation, the ex-slaves were apprenticed to their former masters under various safeguards. The Act of Parliament ending slavery laid down that Governors of Colonies should appoint Special Commissioners with the powers of Justices of the Peace to implement its provisions. The remoteness of the Indian Ocean dependencies posed special difficulties for the emancipation process but the authorities in Mauritius showed great conscientiousness. A report to the Colonial Office in London in 1835 assured the latter that 'all that can be done to carry into effect the provisions of the Abolition Act as far as circumstances will possibly admit'[2] was being done.

Mr George Harrison, designated as Assistant Protector of Slaves, visited the Chagos islands, including Diego Garcia, to supervise emancipation of the former slaves in 1835. There was a follow-up visit by Special Justice Charles Anderson in 1838 in the brig HMS *Leveret.* His instructions before departure pointed out that as the islands could be visited only occasionally, and his stay would be limited, his object was:

> to acquire information with a view to ulterior improvement if required rather than temporary exercise of authority. You will explain to apprentices in the presence of their masters and overseers their positions under the Slavery Abolition Act . . . the work they are expected to do . . . the treatment they have a right to expect . . . and the nature and quantity of their provisions.[3]

Anderson was also to report on general matters and on the possible value of Diego Garcia as a convict settlement.

Anderson was obviously a zealous person. He not only produced a highly critical report of conditions in Diego Garcia, which he described as 'decidedly inferior to those of labourers on the other islands I have visited',[4] but also exceeded his instructions by intervening actively and ordering the reduction of the daily set tasks of the labourers which he regarded as too severe. He found that the food, consisting mainly of rice, and the clothing provided were unsatisfactory. He described the physical state of the labourers as deplorable, with many of them old, infirm or diseased, with several bad cases of leprosy. There was also a deplorable – a word Anderson obviously liked – deficiency of hospital accommodation and an entire want of medical aid.

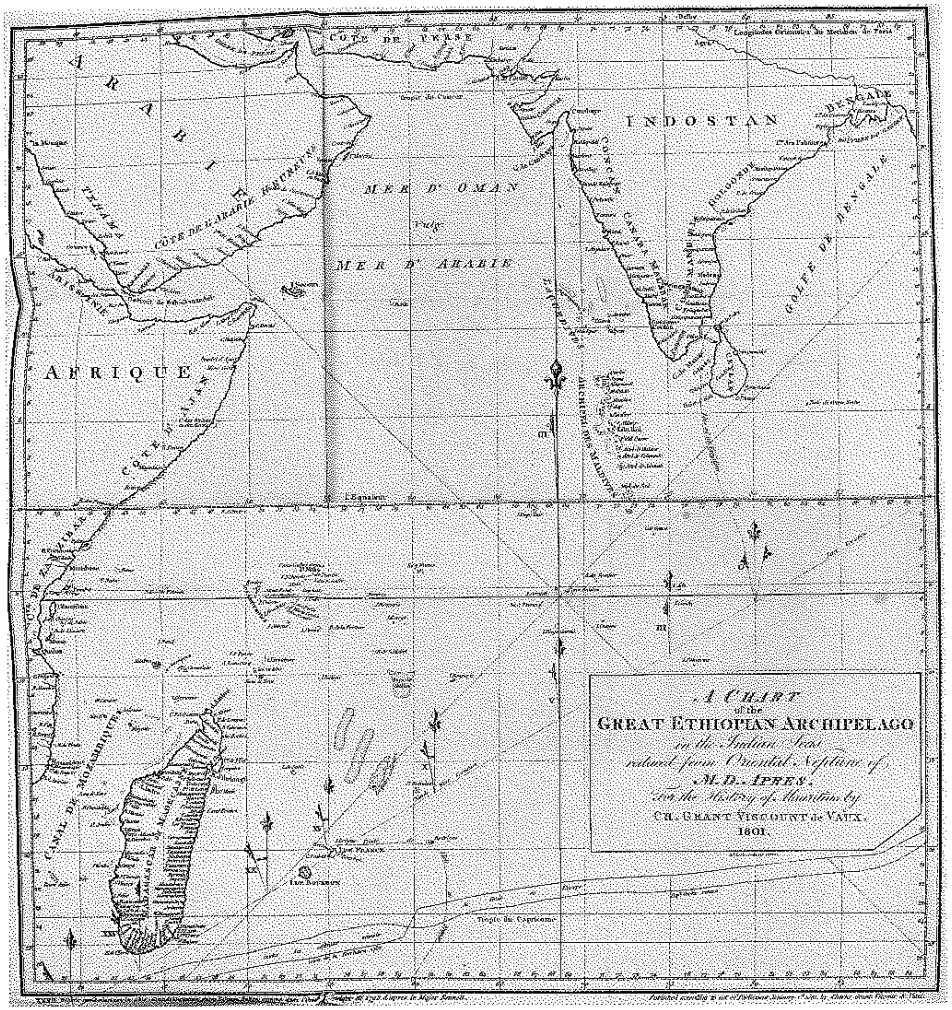
On the positive side, Anderson found that the labour involved in coconut plantations was of a much milder nature than on the sugar plantations of Mauritius. Crime was also uncommon, which he attributed to the absence of strong liquor.

Anderson recommended that the proprietors of the plantations resident in Mauritius, who still included Monsieur Cayeux, 'ought to be compelled to make good the past deficiencies to their fullest extent and that other means should be adopted to prevent the repetition of such wilful neglect'.[5] However, the Governor decided more judiciously that while he 'cannot but regret that the Act is not fully complied with . . . yet taking into consideration the locality, the precarious nature and infrequency of communications, he did not feel disposed to visit on the masters the whole penalties for breaches of the law.'[6]

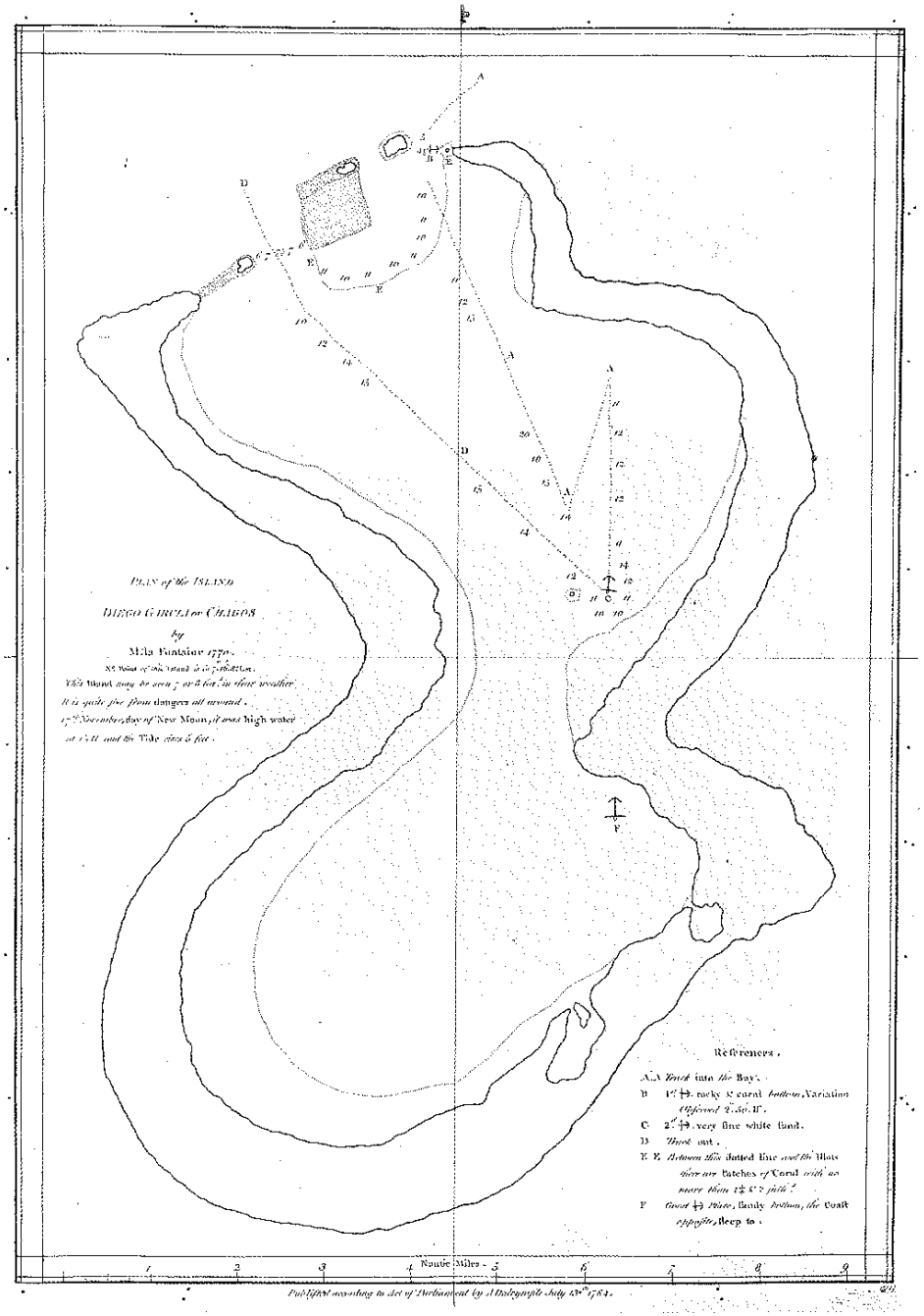
At the time of Anderson's visit there were 135 apprentices, that is, freed slaves, on Diego Garcia. The three estates at East Point, Point Marianne and Minni Minni produced between them 36,000 veltes (a velte is about $^3/_4$ gallons or nearly 8 litres) of coconut oil annually. Anderson also noted that the island was much resorted to by whalers and vessels

bound from England to India for supplies of water, firewood, pork and poultry.

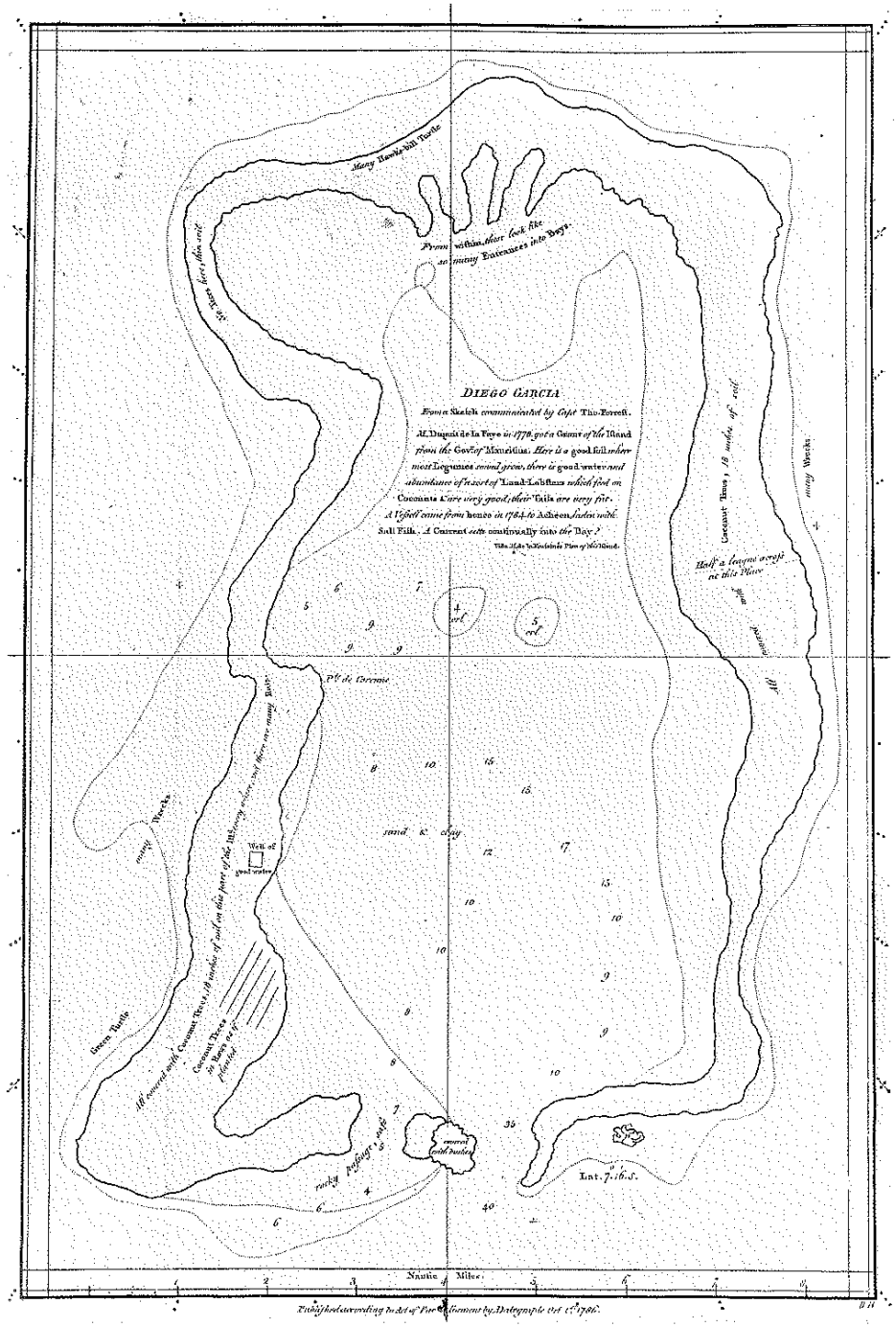
The main difference after final emancipation in 1840, was that the now free labourers made a contract with their new employers in return for wages. Apart from this, life on the islands continued much as before. As Pridham remarked in 1845, 'the slaves on the Chagos Group are now free, that is to say nominally, though perhaps very little change would be found in their condition'.[7] Unlike in Mauritius, where the abolition of slavery led to the increasing recruitment of indentured labour from India to work the sugar plantations, the workers in the islands had effectively nowhere else to go and no other occupation to turn to.



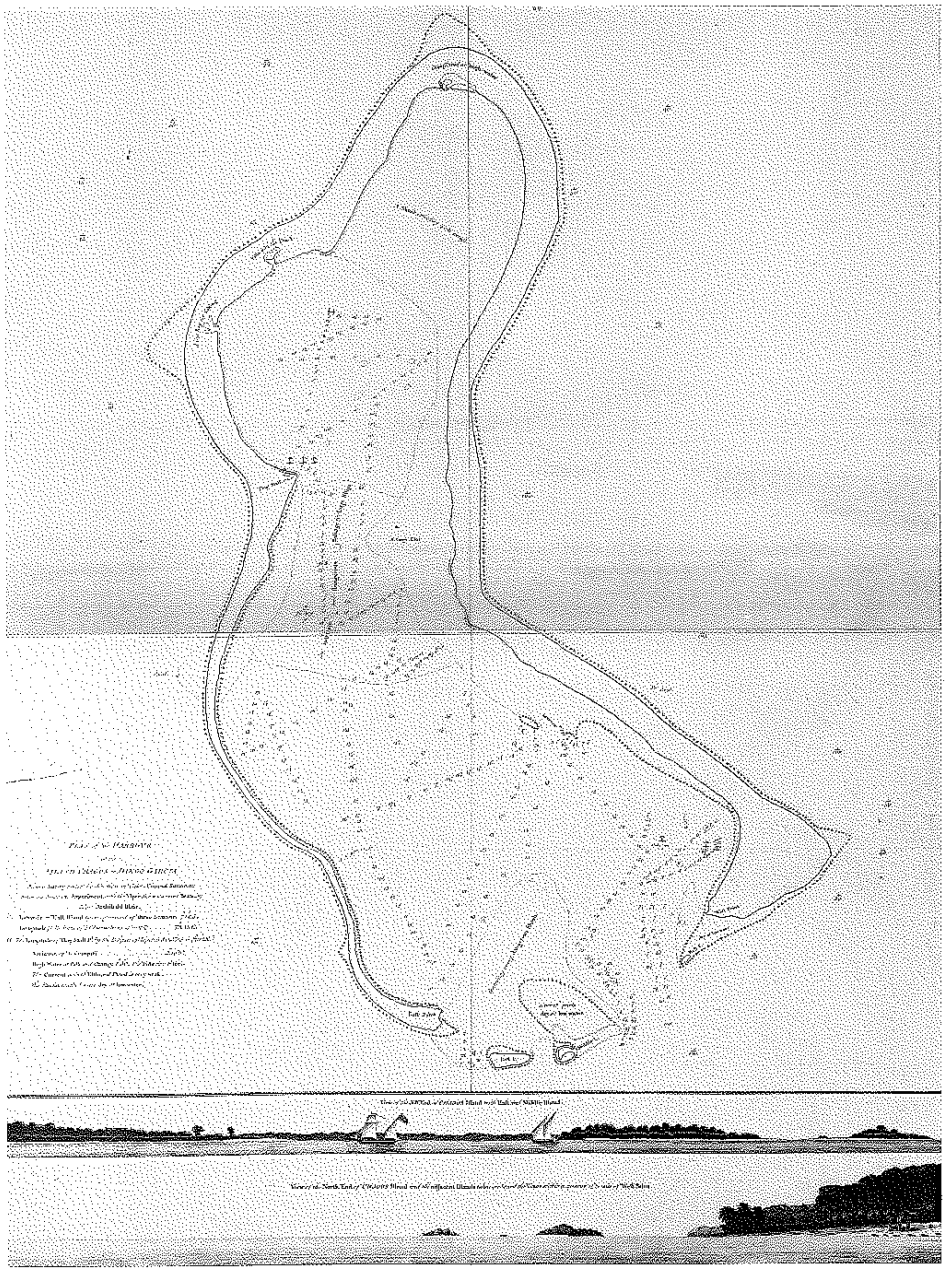
Late eighteenth-century map of the Indian Ocean – 'Neptune Oriental' – by Apres de Mannevillette. *(India Office Collection, British Library)*



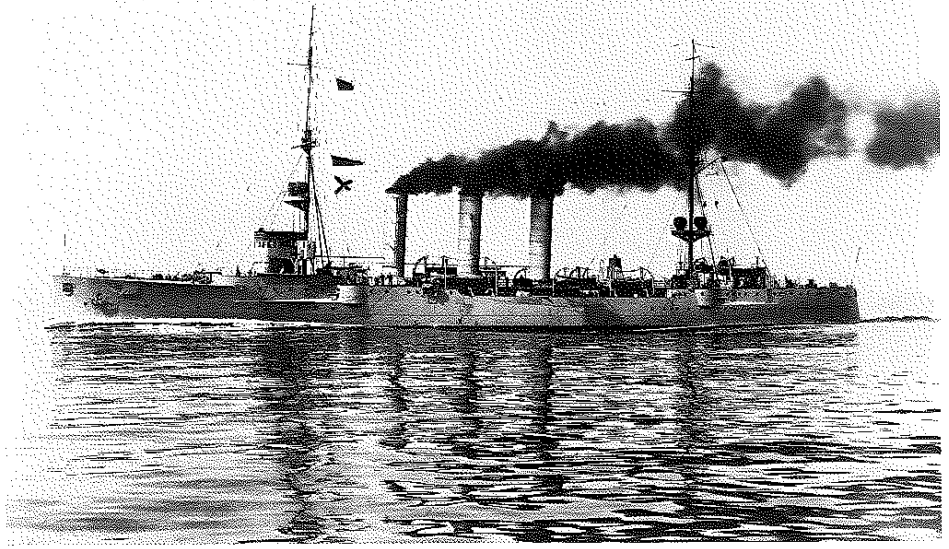
La Fontaine's map of Diego Garcia, published in 1784.
(India Office Collection, British Library)



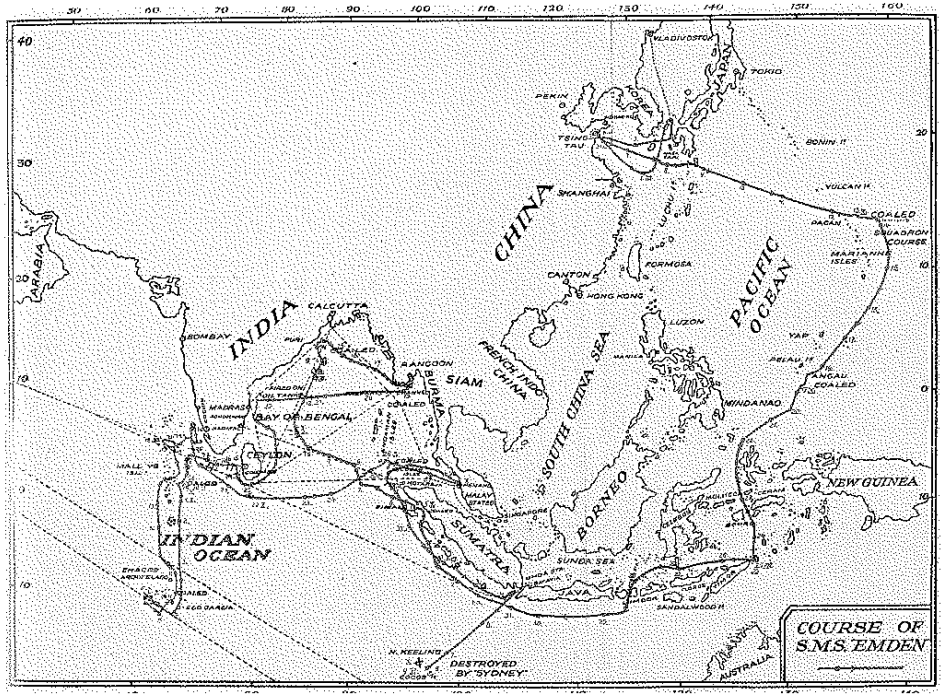
Captain Forrest's map of Diego Garcia, published in 1786.

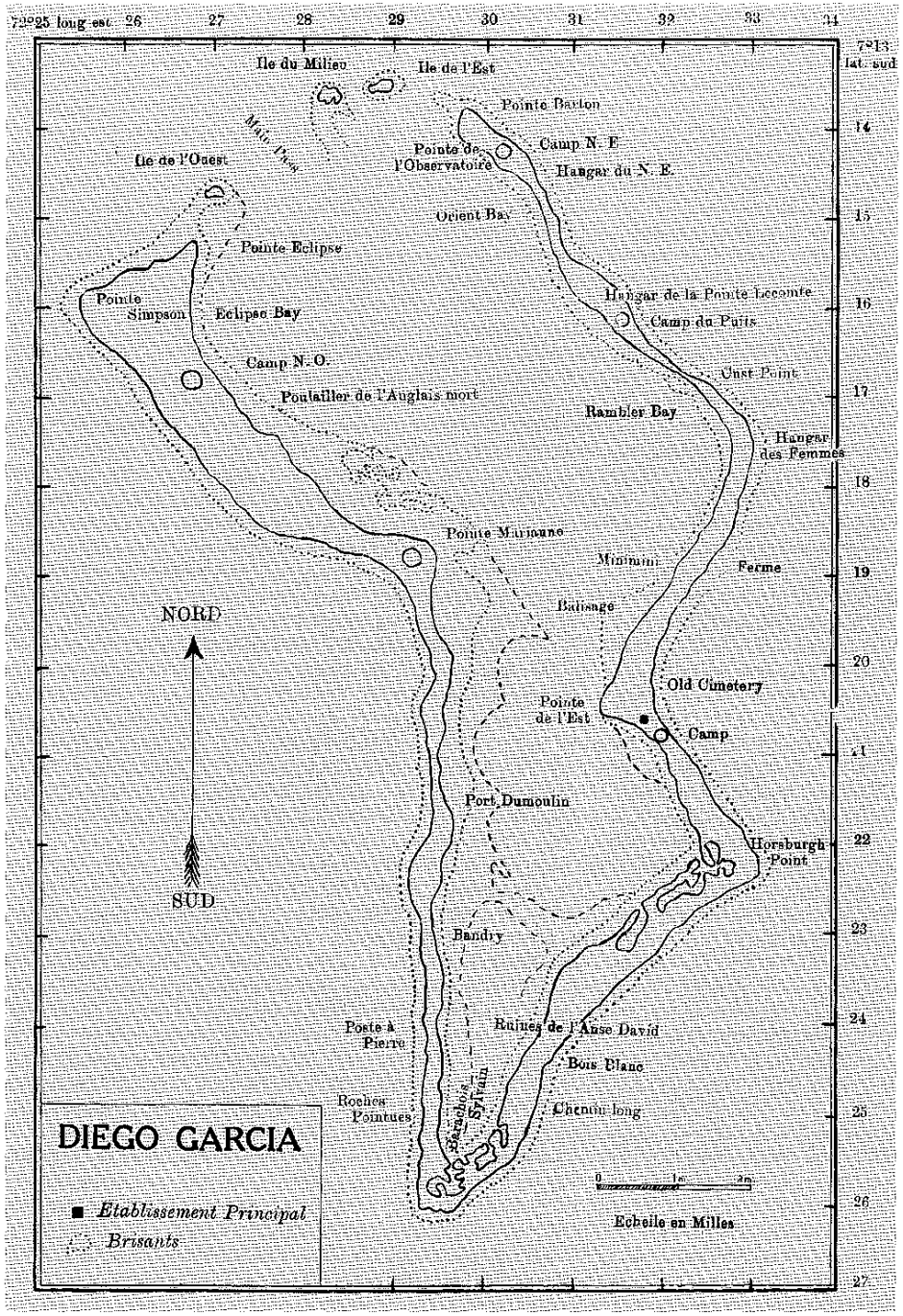


Lieutenant Archibald Blair's map of Diego Garcia, published in 1787.
(India Office Collection, British Library)



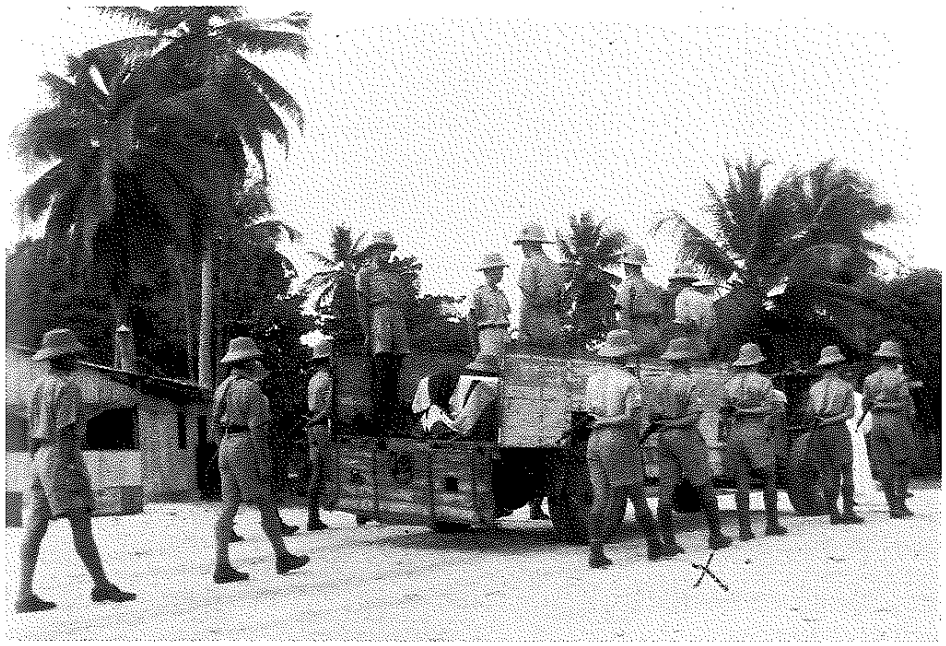
The German cruiser SMS *Emden*. *(MOD Library)*

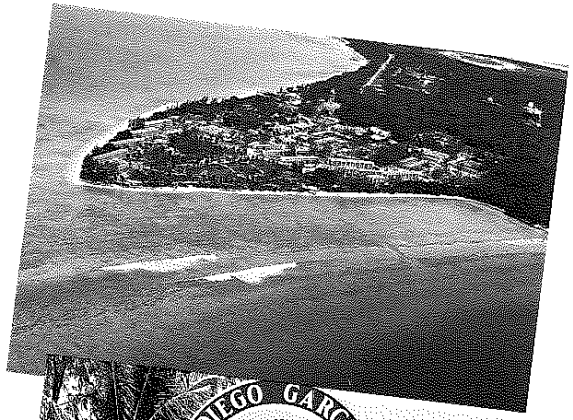




Dussercle's map of Diego Garcia in 1934.
(From Archipel de Chagos: en mission *by R. Dussercle)*

Father Dussercle (seated left with beard) with British military party on Diego Garcia, 1942. *(Fred Barnett – seated next to Dussercle with dog)*

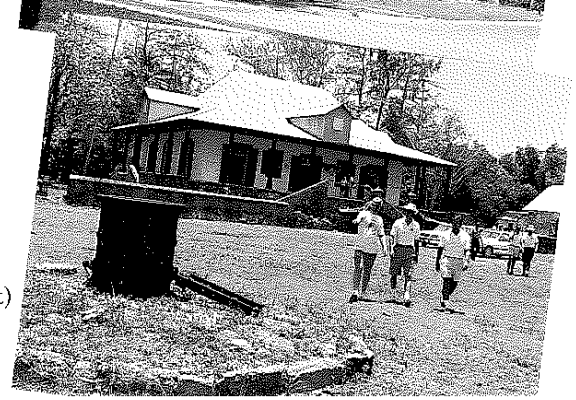




General view of the Downtown area. *(NSF Fotolab, Diego Garcia)*

BIOT Customs and Immigration officers at the airport. *(NSF Fotolab, Diego Garcia)*

Two flags outside the headquarters building. *(NSF Fotolab, Diego Garcia)*



HRH Prince Edward (in hat) with Commissioner Harris (left) Inspecting old oil grinder at East Point, October 1992. *(NSF Fotolab, Diego Garcia)*

VII

The Oil Island

After emancipation had been implemented, direct British intervention in the affairs of the islands was limited for another quarter of a century. Subject to occasional inspections by captains of visiting Royal Navy ships and Special Commissioners, the islands were run effectively as private estates. The owners of the concessions, or *jouissances* in French, which was still the language in general use, were invariably absentees based in Mauritius.

Two significant developments during this period were the change in the system of tenure and the amalgamation of the plantations. From 1865 the holders of the concessions were able to transform them into permanent holdings against payment based on estimates of the amount of oil produced. In 1883 the three separate existing plantations on Diego Garcia at East Point, Minni Minni and Point Marianne were merged into the 'Société Huilière de Diégo et Péros' (the Diego and Peros Oil Company), which continued to run them, along with those in the outer islands, until 1962.

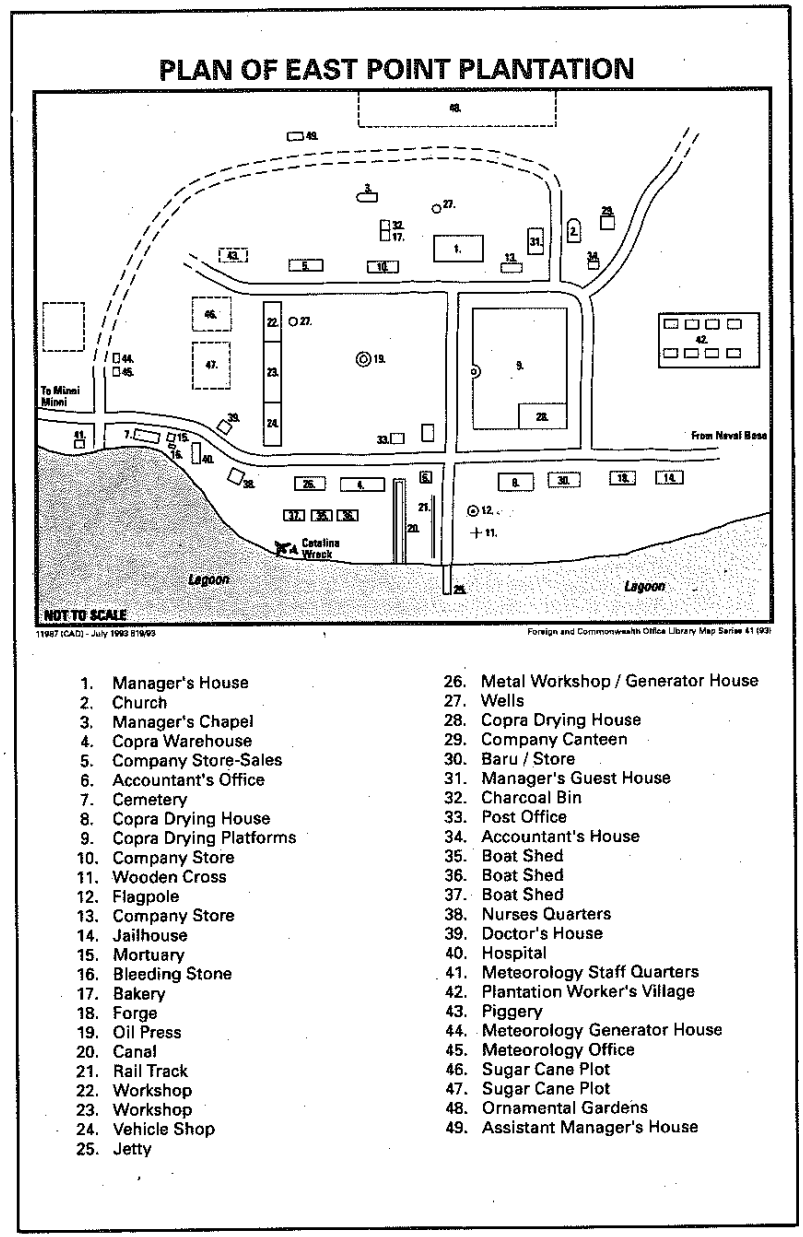
The running of the plantation was in the hands of an *administrateur,* or manager, assisted by a number of under-managers. These were normally whites from Mauritius. Much of the supervision of the labourers recruited from Mauritius,

Madagascar and Mozambique was left to black *commandeurs* or overseers. Occasionally there was an administrator who by his personality and energy stood out from the run of the mill. One such was James Spurs who ran East Point Plantation as a benevolent despot in the 1870s, among other things showing concern for conservation by forbidding the killing of seabirds, turtles and land crabs.

By the lights of the time, and it should be remembered that slavery persisted in the USA until 1864 and in Brazil until 1888, the management seems to have been reasonably enlightened and humane and the life of the labourers tolerable. Typical wages were 40 dollars a month for an undermanager, 10–14 dollars for an overseer, 5 dollars for craftsmen such as blacksmiths, 4 dollars for field-hands and 3 dollars for the women who shelled the coconuts. The workers were expected to put in a couple of hours of voluntary work on Sunday mornings, known as the *corvée*, to clean up the settlement area and tend the animals.

Huts in the 'camp' for accommodation, and basic rations, were provided. Rations consisted typically of 12½ lbs of rice a week, 1lb of salt a month, and 'as gratification' a glass of rum or 'calou' a day 'drunk at the tub as in Her Majesty's Navy.'[1] and an ounce of tobacco a week. Women with babies were entitled to a bottle of coconut oil a week. The labourers supplemented these rations by raising pigs and chickens and by cultivating fruit and vegetables in gardens enclosed to protect them from the depredations of donkeys and crabs. Fish also varied the diet. Such was the abundance of fish that it was said by a visiting official that 'the inhabitants can literally walk into the water and in a few minutes get a supply as would be a banquet for many of a far superior class in Mauritius'.[2]

There were company shops at each of the plantations, selling basic items such as kettles, pans, hooks and needles and small luxuries such as wine, coffee and eau-de-cologne. There was free, if basic, medical care provided for the treatment of the sick and injured. A stock of medicines was dispensed by a medical attendant whose qualifications seem to



Plan of East Point Plantation

(Charles Borman and Foreign and Commonwealth Office Library)

Appendix No. 9.

List of Prices at which Articles are supplied to Laborers on Minimini Estate, Diego Garcia, together with the retail prices of the same in Mauritius.

Articles.	Price on Minimini Estate.	Price in Mauritius.	Remaks.
	$ ¢	$ ¢	
Sugar per lb.	0 12½	0 09	
Coffe do.	0 40	0 30	
Biscuits do.	0 15	0 15	
Salt Pork do.	0 06	...	Made on the Island.
Soap per bar of 2¼ lbs	0 25	..	Do. do.
Wine per bottle	0 25	0 12½	
Liqueurs do.	0 50	0 25	
Conjon bleu per piece	4 00	2 00	
Coutil per aune	0 25	0 18	
Paliacats each	0 37½	0 15	
Grey Calico per piece	4 00	2 25	
White Calico do.	4 00	2 50	24 yards.
Patna each	1 12½	0 75	
Coured handkerchiefs each	0 25	0 12½	
Thread per bobbin	0 04	0 04	100 yards.
Buttons per dozen	0 12½	0 04	
Needles do.	0 06	0 03	
Thimbles each	0 12½	0 03	
Straw hats (Seychelles) each	1 00	0 50	
Felt hats each	1 50	1 00	
Spoons do.	0 06	0 03	
Forks do.	0 06	0 03	
Plates do.	0 12½	0 06	
Common round dishes each	0 40	0 25	
Basins large each	0 25	0 15	
Knives (sailor's) each	0 25	0 12½	
Marmittes each	0 37½	0 25	
Pagne (Madagascar) each...	0 20	0 12½	
Tobacco per stick each	0 12½	0 08	
Vermouth per bottle	1 00	0 50	
Fish Hooks large each.....	0 03	0 01½	
Do. small do.	0 02	0 00½	
Tin pots each	0 50	0 12½	
Tin mugs each	0 25	0 12½	
Padlocks	0 50	0 25	
Grease per lb.	0 06	...	Made on the Island.
Graton do.	0 06	...	Do. do.

E. PAKENHAM BROOKS,
Stipendiary Magistrate.

List of articles for sale at Diego Garcia Plantation shop, 1875.

have been rudimentary. The labourers were reported to have a great fondness for the castor oil administered. Generally the state of health of the labourers was good. Even some of the maladies which led to admission to the sick-bays or giving days off work were attributed by the management to malingering and too much strong liquor.

The population of Diego Garcia fluctuated between 350 and 550 during this period, with additional labour being imported as necessary. The birthrate on the islands was low. There remained a great imbalance between the sexes with women rarely constituting more than 20 per cent. Visitors frequently commented on this, attributing 'the sad state of morality prevailing to the inequality of the members of the sexes. Marriage is unknown and all the women appear to live in a state of concubinage.'[3]

Occasional though they were, the visits to Diego Garcia by British officials, either Special Commissioners such as Commander E. Hardinge of HMS *Persian* or, from 1864, by District Magistrates, such as J. H. Ackroyd and E. Pakenham Brooks, were not perfunctory efforts. Their standard directive from the Governor of Mauritius was threefold: to ensure that no one had been brought to the island against his or her own will, that no one was being kept there against his or her will, and that no one was being treated with cruelty or oppression or illegally detained. They probed with surprising intrusiveness into the island's affairs and their painstaking reports give fascinating glimpses of life on the island. They clearly saw it as their duty to guard against tyrannous behaviour on behalf of the management, which could all too easily have sprung up. They were not slow to upbraid and punish any such manifestations. Pakenham Brooks, who paid a visit as Special Magistrate in 1875, handed out sizable fines both to an under-manager at Point Marianne for striking a labourer and to James Spurs, the Manager at East Point, for unjustifiably imprisoning three labourers without sufficient cause. The management at Point Marianne and Minni Minni were also instructed to provide sick-bays for their workforce. Prices and weights and measures in the Company's shops were

carefully checked and the labourers' accommodation, the hospital and the jail measured to ensure that they fulfilled minimum specifications.

The labourers were not slow in coming forward with complaints against their employers which mainly related to rations and hours of work. This was not always to their advantage. In one case, a labourer was fined for bringing a frivolous and unfounded complaint. There were also disputes between the labourers to adjudicate, usually relating to petty thefts and assaults but occasionally involving suicide and murder. Pakenham Brooks had to investigate one such 'atrocious crime' committed by Janvier, a 'Malagash', that is, a native of Madagascar, who apparently acted as some sort of voodoo doctor. According to the allegations he had 'bewitched' a pregnant woman called Laure, and in presiding at her delivery succeeded not only in killing the unfortunate woman but her twin babies as well. Pakenham Brooks went so far as to exhume the body but the state of decomposition was too advanced. The accused and witnesses were sent to Port Louis for the trial, where it is interesting to note that the Magistrate found Janvier not guilty.

Various attempts were made in the mid-nineteenth century to diversify the economy by introducing new crops and livestock. Maize or Indian corn, cotton, tobacco and citrus trees were tried and found to grow well. Captain Robert Moresby of the Indian Navy had planted breadfruit trees from Ceylon in 1837, which still survive at East Point. His survey of Diego Garcia incidentally produced charts which remained in use for a century and led to the naming of two promentories on the island after two of his officers, Lieutenants Simpson and Cust. Cattle, goats and sheep were also brought in for a while. Donkeys, introduced to drive the copra-grinding mills, became a permanent feature of the island from the 1840s. However, none of the agricultural experiments was pursued, probably because the well-established exploitation of the coconut, which now began to be cultivated systematically, continued to provide a steady and reliable income. In 1864, for revenue purposes, the estate at East Point was assessed as

producing 51,000 gallons of coconut oil, Point Marianne 30,000 gallons, and Minni Minni 18,000 gallons.

Gilbert Bourne, who visited Diego Garcia a few years later under the auspices of the Royal Geographical Society, gave a comprehensive account of the process of extracting the oil:

> Each palm will bear an abundance of coconuts for four or five years in succession, after which it remains comparatively unfruitful for another three years or more. The nuts when ripe fall on the ground, whence they are gathered by parties of men sent out in boats for the purpose. The daily task of each labourer is to collect, husk and deliver at the habitation 350 coconuts per diem. This is performed in a surprisingly short space of time when the nuts have not to be carried far by boat. Each party of men is in charge of a commander or sarang, who measures out a piece of ground on which each labourer is to work. The labourer collects the required number of coconuts into a heap, and then sticking a short broad-bladed spear into the ground, he takes each coconut, spits it upon the spear, and in a couple of wrenches has stripped off the husk and thrown the nut on one side.
>
> On their arrival at the habitation the nuts are counted on the beach, and delivered to the women whose duty it is to break them and extract the kernel. The daily task of each woman is to break 1300 coconuts in the day, but I am told that they are able to break as many as 2500 in ten hours. The kernels, which are now known as copra, are then exposed to the sun in heaps, to allow an incipient fermentation setting in, but are carefully protected from the rain by a sort of pent-house on wheels, which can be run over the heaps at a minute's notice. After an exposure of two or three days, 250lbs of copra are delivered to each mill, this being the amount which each mill-labourer is required to grind daily; from it about 30 gallons of oil are produced. The mills used are of a most primitive pattern. The body of the mill is a hollow

> cylinder of hard wood, in which an upright beam of the same material is made to rotate, the motive power being supplied by three or four donkeys harnessed to a long horizontal beam, which is connected to the upright by a chain, and is weighted at the far end by two or three large lumps of coral. The copra is put in at the top of the cylinder, and the oil escapes by a hole at the bottom. The oil is merely strained through cloths and allowed to settle for a few days, after which it is run off into large vats, and is ready to be collected in casks and shipped for export. All the oil is exported to Mauritius by the oil company's ship, which calls three times a year at Diego Garcia.[4]

So well known were the Chagos for their principal product that they became known as the 'Oil Islands'. The middle of the century must have been a prosperous one for the coconut oil industry. Several of the most substantial buildings surviving in the East Point Plantation have the date 1864 inscribed on them. At that time on the other side of the world, the American Civil War was raging.

VIII

The Coaling Station Interlude

The 1880s saw an intrusion of the outside world into Diego Garcia unparalleled until the establishment of the permanent naval facilities in the 1970s. The introduction of steam ships, which increasingly replaced the old sailing ships from the 1860s, gave rise to the need to establish strategically placed coaling stations along their routes. The newly constructed Suez Canal opened in 1869. For the routes to Australia and the Far East, Diego Garcia in the centre of the Indian Ocean seemed ideally situated. As Lionel Cox, Acting Procurator-General of Mauritius, noted:

> the advantages of Diego Garcia as a coaling station are now evidently well recognised . . . There is little doubt that situated as this is on the straight line between the entrance to the Red Sea and Cape Leeuwin (on the South west Coast of Australia), and possessing a good harbour, it will become more and more important.[1]

In 1882 the Orient and Pacific Steam Navigation Company relocated its coaling station for the Australia run from Aden to Diego Garcia. Messrs Lund and Company also established itself. Traffic built up and by the second half of 1883 there

were coaling visits by 34 large steamers as well as by two Royal Navy warships. Lund and Company, whose agent was George Worsell, kept its coal on hulks off East Point and ashore there. The coal was sold for £2 10 shillings a ton and was hauled by labourers hired from the plantation.

The Orient Company appointed James Spurs, the former manager of East Point, as its permanent agent. He, with characteristic energy, set about bringing in the latest technology for its operations. The Company's coal was kept mostly on hulks, initially off Minni Minni and later in the lee of Barton Point, accounting for the name Orient Bay, but some also on shore at East Point. To transfer the coal to the visiting ships 12 iron lighters were brought in sections and assembled on the spot by artisans from Greece and England. A 35 horse-power tug was used to pull the lighters and the coal was hoisted into the ship by special steam appliances. Spurs based himself on East Island and his work force on Middle Island which was leased to the Orient Company. The remains of the buildings, wells and some of the equipment can still be seen on these islands. The latter included 'a large condensing apparatus which will furnish a sufficient supply of wholesome distilled, filtered and aerated water for the use of the manager and labourers.'[2]

The need for safe navigation of the lagoon by ships calling to coal led to the carrying out of an accurate and detailed survey in 1885 by Captain the Honourable E. P. Vereker, in HMS *Rambler,* after which the bay north of Minni Minni is named. There was also a plan to place lighthouses at Horsburgh Point and West Island. This was never implemented, though temporary lights on posts were rigged up.

Labour proved a problem. Initially 40 Somalis were brought from Port Said but they proved unreliable and troublesome, and were sent back. They were replaced by labour from Mauritius who did not prove entirely satisfactory either, and there was an abortive project to recruit Chinese instead. Imported labour seems to have been behind a near insurrection in 1883 described by Bourne when the residence of the manager at East Point, Mr Leconte, was besieged by a

mob of about 30 men armed with knives and clubs who threatened his life.

> Luckily for him they were as cowardly as they were insolent, and he was able to keep them at bay by presenting a revolver, until he had succeeded in reducing them to a more reasonable state of mind.[3]

The crews and passengers of the visiting ships, carrying such diverse elements as migrants to Australia and Moslem Javanese pilgrims on their way to Mecca, also contributed to the Wild West atmosphere on Diego Garcia in the 1880s. Those on board the ships were not meant to disembark, for quarantine reasons, but this instruction was often ignored, causing havoc ashore. In February 1884 for example, Captain Raymond of the *Windsor Castle,* while in a drunken fit

> landed at East Point with 16 men with loaded guns; had the Union Jack hoisted on the top of a tree in front of the manager's house; paraded his men; had a volley fired at the house (fortunately unoccupied), patrolled about, informed the manager that he had taken possession of the island in the name of the British Government and appointed the Manager Mr Leconte in writing as Lieutenant Governor.[4]

The plantation workers too became infected with the general air of indiscipline. They were induced on board the ships and administered strong drink. There were attempts to desert, some of them successful. Two labourers stowed away on an Orient Company steamer and got as far as Port Said in Egypt.

Visiting British officials noted the deterioration in law and order with concern and were not themselves immune from its manifestations. The memorably named Mr Ivanoff Dupont was exasperated by the lack of respect shown him by the labourers of the Orient Company on Middle Island but, especially as some of those concerned were said to be armed,

decided that discretion was the better part of valour. He reported somewhat plaintively:

> the attitude of these men was impertinent and provoking to the extreme, and they would have met with severe punishment had I the means of enforcing my judgement. But I had not the assistance of policemen, which I would have asked for before leaving Mauritius had I known the state of insubordination in which I found some of the labourers of the Orient Company, and I considered it wiser to let them go unpunished.[5]

As a result of Dupont's report, the authorities in Mauritius concluded there was a need for an officer stationed in Diego Garcia 'who will make all, high or low, feel that they are living under the authority of the Queen and that differences are not to be adjusted by means of sticks and knives and revolvers'.[6] In response to the unprecedented threats to law and order it was decided in 1885 to set up a police post at Minni Minni at the surprisingly large contemporary cost of £1000 and with a sizable complement of an inspector, a Mr V. A. Butler, sergeant and six constables. The inspector's request for a steam launch was however turned down by the Colonial Secretary on the grounds of expense. Indeed the cost of the police operation and the disinclination of the Imperial Government, the authorities in Mauritius and the companies operating in the island to pay for it led to the withdrawal of the police presence in 1888. Although Special Constables were appointed as needed, it was not until 1973 that regular British policemen were reintroduced to Diego Garcia.

In any case, the use of the island as a coaling station did not last beyond the end of the decade. The introduction of larger ships with a longer range rendered the use of Diego Garcia superfluous. In 1888 a visiting official, Mr A. Boucherat, reported that:

> it does not seem at all certain that Lund's coaling company will continue its operations at Diego Garcia. The Orient Company no longer have their coaling station on East Island. The Agent has left for Colombo, having sold the greater part of the stock.[7]

What happened to any remains of the coal stocks is unclear. Perhaps some of it litters the floor of the lagoon.

After this shortlived brush with the developing modern world, the island returned to its sleepy existence as a plantation economy. Developments of local importance included the erection of a chapel at East Point in 1895, and the building of a light railway, whose remains can still be seen, to carry produce to the new jetty. More significantly, in the early 1900s coconut oil gave way to copra as the main product. This was partly because oil was falling into disuse as a means of lighting and partly because of the introduction of new and more efficient techniques to dry copra using a combination of solar power and furnaces fed by husks of coconuts.

IX

The *Emden* Incident

Diego Garcia's next brush with the wider world came at the outbreak of the First World War. Anglo-German naval rivalry dating from the last decades of the nineteenth century had its manifestations in the Indian Ocean as elsewhere on the globe. The expansion of German naval power posed a challenge to the established British maritime ascendancy which caused similar anxiety to that occasioned to the West by the world-wide Soviet build-up at sea in the 1960s and 1970s.

With naval bases a key preoccupation the Royal Navy watched with growing unease as German ships, both merchant and naval, began to visit Diego Garcia. The inhabitants became increasingly accustomed to the sight of the world's warships anchored in the lagoon. In the two-year period from 1888 to 1890 a German, an Austrian and a Russian warship, as well as four Royal Navy ships, visited the island. In 1899 there was a call by the German ships SMS *Bismarck* and SMS *Marie*, closely followed by HMS *Hampshire* and HMS *Empress of Russia*.

There was talk of fortifying the island, though nothing came of it. As Bourne had remarked earlier, 'how this is to be done and what use it would be to fortify an island ten

feet high, which might be commanded by a ship sailing outside it, I am at a loss to know'.[1] Even had Diego Garcia been fortified, it would have made no difference when the German Warship SMS *Emden*, accompanied by the coaler *Buresk* entered the lagoon at dawn on 9 October 1914. The First World War had begun more than two months before but news of this had not yet reached the island, which had no wireless installed and had received its last visit from Mauritius three months earlier.

The *Emden* was a 3500-ton light cruiser equipped with ten 4.2 inch guns, torpedoes and carrying a crew of 361 men commanded by Captain von Müller. The ship had found itself stranded by the outbreak of war with the German Squadron on the China station. After escorting German supply ships to the Caroline Islands in the Pacific, then German territory, the *Emden* was detached in mid-August 1914 by Admiral Graf Spee to prey on allied shipping in the Indian Ocean, including the convoys bringing troop reinforcements and food to the Mother Country from the Empire. Such was the daring and resourcefulness of the *Emden* that her exploits attracted the admiration even of her opponents, including Winston Churchill, then First Lord of the Admiralty.

Having passed through the Straits of Molucca, the *Emden* coaled in neutral waters in the Netherlands East Indies and rigged an additional, false funnel in order to change her appearance. She then proceeded to the Bay of Bengal where she captured 13 allied merchant ships in the space of a fortnight. Shipping in the entire area was paralysed. The fox was in the chicken coop. On her way to a new hunting area on the other side of India, the *Emden* bombarded fuel tanks near Madras, causing enormous damage and provoking panic among the local population. Around the Maldives she intercepted three more ships but, learning from radio interception that pursuing Royal Navy ships were approaching, she decided to make herself scarce.

After several months at sea, the *Emden* badly needed to overhaul her engines, clean mussels and weed, which were

reducing her speed, from the bottom of the ship and to make other repairs. According to the memoirs of one of her officers, Lieutenant the Prince of Hohenzollern, a relative of the German Emperor, Diego Garcia, 'a miniature fairyland of coral banks covered in high palms and a sheltered bay which cannot be seen from the sea'[2] offered an ideal haven. As the *Emden* made its way south across the Equator, the crew made what repairs they could at sea, exercised the ship's guns against a target towed behind the *Buresk* and, perhaps in anticipation of opposition ashore, practised infantry tactics with rifles and machine guns.

After the *Emden* and the *Buresk* had dropped anchor in the lagoon, a boat put out from the shore bearing the assistant manager of the plantation, Mr W. Suzor. He was brought into the wardroom and in Lieutenant Hohenzollern's words 'made very good practice with the iced whisky and soda. For us the conversation became interesting from the moment we recognised that this manager and the inhabitants had no idea there was a war on in the world.'[3] The assistant manager readily accepted the story that the German ship was involved in a major naval exercise involving other navies but was understandably eager for news of the outside world. According to Lieutenant Hohenzollern, the ships' officers embroidered selective information such as the death of Pope Pius X, with 'fairy stories'. When the plantation manager, Mr W. Cummins, joined his assistant, however, he proved more inquisitive and searching in his questions, demanding to know why the ship was in such a state. Captain von Müller assured him that this was because of a frightful storm which had been encountered, and the manager's mind too was put at rest.

Meanwhile the *Emden*'s crew manhandled on board 1000 tons of coal from the *Buresk*. By flooding some of the watertight compartments, they were able to cant the vessel, tilting each end successively into the air, and so to clean off the encrustations from the ship's bottom. They also agreed to repair the manager's motorboat for him and received in return welcome fresh food in the shape of a live pig, fish

and fruit. Not wishing to be under any obligation to their albeit unaware enemies, the crew reciprocated with wine, spirits and cigars. 'I think the Diego Garcia people never had such noble givers as guests', commented Lieutenant Hohenzollern.[4] After two days the Germans left, in too much of a hurry to wait for the lobsters the islanders were collecting for them. The Germans' instinct was right, for eight hours later pursuing Royal Navy warships entered the lagoon. A major naval battle at Diego Garcia, like that off the Falklands a few weeks later when the *Emden*'s former companions from the German China Squadron were sunk, had only just been avoided.

From the Chagos the *Emden* steamed north to the Maldives again where it intercepted seven more merchantmen before vanishing into the eastern Indian Ocean, only to appear suddenly at the port of Penang in Malaya. Here a Russian cruiser and a French destroyer were sunk in short order by her torpedoes and guns. But the *Emden*'s luck finally ran out when it tried a similar exploit to that at Diego Garcia at the British-ruled Cocos-Keeling Islands. Here there was a wireless station which was able to send off a signal, 'Strange ship off entrance', before it could be silenced. Engaged by the cruiser HMAS *Sydney*, which was escorting a convoy of Australian troops nearby, the *Emden* was outgunned, rapidly set ablaze and beached on 9 November 1914, exactly one month after its visit to Diego Garcia. The surviving members of the crew were made prisoner but, by order of Winston Churchill, Captain von Müller and his officers were allowed to keep their swords as a tribute to their daring, gallantry and respect for the rules of naval warfare.

X

Partir C'est Mourir un Peu: Life Between the Wars

In the 1930s and early 1940s a French Roman Catholic priest Father Roger Dussercle, a native of Normandy, paid a number of visits to the Chagos which he described in several books which he had published at his own expense in Mauritius. Photographs taken by a British soldier Sergeant Barnett during the Second World War show Dussercle as bluff, well-built, with a black bushy beard and sporting a pith-helmet. He was sent by the Archbishop Leen of Port Louis to minister to, as the Archbishop put it, 'those poor souls who have till now been more or less abandoned'. Writing in 1846, Pridham had described the spiritual state of the inhabitants as follows: 'there exists no means of instruction among these poor people, either religious or secular; they had scarcely an idea of a Supreme Being.'[1] Other nineteenth-century visitors frequently made similar observations. Forty years after Pridham, Bourne observed: 'no priest is resident on the island, nor is there any arrangement for religious or

other education.'[2] As Pridham had commented, 'Here then is a field, however small or obscure, for some missionary.'[3]

Previous pastoral visits to the islands seem to have been few and far between before Dussercle's mission. The first recorded is by the intrepid Bishop Vincent, the Anglican Bishop of Mauritius, who made the difficult voyage to the Chagos in 1859. He found there 'a good proportion of Protestants', including some who could repeat the Lord's Prayer and the Creed in English, and he carried out several baptisms. The Bishop thought the islands 'a most promising field of labour'.[4] There were at least two visits by Roman Catholic priests in 1875 and 1884. It is doubtful whether the nuances of denominations made much sense to the islanders, although one of Dussercle's aims was to eliminate Protestantism from the island, a goal foiled by the stubbornness of one particular woman who resisted all his blandishments to convert.

Setting sail from Port Louis in the 380-ton three-masted barque the *Diego* in November 1933, Father Dussercle took 15 days to reach the islands. His arrival, as he stepped ashore from the motor boat *Marshal Foch*, caused, like all visits from the outside, a great stir. He found a community and a way of life in many respects little changed from earlier accounts written in the nineteenth century. About 60 per cent of the population were now 'children of the islands' or *Ilois*, who had been born and bred there. They wore a 'national dress' of striped material, patterned like that of mattress covers, and spoke a Creole similar to that of Mauritius. Dussercle describes them as like big children, simple and amenable. Their diet consisted of rice, pork, chicken and fish, with wine and tobacco as simple luxuries. With all their immediate needs taken care of, they were, according to Dussercle, 'the happiest people in the world from the material point of view'.[5]

Dussercle described his pastoral duties in lyrical terms. He took the children through their catechism under the shade of a giant takamaka tree at Point Marianne, and on the beach at East Point in order to catch the breeze. He administered

First Communion to young and old confirmants. He celebrated Christmas midnight mass under the stars at an altar decorated with palm fronds and garlands of flowers which was set up near the jetty at East Point. Rich, strong island voices sang familiar carols such as 'Come all ye faithful' and 'Midnight, Christians'. Dussercle preached good sermons in Creole, drawing on his deep familiarity with the islanders' language and folk stories. He warned of the danger of death which came suddenly 'like a thief at the gate', or like 'brother hare', and which, if not prepared for, could lead to an eternity in hell, stewing in hot spice and salt. After the service the entire island population processed round the settlement from lagoon-side to ocean-side.

However, there were what Dussercle regarded as persistent moral problems, especially a deplorable tendency for couples to live together without benefit of formal marriage. The local description of this practice was to be 'married from behind the kitchen'. Dussercle said that in that case these were the 'Devil's kitchens'. He spent much of his visits to the island trying to persuade couples to regularise their situations but with only limited success. It may be that the women, who were still in a minority, found it an advantage not to be bound to one man. Apart from this, it was, as before, the labour recruited from outside who were seen by Dussercle as a disruptive influence, possibly because they were less inclined to accept the paternalistic system run by the Oil Company.

As before, copra was exported three or four times a year to Mauritius for processing. But some coconut oil was still produced for local use by primitive mills driven by donkey-power. Although some people lived at Point Marianne and Minni Minni, all copra processing had been concentrated at East Point. The set-up at East Point was typical of the other 'Oil Islands', with a manager's residence or *château*, a chapel, which was built in its present form during this period after the existing one was flattened by a tree in a storm in October 1932, a shop, copra drying sheds, an oil mill, boatsheds, a sail-maker's shed, a workshop, hospital and jail. All these

buildings can still be seen at the East Point Plantation site. The Manager's private chapel behind the Plantation House was reconsecrated by Dussercle in 1933, as a stone set in the wall proclaims. The jail contained four cells. During Dussercle's second visit, three of these were occupied by two men, who had killed a donkey to use its skin for a drum, and a young woman who had been cheeky to a supervisor.

A typical labourer's hut was divided into rooms by partitions made of coconut fronds. In the sleeping quarters were straw mattresses, raised above the ground on short stilts. Tattered clothes were scattered on the floor or hung up by strings. The living room was plastered with picture postcards and greeting cards, often with representations of couples in amorous poses. On cheap shelves were knick-knacks, decorative plates and occasionally a cheap and scratchy gramophone. Finally, there were drums for use in dancing, which was presumably what the inhabitants of the jail had in mind for the wretched donkey's skin.

Sports days and picnics were part of island life when it came to holidays and other celebrations. Dussercle records a Christmas afternoon of donkey races, sack races, bobbing for pieces of bread on strings, tug of war and swimming competitions. Dances were also held to the music of accordions, mouth organs and a sort of one-stringed harp. A dance which gave Dussercle particularly grave cause for concern was that typical of the islands, the *Séga*. No doubt because of the Mozambican origin of many of the islanders, this dance seems to have come from central Mozambique, where a similar dance exists to this day.[6] It was regarded by Dussercle and other European visitors as a throwback to African roots and too wild and abandoned for civilized tastes, accompanied by wild drumming, stamping of feet and suggestive movements as well as generous infusions of rum. The dance, held around a fire on a beach or in a clearing, went on for several hours and became increasingly frenzied and reportedly often ended in fornication. The islanders were very attached to the dance. An attempt by a manager in the Salomons to ban *Séga*

in 1937 led to an insurrection. A more decorous version of the dance is still performed in Mauritius.

The *Séga* was not the only African survival which caused Dussercle concern. Distinctly non-Christian death ceremonies, intended to ensure that the ghost would not haunt the living, continued to be practised. Reports of these had cropped up before. In October 1886 a certain Louis Fidèle had been imprisoned for 'practising witchcraft in the Cemetery'. Dussercle described these practices as 'savage, barbarous and often bestial . . . such as one would only expect to find in the middle of Africa'. According to him the rites, which went on for eight days after the death, involved 'orgies, disgusting talk, witchcraft, casting spells, hellish invocations, devilish incantations, lascivious dancing, immoral getups, frenetic leaping off coconut trees on to the roofs of huts, and all accompanied by revolting acts committed on the corpse'.[6] Having given this lurid description Dussercle said that he was not prepared to give more detail in order not to shock normal sensibilities!

Dussercle made the Chagos his special field of labour and, despite suffering shipwreck with the *Diego* on Eagle Island in June 1935, continued to serve the inhabitants of Diego Garcia through periodic visits up to and during the Second World War. He also ministered to the military garrison stationed on Diego Garcia during the war and presided at the funerals of those soldiers who are buried at Point Marianne cemetery.

Dussercle loved the islands and their people. As he quoted on his departure, 'Partir c'est mourir un peu' (to leave is to die a little).[7] Many have felt the same on leaving Diego for the last time.

XI

Outpost of Empire: Diego Garcia and the Second World War

During the Second World War, as in the First, German raiders preying on allied merchant shipping entered the Indian Ocean from time to time. The pocket battleship *Scheer* sank ten ships in the first three months of 1941. The raider *Thor*, a disguised armed merchantman equipped with its own aeroplane, was active in the central Indian Ocean to the south of the Chagos from May to August 1942, but did not try to emulate the *Emden* by visiting Diego Garcia.

However, in early 1942 a threat of a different order began to develop from the East. In December 1941, shortly after the attack on Pearl Harbor, the sinking by Japanese aircraft of the battleship HMS *Prince of Wales* and the cruiser HMS *Repulse* in the South China Sea was followed by the fall of

Malaya, Singapore and the Netherlands East Indies (now Indonesia) in January to March 1942. Japanese armies also advanced through Burma to the gates of India and seized the Andaman Islands in the Bay of Bengal. The Indian Ocean was now wide open to Japanese naval attack, both surface and submarine.

In response to the Japanese threat, the British hurriedly developed a chain of naval and air bases and refuelling stations between Ceylon and the coast of Africa in early 1942. The huge natural harbour provided by Addu Atoll at the southern point of the Maldive Islands, about 400 miles north of Diego Garcia, was developed in conditions of great secrecy as an alternative base to Ceylon for the British Eastern fleet and was code-named Port T. If, as was feared at the time, the Japanese had invaded Ceylon, it is possible the fleet would have been forced to move farther south to Diego Garcia. As it was, steps were taken to provide defences for Diego Garcia which was given the code-name Port 2Y. Along with the Seychelles and Mauritius, Diego Garcia was to serve as a refuelling and minor base for naval craft and flying boats. A battery of 6-inch guns was installed on the north-west tip of the island to command the entrance to the lagoon. These guns can still be seen at Cannon Point.

We have a snapshot of life in wartime Diego Garcia because of an autobiographical book, *Only the Sun Remembers*, and a collection of poems, 'Military Honours', written by a young Scottish Royal Marine Captain, J. Alan Thompson, who served on the island in early 1942 to supervise the installation of the gun battery. Although Marines embarked on British ships no doubt visited the island from the eighteenth century onwards, the detachment commanded by Thompson was the first to be actually stationed on Diego Garcia. The two ex-naval guns which they installed were brought in a merchant ship, the SS *Clan Forbes*. There were inevitable accidents. A young sergeant was knocked overboard on to a landing craft and died of head injuries. His body was buried at sea. Thompson may have had this in mind in his poem 'War to the Atoll', where he wrote:

> . . . our once laughing friends
> Snug in their taut neat canvas shrouds,
> Tumble down green alleyways of weeds
> Gnawed by the passing shark . . . [1]

The guns were pulled to their positions by tractors and winched into place. During this process teeth in the winching gear slipped and a Marine Morris was struck severely on the forehead by an iron winching handle. Against the odds he survived this appalling injury after convalescence in the hospital at East Point. The Marines suffered from more banal afflictions, including prickly heat and intense skin rashes and blisters which rendered movement miserable and made them dream of the cold winds of Norway where they had served earlier in the war.

Homesick and separated from his newly married bride, Captain Thompson drew a rather jaundiced view of Diego Garcia, which he described as 'an empty fort in the sea desert . . . life years away from the world'. He complained of the heat – 'the sun burned nearer to the earth in Chagos' – and the tropical storms – 'squalls of ungovernable fury' drenching the 'hungry, shallow earth' – and the jungle – 'a useless maze of vegetation, the dense palm growth, weird bushes, the impenetrable thickets, the wooden walls of . . . banyan, the giant hardwood trees'.[2]

Thompson was scarcely more complimentary about the inhabitants who, in an echo of previous descriptions, he said were 'normally carefree, good humoured, rich in laughter; but unforeseeably vicious, sullen, heat-tempered [sic] and passionate, wildblooded, uncertain, vitriolic, ignorant. Dirty, guileless and cunning, pleasantly manageable or dangerously intractable, ready knived, cowardly, mob conscious'.[3] The women clearly disturbed him with their open sexuality. He described an encounter with women returning from the coconut plantations who, as would be said today, sexually harassed him by standing in his path and baring their breasts.

The Mauritian under-manager at East Point at this time was called Bertillon. According to Thompson, he was a

'Picasso man' and resembled a dirty white toadstool in his extraordinarily wide-brimmed sun helmet, which he wore day and night. Bertillon had not left the island for 14 years but dreamed of returning to Mauritius one day. He was on bad terms with the over-manager, Malbois, who lived at Point Marianne with two women, one described as his wife and the other as her sister.

Bertillon drove a Ford truck on the track which ran around the island, but the quickest way then to travel from East Point to Point Marianne was by boat across the lagoon.

Bertillon took the Marines out on a night expedition to look for edible crabs by the light of torches, duly terrifying them with talk of giant crustaceans which snapped like bulldogs. He also took them fishing in the lagoon and on the open sea, where tuna and shark were easily hooked. Thompson described Diego as:

> the fisherman's paradise; the incredible Valhalla where all lies come true, where the two exaggerating arms cannot span the fish he caught; where there is neither doubt nor hope but only the certainty of catching fish until his arm is tired or the line snaps . . . Fishing in paradise, in the kind waters of greedy and ignorant fish: dream fish, fish weighing ten, twenty, fifty, one hundred pounds.[4]

Clearly little has changed in this respect as regards fishing in Diego Garcia.

Unlike Father Dussercle, Thompson was able, thanks to Bertillon who was rewarded with bottles of whisky, to observe from concealment a fully-fledged *Séga*. The event took place under a full moon in a clearing to the north of East Point. By the light of the moon and a fire, the participants drank rum and then danced to the quickening beat of the drums with increasing frenzy and sensuality. Thompson left a graphic account:

> As if automatons awakened the scene gradually stirred into life, the toys moved stiffly in the shadows . . . The drums grew louder, quicker, the beat deepening to a wild urgency . . . slowly the rhythm and movement increased; the dancers' bodies glistened and shone in the heat . . . couples paired and danced together . . . They danced closer, their bodies touching, rubbing . . . The endless drumming now a drug, the blood of the living moment, burrowing into muscle and brain, throbbing in the body like an iron pulse, alive, dynamic.[5]

The upshot was very much as Father Dussercle had feared. One can imagine the effect on the lovelorn Marines, far from home.

Captain Thompson and his men left Diego Garcia in March 1942 without regret. However, in his poetry and book about his wartime experiences he left vivid descriptions of the island, some of which have been quoted in earlier chapters. The island was subsequently garrisoned by a mixed force of British, Mauritian and Indian troops. The guns were manned by men of the 1st and 25th Coast Batteries, Royal Artillery, recruited in Mauritius. Indian forces stationed on Diego Garcia included Pathans from the North West Frontier, Sikhs of the Bombay Grenadiers and Goan Pioneers. The graves of those who fell prey to diseases such as scrub typhus during their lonely vigil can be seen at Point Marianne cemetery. An annual Remembrance Service is still held on 11 November at Point Marianne. Captain Thompson left a vivid description of the funeral of one of these soldiers in his poem 'Military Honours':

> . . . the dead
> who passes in the breath defying heat,
> between the rigid, gasping trees,
> beneath a flag, and shaken by a lorry
> slowed for the damp uncaring feet
> that march with stolid step beside.
> Hard rifles glinting dully in the sun

> shirts dark with sweat, the lifting glare,
> each head annoyed because he died.[6]

Life was tough for the troops, with few pleasures, although Sergeant Fred Barnett, then a 21-year-old fitter in the Royal Artillery remembers some lighter moments, with his comrades and his pet Maltese poodle Charlie: the brewing of home-made beer, the 'windfall' of bottles of gin buried on the beach at East Point (where they may still lie), and the incident in which the only two military trucks on the island managed to collide on the island's only road.[7]

A detachment of Royal Air Force Catalina flying boats was also stationed on Diego Garcia during the Second World War. The Catalina was a versatile aircraft used for maritime surveillance and attack, the forerunner of the P3s and Nimrods which now frequent the island. It had long endurance, being able to operate within a range of 4000 miles for $17^1/_2$ hours without refuelling. It carried three machine guns and a 2000 lb bomb load. It was a Catalina which spotted the same Japanese fleet whose aircraft had raided Pearl Harbor, on its way to mount a surprise attack on British naval bases in Ceylon in early April 1942. With the warning provided, the British air defences were able to give the Japanese a bloody nose and the surface threat receded, although Japanese submarines and surface raiders continued to range widely in the Indian Ocean.

The 29th Advanced Flying Boat base on Diego Garcia was at East Point, where there was also a wireless and a weather station. These buildings still stand. Detachments from both Nos 205 and 240 Squadrons RAF, based in Ceylon, were sent to East Point. According to the Operations Record Book of No. 205 Squadron RAF in July 1944, the 'facilities at Diego Garcia are still very inadequate; insufficient personnel, insufficient marine craft and bad living conditions'. As regards the last there were 'no recreational facilities, the billets for NCOs were without lights, flies and mosquitoes abound and conditions are not ameliorated by the existence in the camp area of a copra yard and donkey stables'. The 'reluctant and

inefficient ministrations of a creole cook' did not help.[8] A visit by a Royal Navy frigate, and gin and tonics in its ward room, helped to raise spirits. Later, however, improvements were wrought including spraying against mosquitoes, the organisation of an operations room with plotting and situation boards, and the arrival of stores on a large Sunderland flying boat. The main role of the Catalinas on Diego Garcia was hunting for enemy submarines, searching for survivors from sunken merchant vessels and collecting meteorological data. There were also exercises familiar to present-day flyers; night circuits and landing, and bombing practice against floating targets.

A very tangible relic of the Royal Air Force presence on Diego Garcia is the remains of a Catalina which can be seen on the beach north of East Point pier, still well preserved nearly 50 years later because of its aluminium construction. Cyclones are very rare in the Chagos which lie between the southern cyclone belt which periodically devastates Mauritius and Rodrigues and the more northerly Indian Ocean cyclone belt. However, occasionally a maverick cyclone strikes the Archipelago. In 1901 a visiting official reported:

> I had always heard that no cyclone ever passed the neighbourhood of the Chagos Group but while I was at Diego Garcia we felt the effects of a very strong one which passed south of us, the barometer falling to 29.5. The wind blew very hard and squalls were very strong, one thousand to fifteen hundred coconut trees were destroyed.[9]

The same happened on the night of 15/16 September 1944. Forty miles per hour winds began to lash the island. There were four Catalinas at East Point at the time, two from 205 Squadron and two from 240 Squadron. As the winds rose in the course of the night, the two 240 Squadron aircraft broke from their moorings, and by dawn they were beached on the shore. The seaplane tender also beached and several other support craft sunk. In the course of the morning the two

other aircraft from 205 Squadron began to drift and efforts to rescue the guards on board failed when the refuelling craft foundered and sank in the rough seas. Working in driving rain and sand and with debris from collapsing buildings blowing around them, Flying Officer Usherwood and Sergeant Gregory set out in the only craft that remained, a rowing dinghy, and managed to save those on board the Catalinas still afloat. The wind now veered and threatened to throw one of these on the pier. While all attention was concentrated on averting this disaster, one of the beached Catalinas swung beam on to the tide and was irreparably damaged by a palm tree. There it lies to this day. Several generations of island children must have played in the shell, imagining they were piloting a plane. Ironically enough, another of the infrequent storms that hit Diego Garcia chose to do so in September 1990, causing serious disruption to tented accommodation and stores when the United States Air Force was deploying to the island in connection with Operation Desert Storm.

Diego Garcia was never directly attacked during the Second World War, although dramatic events took place all around it, including the British landings in Madagascar in May 1942 to prevent its use by Japanese submarines. British forces were withdrawn from Diego Garcia after the Japanese surrender in South East Asia to Lord Mountbatten at Singapore on 12 September 1945. A visitor a few years later, F. D. Ommanney, wrote that it was strange to see what used to be the Operations Room at East Point with a large operational map still in place on the wall, RAF emblems and pin-up girls ogling at nothing in the dusty heat.[10] The nearest remaining British base in the area was 400 miles to the north at Gan at the southern tip of the Maldives, until the withdrawal of the RAF station there in 1976.

XII

The End of an Era

Sources of information about Diego Garcia become more vivid during the period between the end of the Second World War and the final closure of the plantations in 1971. In addition to written accounts, there are now numerous photographs and even a colour movie film. As a result we can form a clear view of life on the island as the plantation era drew to a close. Obviously the pattern of life had still changed little since the nineteenth century, an amazing and perhaps unique survival of 'Gone with the Wind' plantation life.

Sir Robert Scott was Governor of Mauritius and visited Diego Garcia as part of a wider tour of inspection of the 'Oil Islands' in October 1955. What might have been simply a routine chore by a senior Colonial Office official produced a minor literary masterpiece. Scott was clearly enchanted by the islands and some years later transformed the diary he had kept and the observations he had jotted down into *Limuria*, a masterly and beautifully written survey of their history and their then state.

Scott arrived at Diego Garcia in the corvette HMS *Killisport*. East Point Plantation was at the peak of its development, set in a crescent of lawns and flowering shrubs. Scott described

East Point as having 'the look of a French coastal village, miraculously transferred whole to this shore',[1] with the manager's *château*, the chapel, white-washed buildings, thatched cottages and even lamp-standards all grouped around a village green. A substantial portion of the then 680 population of the island turned out on the pier to welcome him, waving Union Jacks and creating a fête-like atmosphere. The visit of the Governor was a major event.

According to Scott, for every human being there was at least a score of other creatures, chickens, ducks, dogs, cats, donkeys, horses, pigs. And for each creature there were thousands of flies, which could blanket a horse to the extent of transforming it into a piebald. The smell of drying copra was everywhere. As Scott observed:

> the principal characteristic of Diego Garcia is a prodigal fecundity, with the useful forms of life continually under pressure from the useless. The vegetation thrusts, sprawls, creeps, intertwines and shoots upward and sideways.[2]

(This vegetable vigour is the bane of efforts currently under way to preserve the East Point Plantation in a recognisable form.) Among the trees acrobatic rats disported themselves like squirrels.

In Scott's day, there was a motorable track both up to Barton Point and round the bottom of the island. There were a number of hamlets scattered around both arms of the island with now forgotten names and even locations. To the north of Minni Minni were Balisage, Camp du Puits and North East Camp; between East Point and Point Marianne lay Barochois, Roches Pointes, and Port Dumoulin; and to the north of Point Marianne, Noroit. Scott describes the islanders as dour and hard-headed compared with those of the other 'Oil Islands'. Like their present-day successors in Diego Garcia, they played soccer with an obvious and noisy consciousness that the match was for real and in earnest.

There had been some diversification of production on the

island. Dried fish, and timber from the large hardwood trees such as the takamaka, were exported. And from the mid-1950s guano for fertiliser was dug at the north-west end of the island, carted to the shore by tractors, and loaded on to a ship by barge. Maize, or Indian corn, was also grown on quite a large scale.

But exploitation of the coconut continued to provide the staple crop. Seven thousand nuts were needed to produce 1 ton of copra which in turn produced 11 hundredweight of crude oil. The film referred to above was made by the Colonial Film Unit, probably during Scott's visit. In scenes remarkably reminiscent of Bourne's account a century before, it shows in colour what was essentially an eighteenth- and nineteenth-century plantation society functioning in the middle of the twentieth century. The labourers are seen collecting fallen coconuts which they speared with cutlasses and tossed with great skill and rapidity into large baskets carried on their heads. As in Bourne's day the coconuts were then husked among the coconut groves on a stake-like device stuck in the ground. From there the nuts were taken by donkey and horsedrawn carts to East Point where women were waiting to break them into pieces with pestles and then, with the help of children, to chop them into even smaller bits. These were then spread out to dry on large concrete beds which, in the event of rain, could be covered in a matter of moments by corrugated-iron shelters on wheels. Finally, the copra was dried in hot-air chambers heated from below by burning coconut husks. Most of the dried copra was then exported by boat to Mauritius for the extraction of oil for cooking and soap. However, a small amount of oil for local needs was produced on the spot in a primitive mill composed of a beam in a large metal drum propelled by donkey power. These mills can still be seen at East Point. What was left over after the oil had been extracted was known as 'poonac' and was fed to pigs and poultry.

The same film also shows a weather balloon being released at the meteorological station at East Point, still a key element in particular for cyclone forecasting in that pre-satellite age.

The film gives a glimpse of the range of physical types among the islanders, from African to Malagasy to Creole, as they went about their work, propelling punt-like craft in the lagoon with long poles, and hanging up octopuses to dry to provide a culinary feast.

Neither the islanders nor indeed Scott could have had any inkling that the plantation era was soon to end, although his book contains some prophetic remarks about the artificial nature of the small society on Diego Garcia and the uncertainty of its long-term viability. The imbalance in sexes, with women in a distinct minority, and a low birth-rate characteristic of marginal populations, persisted. The drift away from the island to the bright lights and wider prospects of Mauritius was quickening. The population fell by 50 per cent between 1952 and 1962. As a result, labour to help work the plantations had to be imported from the Seychelles. By the mid-1960s imported labour outnumbered those born in Diego Garcia by two to one. Previously in the history of the Chagos Group, other islands had been abandoned as a result of commercial decisions; Three Brothers in the 1850s and the Egmonts and Eagle Island as recently as the 1930s. The events soon to take place on Diego Garcia were therefore by no means unprecedented.

Dependent on a single major staple crop, the plantation economy on Diego Garcia was in any case vulnerable and its future doubtful. By the early 1960s, the copra industry was in serious decline world-wide. As Scott put it:

> a population was drafted to the lesser Dependencies in the first place because there was work for it there. It moved from group to group as opportunities for paid work expanded and contracted. It was not a natural island society, and even today [1960], it shows little inclination to exploit the natural bounties of the island.[3]

Certainly no community could have survived the closure of the plantations. So even had the outside world not again projected itself into the islands, the long-term continuance

of the way of life there must have been in doubt. History sadly shows a catalogue of such evacuations elsewhere in the world; St Kilda in the North Atlantic off the Scottish coast for example, and perhaps eventually Pitcairn in the Pacific.

Annex 105

Fisheries and Marine Resources Act 1998

THE FISHERIES AND MARINE RESOURCES ACT 1998

Act No. 22 of 1998

Proclaimed by [Proclamation No. 22 of 1999] w.e.f 20.11.1999
Part III shall come into operation on 1.5.2000

Repealed by [Act No. 27 of 2007]

I assent

24th December 1998 — **C. UTEEM**, *President of the Republic*

ARRANGEMENT OF SECTIONS

Section

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An Act

To provide for the management, conservation, protection of fisheries and marine resources, and protection of the marine ecosystems

ENACTED by the Parliament of Mauritius, as follows —

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Fisheries and Marine Resources Act 1998.

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2. Interpretation

In this Act—

"accessory" means any equipment used on a boat or vessel;

agent" means a person in Mauritius who is —

(a) appointed by an owner or operator of a vessel operating under a licence issued under this Act; and

(b) authorised to receive, and capable of responding to, any legal process issued in Mauritius against his principal;

"bait gear" means a gear used for catching fish to be used as bait on such terms and conditions as the Permanent Secretary may approve and bearing an approved identification mark;

"barachois" means a pond —

(a) within or adjacent to the sea, and
(b) enclosed by a weir or dam through which the sea flows and reflows;

"boat" means a raft or watercraft not exceeding 20 metres in length overall used, intended to be used and capable of being used for fishing;

"canard net" means a net—

(a) which is used in conjunction with a large net for catching mullets; and
(b) which does not exceed 100 metres in length and *5* metres in width; and
(c) which is made by several layers of nets fitted with poles to maintain the whole net afloat on the surface of the water; and
(d) the meshes of any of the layers of which measure not less than 9 centimetres when stretched diagonally;

"carlet net" means a net—

(a) in the shape of a bag with meshes of any size; and

(b) the mouth of which is kept open by a hoop not more than one metre in diameter;

"continental shelf' means the continental shelf of Mauritius;

"explosive" has the same meaning as in the Explosives Act;

"fish" means —
(a) an aquatic organism, other than a bird; or

(b) a shell or a coral;

"fish aggregating device" means —

(a) a device placed in water to attract fish; or

(b) an object which floats naturally; and to which a device has been placed to facilitate its location;

"fish product" means

(a) an aquatic organism or part of an aquatic organism; or

(b) any fresh, prepared, processed or frozen fish products;

"fish farm" means a pond, tank, barachois, a fish hatchery or any other place —

(a) where fish farming or fish culture is carried out; and

(b) which has been approved as such under section 10;

"fishing" —

(a) means—
(i) catching;
(ii) collecting;
(iii) killing; or
(iv) destroying,
a fish by any method; and

(b) includes —
(i) searching for fish for the purpose of catching, killing or destroying the fish;
(ii) placing, searching for or retrieving a fish aggregating device;

"fish landing station" means an area so prescribed under section 23 (1);

"foreign boat" means a boat which —

(a) is engaged in fishing; and

(b) has not been registered under section 42;

"foreign vessel" means a vessel other than a Mauritian vessel;
"gear" means a net, a line, a hook, a lure, or a device used for fishing;

"gill net" means a net which —

(a) is set for catching fish;

(b) does not exceed 250 metres in length and 2.5 metres in width; and

(c) is made up of square meshes measuring not less than 11 centimetres when stretched diagonally;

"identification mark" means a mark assigned to a net or fishing boat or gear by the Permanent Secretary;

"implement" means a device used or intended to be used for fishing;

"landing net" means a net in the form of a bag having —

(a) meshes of any size;

(b) hoop measuring not more than 50 centimetres in diameter and fitted with a handle;

"large net" means a net which —

(a) does not exceed 500 metres in length and 2.5 metres in width; and

(b) is made up of square meshes measuring not less than 9 centimetres when stretched diagonally;

"Mauritian vessel" means a vessel which is wholly owned by —

(a) the State of Mauritius; or

(b) a statutory corporation in Mauritius;

(c) one or more persons who are citizens of Mauritius;

(d) a company, society or other association —
(i) incorporated or established under the laws of Mauritius; and
(ii) of which at least 50 percent of the shares carrying voting rights are held by the State of Mauritius, a statutory corporation or a citizen of Mauritius;

"Mauritius waters" includes —

(a) the territorial waters;

(b) the exclusive economic zone; and

(c) areas where Mauritius has traditional or historic rights as may be determined under the Maritime Zones Act;

"Minister" means the Minister to whom the subject of fisheries and marine resources is assigned;

"net" means a net which is used or intended to be used for fishing;

"officer" means—
(a) a Fisheries Officer;
(b) a Police Officer;
(c) a National Coast Guard Officer;
(d) a Customs Officer;
(e) a Forest Officer;
(f) a Health Inspector;
(g) a Veterinary Officer;
(h) an Enforcement Officer of the Ministry of Industry and Commerce; or
(i) a person appointed by the Permanent Secretary;

"operator" means —

(a) the master or other individual on board a vessel who is in charge of that vessel; or

(b) the person in charge of a boat;

"ornamental fish" means live fish kept in an aquarium, a tank, pond or a container for decorative or display purposes and not intended for release;

"owner" in relation to a vessel —

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(a) means a person who owns the vessel; and

(b) includes —
(i) a charterer, whether bareboat, time or voyage; and
(ii) a person who acts in the capacity of a charterer; (iii) a party upon whom control over the destination,
function or operation of the vessel is conferred
under a management agreement or a similar agreement;

"pass" means a passage through the reefs and includes the entrance to any harbour, bay or creek;

"pocket net" means a net —

(a) not exceeding 15 metres in length and 12 metres in width;

(b) with 2 arms not exceeding 10 metres each;

(c) which is made up of square meshes measuring not less than 9 centimetres when stretched diagonally; and

(d) which is used in conjunction with a large net;

"poisonous substance" means any substance likely to kill, stun or injure any fish or damage or pollute aquatic ecosystems;

"related activity" in relation to fishing, means the operation of a mother ship or vessel in conjunction with fishing operations in order to —

(a) receive, handle, process, store or transport catches; or

(b) refuel or supply fishing vessels; or

(c) support fishing operations;

"sell" includes —
(a) hawk;
(b) expose for sale;
(c) keep for sale;
(d) offer for sale; and
(e) convey or consign for the purpose of sale;

"shrimp net" means a net in the form of a bag not exceeding 2 square metres

which—

(a) is used for catching shrimps; and

(b) is fitted with a hoop measuring not more than 50 centimetres diametrically or diagonally; or

(c) is mounted on 2 handles and fitted with weights;

"territorial waters" means the territorial waters of Mauritius as defined in the Maritime Zones Act;

"toxic fish" means a fish listed in the Schedule;

"undersized fish" means a fish the size of which is less than the size prescribed for that species of fish;

"underwater fishing" means fishing by diving or with the of a snorkel, flippers, goggles or similar equipment;

"vessel" means a vessel used for fishing other than a boat;

"wetland" —

(a) means an area of marsh whether —
(i) natural or artificial; or
(ii) permanently or temporarily with water which is static or flowing, brackish, or salty; and

(b) includes areas of marine water.

PART II
MANAGEMENT OF FISHERIES AND MARINE RESOURCES

3. Consultative Committees

(1) The Minister may set up such Consultative Committees as he thinks fit —
(a) for discussions and advice on matters of general policy relating to fisheries and marine resources;
(b) for inquiring into matters relating to fisheries and marine resources.

(2) A Consultative Committee shall consist of—
(a) the Minister, who shall be the Chairperson;

(b) such other person as the Minister may appoint.

(3) Where the Minister is unable to attend a meeting of the Consultative Committee, he shall designate a member to chair the meeting.

(4) The Chairperson of a Consultative Committee may co-opt at a meeting any person who, in his opinion, may assist the Committee on the subject under deliberation at that meeting.

(5) No member of the Consultative Committee, other than the representative of a Ministry, shall be deemed to hold a public office by virtue only of his appointment as member.

(6) A member of the Consultative Committee shall be appointed by the Minister on such terms and conditions as he may determine.

4. Production of information —

(1) The operator of —

(a) a boat measuring more than 10 metres in length; or

(b) a vessel,

shall keep a record in such form as may be approved by the Permanent Secretary.

(2) An officer may require the operator of a boat or vessel to produce such information as he may require for the-purposes of this Act.

(3) Where an operator is required to produce any information under subsection (2), the operator shall submit the information to the officer in an approved form.

(4) Where the operator of a foreign vessel is required to submit information under subsection (2) and that information is not readily available, the operator shall submit an undertaking on an approved form to that effect.

(5) Where an undertaking has been given under subsection (4). the officer shall forward the undertaking to the agent.

(6) The agent shall, within 15 days of receipt of the undertaking, submit the information to the Permanent Secretary on an approved form.

(7) An officer who receives any information under this Act shall not use or disclose those information except for the purposes of this Act.

(8) The Minister may by regulations exempt the operator of a boat of a length of less than 10 metres from the provision of this section.

(9) Any person who contravenes subsection (1) shall commit an offence.

5. Registration of fishermen

(1) Every fisherman shall be registered with the Permanent Secretary.

(2) A fisherman wishing to register himself under subsection (1) shall make an application to the Permanent Secretary in such form as may be approved.

(3) Where an application is made under subsection (2), the Permanent Secretary may register the fisherman subject to such terms and conditions as he may determine.

(4) The Permanent Secretary shall issue to a fisherman registered under this section—

(a) a Fisherman Registration Card;
(b) a Fisherman Continuous Record Book;
(c) a Trainee Fisherman Continuous Record Book; or
d *(d)* such other document as the Permanent Secretary deems fit.

6. **Protection of the aquatic ecosystem**

(1) No person shall place, throw, discharge or cause to be placed, thrown or discharged into Mauritius waters or into a river, lake, pond, canal, stream or tributary any poisonous substance.

(2) No person shall cut, remove, damage or exploit a mangrove plant or part of a mangrove plant except with the written approval of the Permanent Secretary.

(3) No person shall place, construct or cause to place any structure within Mauritius waters except with the written authorisation of the Permanent Secretary.

(4) Any person who contravenes subsection (1), (2), or(3) shall commit an offence.

7. Marine protected areas

(1) Notwithstanding the Wildlife and National Parks Act 1993, the Minister may by Proclamation declare —

(a) an area of Mauritius waters including the seabed underlying such waters;

(b) any land associated with Mauritius waters; or

(c) any wetland,

to be a Marine Protected Area.

(2) A Marine Protected Area may be designated as—

(a) Fishing Reserve;

(b) a Marine Park; or

(c) a Marine Reserve.

(3) The Minister may by regulations, prescribe measures for the protection, conservation and management of a Marine Protected Area, including —

(a) the prohibition of certain activities;

(b) the carrying out of certain activities subject to certain conditions;

8. Marine Protected Area Fund

(1) There is established for the purposes of this Act a Marine Protected Area Fund.

(2) The Permanent Secretary shall be responsible for the management of the Fund.

(3) The Fund shall consist of —

(a) such sums of money as may be appropriated by the National Assembly for any of the purpose of this Act;
(b) any grant or donation made to the Fund;
(c) the proceeds of sale of any produce;
(d) any money that is payable under this Act including all fees, rent and other charges arising from the authorised use of the marine parks and reserves;
(e) any fee payable in respect of the use of marine resources other than fishing.

(4) The assets of the fund shall be applied towards the payment of expenses which may be incurred in the management of a Marine Protected Area.

9. Conservation measures

(1) The Minister may by regulations prescribed measures for the protection, conservation and management of fisheries and marine resources including —

(a) the prohibition of fishing by certain means, in certain areas and or during certain periods;

(b) the prohibition of fishing of a specific —

(i) species;

(ii) size; or

(iii) gender,

of fish;

(c) conditions to be attached to possession, manufacture, purchase of any gear;

(d) schemes for setting and allocation quotas and for limiting entry into all or specified fisheries;

(e) the prohibition of an activity likely to disturb the marine ecosystems and habitats.

(2) Any person who fails to comply with any regulations made under subsection (1) shall commit an offence.

PART III - FISH FARMING

10. Fish farming

(1) No person shall run a fish farm unless he has an authorisation from the Permanent Secretary.

(2) A person who wishes to run a fish farm shall make an application to the Permanent Secretary in an approved form.

(3) The Permanent Secretary may approve the application on such terms and

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conditions as he deems fit subject to the applicant being granted, where applicable, an Environment Impact Assessment licence under the Environment Protection Act 1991.

(4) Any person who contravenes subsection (1) shall commit an offence.

11. Registration of fish farm

(1) The owner or lessee of a fish farm shall cause it to be registered with the Permanent Secretary and shall, for the purposes of the registration, provide to the Permanent Secretary —

(a) a full description of the fish farm;

(b) the name of the operator; if any; and

(c) such other particulars as the Permanent Secretary may require.

(2) A person, who is a party to a sale or transfer of a fish farm shall, within 14 days after the sale or transfer, give notice of the sale or transfer to the Permanent Secretary.

12. Exemptions

The Minister may, by regulations, provide for the exemption of any fish farm from the requirement of sections 1O and 11 depending on the size and scale of the fish farm.

13. Fishing in fish farms

(1) No person shall fish in any fish farm unless authorised to do so in writing by the owner or lessee.

(2) Notwithstanding section 30(l), the Permanent Secretary may, under such terms and conditions as he may think fit, authorise the use of any net or implement for fishing in a fish farm.

(3) Any person who contravenes subsection (1) shall commit an offence.

14. Management of barachois

(1) The Permanent Secretary may direct the lessee of a barachois to take measures, in accordance with fish farming practices, for the purpose of improving the yield in a barachois.

(2) The lessee of a barachois shall implement any measure which he is directed to take under subsection(1).

15. Disease outbreak

(1) Where there is an outbreak of disease in a fish farm, the owner or lessee of the fish farm shall within 24 hours of the outbreak inform the Permanent Secretary of such outbreak.

(2) The Permanent Secretary may direct the owner or the lessee to take such measures he considers appropriate to control the outbreak and prevent further spread of the disease.

(3) Where the Permanent Secretary is satisfied that a fish farm has been affected by a disease, the Permanent Secretary may direct the owner or lessee to—

(a) remove and destroy any fish affected by the disease.

(b) disinfect the fish farm; and

(c) take such other measures as may be required.

PART IV

CONTROL OF FISHING ACTIVITIES

16. Prohibited fishing methods

(1) No person shall —

(a) fish with a gunny bag, canvas, cloth, creeper leaf or herb

(b) fish with lime or poisonous substance, a speargun or an explosive;

(c) have in his possession or control an article mentioned in paragraph (a) *or(b)* for the purposes of fishing;

(d) have in his possession any speargun or part thereof except with the approval of the Permanent Secretary;

(e) land, sell or have in his possession any fish which he knows or has reason to believe has been caught by—

(i) one of the means or methods set out in paragraphs (a) and *(b);* or

(ii) any other illegal means.

(2) Where an article specified in paragraph (1) (a) and *(b)* is found on board a fishing boat or vessel, it shall be presumed to be intended for use for fishing.

(3) Any person who contravenes subsection (1) shall commit an offence.

17. Prohibition of underwater fishing

(1) Subject to subsection (2), no person shall carry out underwater fishing without the written authorisation of the Permanent Secretary.

(2) The Permanent Secretary shall not authorise underwater fishing except —

(a) for scientific purposes; or
(b) for the purpose of catching ornamental fish; and
(c) in accordance with such terms and conditions as may be determined by him.

(3) Any person who contravenes subsections (1) and (2) shall commit an offence.

18. Close periods

(1) No person shall fish with, or have in his possession at sea—

(a) a large net or a gill net from 1 October in a year to the last day of February of the following year:
(b) a canard net from —

(i) 1 May to 31 July in a year;

(ii) 1 October in a year to the last day of February of the following year.

(2) Subject to subsection (1), no person shall fish with or have in his possession at sea —

(a) a large net or canard net between 1800 hours and 0600 hours; (

(b) a gill net between 0600 hours and 1800 hours.

(3) Subject to subsection (4) no person shall —

(a) fish oysters; or

(b) have in his possession fresh oysters,

from 1 October in a year to the last day of March of the following year.

(4) Subsection (3) does not apply to oysters which are —

(a) caught in a fish farm; or

(b) imported for sale.

(5) Any person who contravenes subsections (1), (2) and (3) shall commit an offence.

19. Protection of fish

(1) Subject to subsection (2), no person shall fish —

(a) an undersized fish;

(b) any crab or lobster in the berried state; or

(c) a turtle, turtle egg or a marine mammal.

(2) The Permanent Secretary may authorise the catching of-

(a) any fish specified in subsection (1) or turtle eggs for scientific, reproductive, or any other purpose beneficial to the community;

(b) undersized fish by the owner or lessee of a barachois or fish farm for stocking the barachois or fish farm;

(c) undersized fish specified in the Schedule for use as bait.

(3) Any person who contravenes subsection (1) shall commit an offence.

20. Restriction on landing and sale of fish

(1) Subject to subsection (2), no person shall land, have in his possession for purposes of sale or supply, or sell or offer for sale —

(a) any toxic fish or any part thereof;
(b) any fish, or fish product, which is unfit for human consumption;
(c) any turtle whether dead or alive, or part of a turtle, turtle eggs, stuffed turtle;
(d) any marine mammal or part of a marine mammal;
(e) any undersized fish;
(f) any crab or lobster in the berried state.

(2) The Permanent Secretary may issue prior authorisation the capture and landing of any fish specified in subsection (1) (a) to (1) *(e)* for scientific purposes.

(3) Where an officer is satisfied that subsection (1) has been contravened, he shall order the items the subject matter of the contravention to be forfeited.

(4) Where an officer is satisfied that any fish which is being sold or offered for sale or supplied is unsuitable for human consumption he shall order the fish to be seized and destroyed.

(5) The owner of any fish forfeited under subsection (3) or destroyed under subsection (4) shall not be entitled to any compensation.

(6) Any person who contravenes subsection (1) shall commit an offence.

21. Fishing with the aid of artificial light

k

l (1) Subject to subsection (3), no person shall fish
m with the aid of any artificial light except with
n the approval of the Permanent Secretary.

(2)_ The Permanent Secretary shall not issue an authorisation except-

(a) to the owner or lessee of a fish farm for the purpose of fishing in the fish farm;
(b) for the purpose of catching undersized crabs to stock a barachois or fish farm under such terms and conditions as may be specified in the licence;
(c) for the purpose of catching fish to be used as bait, the quantity of which shall not exceed such amount as may be specified in the licence;
(d) for the purpose of catching shrimps with a shrimp net.

(3) A person may fish with artificial light within a barachoisor fish farm of which he is the owner or lessee or with the permission of the owner or lessee.

(4) Any person who contravenes subsection (1) shall commit an offence.

22. Fishing in pass

(1) No person shall

(a) make use of a net in a pass, or

(b) place in a pass any object likely to cause obstruction to navigation,

Any person who contravenes subsection (1) shall commit an offence.

23. Fish landing station

(1) The Minister may prescribe an area near the shore as a fish landing station.

(2) No fisherman shall land fish at a place other than a fish landing station.

(3) Any person who lands fish at a fish landing station shall-

(a) where requested by an officer, cause the fish to be weighed;

(b) keep and store the fish in such a manner and at such a place as an officer may direct; and

(c) not expose the fish to rain, sun or flies or other unhygienic conditions.

(4) Any person who contravenes subsection (2) or (3) shall commit an offence.

24. Origin and sale of fish

(1) A person found in possession of fish shall, on being required to do so by an officer, furnish the officer with particulars of the origin or source of the fish.

(2) Subject to subsection (3), no person shall sell or have in his possession for sale any fish unless he holds a fishmonger'slicence.

(3) Subsection (2) shall not apply to a fisherman who sells fish at a fish landing station.

(4) No person shall purchase fish from a fisherman for the purpose of sale at a place other than a fish landing station.

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(5)No fishmonger who purchases fish from a fisherman shall refuse to sell fish at a fish landing station.

(6) Any person who contravenes subsection (2), (4) or (5) shall commit an offence.

PART V
RESTRICTION ON IMPORT AND EXPORT

25. Restriction on importation of fish and fish products

(1) No person shall import into Mauritius any fish or fish product except with the approval of the Minister on such terms and conditions as he may determine.

(2) No person shall import into Mauritius any turtle egg, marine mammal or part of a turtle whether dead or alive or stuffed.

(3) Where an officer is satisfied that any fish or fish product which has been imported is unsuitable for human consumption, he shall cause the fish or the fish product to be forfeited and destroyed.

(4) The owner of any fish or fish product destroyed under subsection(3) shall not be entitled to any compensation.

(5) Any person who contravenes subsection (1) or (2) shall commit an offence.

26. Import of live fish

(1) Notwithstanding subsection 25 (1), the Minister may authorise the importation into Mauritius of fish intended for release or for ornamental purposes.

(2) No fish imported under subsection (1) shall be released except with the written approval of the Permanent Secretary.

(3) The Permanent Secretary shall not give his approval under subsection (2) unless the fish has been kept under observation and control for such period and on such terms and conditions as he thinks fit.

(4) Where the Permanent Secretary is satisfied that any fish which has been introduced into Mauritius is unsuitable for the purpose of release or for ornamental purposes, he may order the fish to be forfeited and destroyed.

(5) The importer of any fish destroyed under subsection (4)

shall not be entitled to any compensation.

(6) Any person who contravenes subsection (2) shall commit an offence.

27. Export of fish and fish products

(1) No person shall export from Mauritius any fish or fish product except with the approval of the Minister.

(2) No person shall handle, store or process any fish or fish product for the purpose of export except wit the approval of the Permanent Secretary.

(3) An approval under subsection (I) or under subsection (2) may be granted subject to such terms and conditions as may be determined by the Minister or the Permanent Secretary, respectively.

(4) Any person who contravenes subsection (1) or (2) shall commit an offence.

28. Restriction on importation and manufacture of implement

(1) No person shall manufacture, import, sell or supply any article specified in subsection (2) except with the approval of the Permanent Secretary.

(2) Subsection (1) shall apply to —

(a) a net or part of a net;

(b) an implement or part of an implement other than a basket trap, a fish spear, a hook, a line, a rod, a reel and a lure.

(3) A licensee under subsection (1) shall —

(a) keep a register in which he shall forthwith enter particulars of every sale or purchase of nets made by him including—

(i) the name and address of every seller or purchaser of nets;
(ii) the description, measurement and number of nets sold or purchased by him;

(iii) the number and date of issue of the licence held by the seller or purchaser of nets;

(b) not later than 14 days after any sale or purchase of nets, submit to the Permanent Secretary, in writing, the particulars specified in paragraph *(a)*.

(4) Any person who contravenes subsection (1) or (3) shall commit an offence.

29. Import of fishing vessel

No person shall import into Mauritius any fishing vessel or boat for purposes of fishing except with the approval of the Permanent Secretary on such terms and conditions as he may determine.

PART VI
LICENSING

SUB-PART A

NETS AND IMPLEMENTS

30. Licences

(1) Subject to subsection 13 (2), no person shall, without a licence, use or have in his possession —

(a) a bait gear;

(b) a canard net;

(c) a gill net;

(d) a large net;

(e) a basket trap; or

(f) a shrimp net.

(2) Notwithstanding subsection (1), no licence shall be required in respect of the basket trap which has meshes of a size which allows a cylinder measuring not less than 4 centimetres in diametre to pass through.

(3) Any person who contravenes subsection (1) or (2) shall commit an offence.

31. Application for licence

(1) A person who wishes to operate a gear or implement for which a licence is required under section 30(1) shall make a written application to the Permanent Secretary.

(2) Upon receipt of an application under subsection (1), the Permanent Secretary may request the applicant to furnish such particulars as he may think fit.

(3) Where the Permanent Secretary is satisfied that a licence may be issued, he may, subject to subsection *(5)*, issue the licence on payment of the prescribed fee.

(4) A licence issued under subsection (3) shall —

(a) be in the prescribed form; and

(b) be subject to such terms and conditions as the Permanent Secretary thinks fit.

(5) The Permanent Secretary shall not issue to any person a licence for a large net and a gill net concurrently.

32. Limitation on number of licences

(1) Subject to subsection (2), the Permanent Secretary shall not at any time licence the use of more than—

(a) 10 large nets, 10 canard nets, 10 gill nets and 100 shrimp nets in the lagoon of the island of Mauritius;

(b) 8 large nets, 8 canard nets and 15 shrimp nets in the lagoon of the island of Rodrigues;

(c) 2 large nets in the lagoon of the island of Agalega.

(2) Where a person, who is the holder of a licence at the commencement of this Act applies, on the expiry of the licence, for a licence under this Act, the Permanent Secretary may grant the licence notwithstanding that the limits specified in subsection (l) may thereby be exceeded.

(3) A licensee shall, on demand, produce to an officer any licence issued to him under this Act.

33. Licence not transferable

(1) A licence issued under Sub-Part A of Part VI shall not be transferable.

(2) Where a licensee —

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(a) dies; or

(b) in the case of a body corporate, the body corporate is wound up,

the licence shall lapse, and any fishing net in respect of which the licence was issued shall forthwith be surrendered to the Permanent Secretary for safe keeping until disposal.

34. Possession of unauthorised or prohibited implements

(1) No person shall have in his possession a net or an implement which is intended to be used for fishing and for which no licence has been issued by the Permanent Secretary.

(2) Where an implement —

(a) for which a licence is required and for which no licence has been issued; or

(b) which is prohibited from use for fishing,

is found on board a fishing boat or vessel or vehicle, it shall be presumed to be intended for use for fishing.

(3) Subsection(1) shall not apply to a licence holder licensed under Sub-Part B of Part VI of this Act.

(4) Any person who contravenes subsection (1) shall commit an offence.

35. Duties of licensee of a net

The licensee of a net shall—

(a) keep or store the net in such place as may be approved by the Permanent Secretary;

(b) on demand, produce the net or indicate its location to any officer;

(c) report to the Permanent Secretary any damage to the seal or identification;

(d) surrender the net to the Permanent Secretary upon the expiry or revocation of his licence.

36. Disposal of licensed nets

(1) No licensee shall dispose of any licensed net or part thereof without the written approval of the Permanent Secretary.

(2) No licensee shall replace any licensed net or part thereof unless —

(a) the net has become unserviceable;

(b) the net is surrendered to the Permanent Secretary; and

(c) the Permanent Secretary approves the replacement in writing.

(3) The Permanent Secretary may cause to be destroyed any net which is surrendered to him under subsection 2 *(b)*.

SUB-PART B - **BOAT AND VESSEL**

37. Licence issued to foreign vessel engaged in fishing

(1) No person shall use a foreign vessel or foreign boat for fishing or any related activity within the Mauritius waters except under a licence issued under this section.

(2) No person shall use a foreign vessel or foreign boat for fishing of sedentary species on the continental shelf except under a licence issued under this section.

(3) An application for a licence under this section shall be made to the Minister on such form as may be approved by the Permanent Secretary.

(4) The Minister may, on such terms and conditions as he thinks fit and subject to the approval of the Prime Minister, issue a licence for the use of a foreign vessel or foreign boat for the purpose of fishing within Mauritius waters or on the continental shelf.

(5) A licence issued under this section shall be in a prescribed form.

(6) Any person who contravenes subsection (1) or (2) shall commit an offence.

(7) Any person who fails to comply with any condition of a licence issued under this section shall commit an offence.

38. Licence and international agreement

(1) Subject to subsection (2), a licence to fish within the Mauritius waters shall not be issued under this section unless there is an agreement —

(a)between the Government of Mauritius and the State in which the vessel or boat is registered;

(b) between the Government of Mauritius and an intergovernmental organization to which the State, in which the vessel or boat is registered, has delegated the power to negotiate fishing agreements; or

(c) between the Government of Mauritius and a fishing association of which the owner or charterer of the vessel or boat is a member.

(2) In the absence of an agreement referred to in subsection (1), the Minister may issue a licence under this section if the applicant provides such financial or other guarantees as he may determine.

39. Licence issued to a Mauritian vessel or boat

(1) Subject to subsection (2), and the Maritime Zones Act, no person shall use a Mauritian vessel or boat for fishing or a related activity —

(a) within Mauritius waters or the continental shelf;

(b) in any fishery on the high seas; or

(c) within the fishing zone of a foreign State; except under a licence issued under this section.

(2) The Minister may exempt a category of boats from the requirements of subsection (1) subject to such conditions as he may prescribed.

(3) An application for a licence under this section shall be made to the Minister in such form as may be approved by the Permanent Secretary.

(4) A licence issued under this section shall be in a prescribed form.

(5) The Minister shall not issue a licence under this section unless he is satisfied that—

(a) in the case of a vessel, the vessel is a Mauritian vessel;

(b) in the case of a boat, the boat is registered under section 42;

(c) the applicant has satisfied such conditions as may be prescribed by regulations.

(6) Any person who contravenes subsection (1) shall commit an offence.

(7) Any person who fails to comply with a condition of a licence issued under this section shall commit an offence.

40. Conditions of licences

(1) A licence issued under Sub-Part B of Part VI shall be subject to such conditions as the Minister thinks fit including conditions relating to —

(a) the type and method of fishing or other activity authorized;
(b) the areas within which such fishing or other activity is authorized;
(c) the species and amount of fish, authorized to be taken, including any restriction on by-catch.

(2) No licence shall be issued unless the prescribed fee has been paid.

41. Validity

(1) Subject to section 61, a licence issued under Sub-Part B of Part VI shall be valid for such period as may be specified in the licence, but shall not exceed one year.

(2) The Minister may, on renewal of a licence —

(a) attach fresh conditions to the licence; or

(b) vary its conditions.

(3) Where a Mauritian vessel ceases to be registered under the Merchant Shipping Act 1986, any licence issued under this Part shall lapse.

(4) A licence issued under this Sub-Part B of Part VI shall not be transferable.

PART VII

OBLIGATIONS RELATING TO BOATS AND VESSELS

42. Registration of boats

(1) A person who owns a boat shall cause it to be registered with the Permanent Secretary.

(2) No person shall use a boat which —

(a) is not registered; and

(b) does not bear an identification mark.

(3) No person shall modify the size of a registered boat without the written approval of the Permanent Secretary.

(4) The Permanent Secretary shall keep a register in which shall be entered —

(a) the identification mark assigned to every boat;

(b) the name and address of the owner; and

(c) such other particulars as he thinks fit.

(5) A person who is a party to a sale or transfer of a boat shall, within 14 days after the sale or transfer, give notice of the sale or transfer to the Permanent Secretary.

(6) Where a boat is lost or is destroyed, the owner of the boat shall, within 7 days, give notice of the loss or destruction to the Permanent Secretary.

(7) The initial registration, or the registration of a sale, transfer and modification shall be subject to payment of a prescribed fee.

(8) Any person who contravenes subsection (2) shall commit an offence.

43. Identification of fishing **boats**

(1) The Permanent Secretary shall assign to every registered boat an identification mark.

(2) The owner of a boat shall display its identification mark on both sides of the boat in such a manner as may be approved by the Permanent Secretary.

(3) Any person who contravenes subsection (2) shall commit an offence.

44. Stowage

(1) Subject to subsection (2), a foreign fishing vessel or foreign boat which is not licensed under section 37 shall keep its gear stowed while it is within the Mauritius waters.

(2) A foreign vessel or foreign boat that is licensed under section 37 shall keep its gear stowed while it is in a place where it is not licensed to fish.

(3) Any person who contravenes subsection (1) or (2) shall commit an offence.

***45.* Landing**

(1) A Mauritian vessel or boat licensed under section 39 shall land its catch within the limits of Port Louis harbour or such other fish landing station as may be specified in the licence.

(2) Notwithstanding subsection (1), the Minister may, subject to such terms and conditions as he may determine, authorise a Mauritian vessel or boat licensed under section 39 to land fish at a place other than one mentioned in subsection (1).

46. Inspection of vessel

The Permanent Secretary may authorise a person to board and remain on a vessel for such period as he thinks fit for the purpose of inspection, of collecting information or any other purpose in relation to fishing activities and fisheries resources.

47. Trans-shipment

(1) The Minister may make regulations in respect of the—

(a) trans-shipment of fish or fish product;

(b) transport of fish or fish product caught in the Mauritius waters; and

(c) operation of a fishing base for fishing within the Mauritius waters.

(2) Regulations made under subsection (1) may provide for the levying of fees and charges.

48. Departure of Mauritian fishing vessels

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(1) The master of a Mauritian vessel engaged in fishing shall, at least 3 days prior to leaving port for a fishing trip —

(a) inform the Permanent Secretary of the intended date and time of departure of the vessel; and

(b) comply with such conditions as may be determined by the Permanent Secretary;

(c) submit such documents as may be required by the Permanent Secretary.

(2) A fisherman engaged to work on a vessel referred to in subsection (1) shall be the holder of a Fisherman Continuous Records Book.

(3) The master of a vessel referred to in subsection (1) may, subject to subsection (4), enlist such number of trainee fishermen as may be prescribed by regulations.

(4) No trainee fisherman enlisted under subsection (3) shall stay at sea for a cumulative period of more than 6 months.

(5) A vessel referred to in subsection (1) shall not leave the port with any fish on board unless it has been so authorised by the Permanent Secretary.

(6) The Permanent Secretary may object to the departure of a vessel where he has reason to believe that any of the provisions of subsections (1) to *(5)* have not been complied with.

49. Arrival of Mauritian fishing vessels or boats

(1) The master of a Mauritian vessel or boat licenced under section 39 shall, 2 days prior to reaching Port-Louis harbour or such other landing station as may be specified in the licence, inform the Permanent Secretary of the expected time of arrival of the vessel or boat in Port Louis or such other landing places.

(2) On reaching Port Louis or such other landing places as may be specified in the licence, the master shall immediately submit to the Permanent Secretary —

(a) a report on the species composition of the catch;

(b) information relating to the origin of the catch, the catch and effort in accordance with the approved log sheets;

(c) any other information that may be required by the Permanent Secretary.

(3) The master shall —

(a) produce to the officer, the log book of the vessel or boat for examination;

(b) make its catch available to the officer for verification and sampling.

(4) Where the Permanent Secretary is satisfied that subsections (1) to (3) have been complied with he shall issue a fish landing permit.

50. **Register of fishing vessels and boats**

(1) The Permanent Secretary shall keep a register of fishing vessels and boats licensed under section 37 and section 39.

(2) The register shall contain —

(a) the name of the vessel or boat;
(b) the international radio call sign;
(c) the country of registration;
(d) the length overall;
(e) the net registered tonnage;
(f) the gross tonnage;
(g) the material of build;
(h) the vessel type and fishing method;
(i) the hold capacities in cubic meters;
(j) the date of build;
(k) the number of crew including fishermen and persons commonly known as frigoboys; and
(l) the name and address of the owner, manager or agent;

PART VIII

ENFORCEMENT

51. Warrant to enter and search

(1) A Magistrate may, where he is satisfied by information upon oath that there is reasonable ground to believe that an offence against this Act has been, is being or is about to be committed, issue a warrant authorising an officer to enter and search any boat, fishing vessel, or premises.

(2) Where the Permanent Secretary is satisfied by information upon oath that

—

(a) there is reasonable ground to believe that an offence against this Act has been, is being or is about to be committed; and

(b) communication with a Magistrate for the purpose of securing a search warrant may cause delay,

he may issue a search warrant authorising an officer to enter and search any boat, fishing vessel, or premises.

52. Liability of owners of implements used in commission of offences

(1) Where a vehicle, net, fishing implement, or other accessory is used in the commission of an offence under this Act, the owner shall be deemed to have committed the offence unless he proves —

(a) that he was not a party or privy to the commission of the offence; and

(b) that he took all reasonable steps to prevent the use of the vehicle, net, fishing implement, or other accessory.

(2) Where a vessel or boat, is used in the commission of an offence under this Act, the owner, in addition to the master, shall be deemed to have committed the offence unless he proves —

(a) that he was not a party or privy to the commission of the offence; and
(b) that he took all reasonable steps to prevent the use of the vessel or boat.

53. Power of search and seizure

(1) Where an officer has reasons to believe that an offence under this Act has been, is being or is about to be committed, and considers that it would be impracticable to apply for a warrant the officer may, without a warrant —

(a) stop, board and search —
(i) a boat or vessel within the Mauritius waters;
(ii) a Mauritian vessel outside the Mauritius waters;
(b) stop and search any vehicle;
(c) require to be produced, examine and take copies of any licence, log book or other document required to be kept under this Act;
(d) require to be produced and examine any fishing net, other gear, any fish or other aquatic organism;
(e) seize —
(i) a vehicle;

(ii) a vessel;
(iii) a boat;
(iv) a net;
(v) an implement;
(vi) a gear; or
(vii) an accessory.

(2) A fishing vessel or boat seized under subsection (1)(e) shall be taken to Port Louis, or to another suitable port of Mauritius together with all the persons employed on the vessel or boat.

54. Power to arrest and detain

(1) An officer may, without warrant, arrest and detain a person found —

(a) fishing in breach of this Act;

(b) in possession of any fish or implement, or selling any fish caught, in breach of this Act, unless the person gives his name and address and a satisfactory explanation regarding the origin of any fish in his possession.

55. Seizure of fish

An officer may seize —

(a) any fish caught, landed, sold or stored;
(b) any fish product landed, sold or stored,

in breach of this Act.

56. Duty of officer

An officer shall, in the exercise of his powers under this Act, produce on request such means of identification as shall be determined by the Permanent Secretary for the purposes of enforcing this Act.

57. Pursuit beyond the Mauritius waters

(1) Subject to subsection (2), where a vessel or boat is pursued within Mauritius waters on reasonable suspicion of having committed an offence under this Act and the pursuit extends beyond Mauritius waters the powers conferred to an officer by sections 52 to 54 shall be exercisable in respect of such vessel beyond the Mauritius waters.

(2) The powers conferred to an officer by subsection (1) shall cease when

the vessel or boat enters the territorial sea of another state.

58. Custody and disposal of seized articles

(1) An article seized under section 53(1)*(e)* shall be delivered to the Permanent Secretary who shall forthwith return the article to the person from whom it was seized where —

(a) no criminal proceedings for any offence under this Act are instituted; or

(b) upon examination, it is found not to have been used in the commission of an offence under this Act.

(2) Notwithstanding subsection (1), the owner or the person from whom the article was seized may apply to the Judge in Chambers for an order for the release of the article.

(3) On an application under subsection (2), the Judge in Chambers may, grant an order for the release of the article subject to the provision of such security and to such conditions as the Judge may determine.

59. Disposal of fish

Any fish or fish product seized under this Act may be disposed of as the Permanent Secretary may direct and without payment of any compensation to its owner or to the person from whom it was seized.

60. Application of the Public Officers Protection Act

The Public Officers' Protection Act shall apply to anything done under this Act notwithstanding the fact that the act was done outside Mauritius waters.

61. Suspension and cancellation

(1) Subject to subsection (2), the Minister may suspend or cancel any licence issued under this Act where —

(a) the boat, vessel, implement or gear, in respect of which the licence was issued, has been used in contravention of—
(i) this Act;
(ii) any regulations made under this Act;
(iii) any law in force in Mauritius; or
(iv) any condition of the licence;

(b) the licensee has been engaged in any activity contravention of—
(i) this Act;
(ii) any regulations made under this Act; or
(iii) any condition of the licence.

(c) the sustained utilisation of any species of fish or marine fisheries in general is threatened.

(2) The Minister shall not suspend or cancel a licence under subsection (1) unless he is satisfied that —

(a) such suspension or cancellation is necessary andexpedient; and

(b) the need for any suspension or cancellation outweighs any hardship caused to the licensee.

PART IX

PENALTIES

62. Offences and penalties

(1) A person who contravenes sections 4, 10, 13, 23, 24 or 42 shall, on conviction, be liable —

(a) in the case of a first conviction, to a fine of not less than 2,000 rupees and not more than 3,000 rupees;

(b) in the case of a second conviction, to a fine of not less than 3,000 rupees and not more than 4,000 rupees;

(c) in the case of a third or subsequent conviction, to a fine of not less than 4,000 rupees and not more than 5,000 rupees.

(2) A person who contravenes sections 6, 16, 17, 18, 19, 20, 21, 22, 30 or 34 shall, on conviction, be liable —

(a) in the case of a first conviction, to a fine of not less than 2,000 rupees and not more than 3,000 rupees and to imprisonment for a term not exceeding 2 years;

(b) in the case of a second conviction, to a fine of not less than 3,000 rupees and not more than 5,000 rupees and to imprisonment for a term not exceeding 5 years;

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(c) in the case of a third or subsequent conviction, to a fine of not less than 5,000 rupees and not more than 10,000 rupees and to imprisonment for a term not exceeding 8 years.

(3) A person who contravenes sections 25, 27 or 28 shall, on conviction, be liable —

(a) in the case of a first conviction, to a fine of not less than 5,000 rupees and not more than 10,000 rupees;

(b) in the case of a second conviction, to a fine of not less than 10,000 rupees and not more than 15,000 rupees and to imprisonment for a term not exceeding **5** years;

(c) in the case of a third or subsequent conviction, to a fine of not less than 15,000 rupees and not more than 20,000 rupees and imprisonment for a term not exceeding 5 years.

(4) A person who commits an offence under this Act for which no penalty has been provided shall, on conviction, be liable to a fine of not less than 2,000 rupees and not more than 50,000 rupees and to imprisonment for a term of not more than 2 years.

63. Forfeiture

(1) Subject to subsection (2), where a person is convicted of an offence under this Act, the court may, in addition to any other penalty—

(a) order the forfeiture of —

(i) a vehicle;
(ii)a vessel;
(iii) a boat;
(iv) a net;
(v) a fishing implement; or
(vi) any article,

used in the commission of the offence under this Act;

b (b) order the forfeiture of any fish caught in breach of the Act.

(2) The Court may, instead of ordering the forfeiture as provided under subsection (1), order that any item referred to in subsection (1) be kept by the Permanent Secretary until the fine imposed is paid.

64. Penalty for an offence under section 37

(1) A person who commits an offence under section 37 (6) shall, on conviction, be liable to a fine of not less than one million rupees and not more than 5 million rupees.

(2) Any person who commits an offence under section 37 (6) shall, on conviction, be liable to a fine of not less than 250,000 rupees and not more than 5 million rupees.

***65.* Penalty for an offence under section 39**

(1) A person who commits an offence under section 39 (6) shall, on conviction be liable to a fine of not less than 50,000 rupees and not more than 250,000 rupees.

(2) A person who commits an offence under section 39 (7) shall, on conviction, be liable to a fine of not less than 25,000 rupees and not more than 150,000 rupees.

66. Higher penalty for breach of section 20

Notwithstanding section 62, where a person who holds a licence under section 37 or 39 is convicted of an offence under section 20 (1) he shall be liable to a fine of not less than 50,000 rupees and nor more than 250,000 rupees.

67. Penalty for breach of section 44

A person who commits an offence under section 44 shall, on conviction, be liable to a fine of not less than 250,000 rupees.

68. Breach of management measures outside territorial waters

Notwithstanding section 62, a person who commits a breach of a conservation measure prescribed under section 9 within Mauritius waters, other than the territorial waters, shall on conviction, be liable to a fine of not less than 50,000 rupees and not more than 250,000 rupees.

69. Offence committed under subsection 16(1) outside territorial waters

Notwithstanding section 62, a person who commits an offence under subsection 16 (1) within Mauritius waters, other than the territorial waters shall, on conviction, be liable to a fine of not less than 50,000 rupees and not more than 200,000 rupees.

70. Possession of fish caught outside territorial waters

Notwithstanding section 62, a person who, in breach of this Act—

(a) lands;

(b) sells;

(c) receives for sale; or

(d) has in his possession for sale;

any fish caught in the Mauritius waters, other than the territorial waters shall commit an offence and on conviction, shall be liable to a fine of not less than 50,000 rupees and not more than 200,000 rupees.

71. Giving false information

A person who —

(a) is required to supply information under section 4 of this Act; and

(b) knowingly —

(i) fails to supply such information; or

(ii) furnishes false or misleading information,

shall commit an offence and on conviction, shall be liable to a fine of not less than 20,000 rupees and not more than 50,000 rupees.

PART X

MISCELLANEOUS

72. Jurisdiction

(1) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate —

(a) shall have jurisdiction to try an offence under this Act; and

(b) may impose any penalty provided by this Act.

(2) The Intermediate Court shall have jurisdiction to try an offence under this Act.

(3) Section 153 of the Criminal Procedure Act shall not apply to a conviction for an offence under this Act.

73. Regulations

(1) The Minister may make regulations generally for the implementation of this Act, and in particular for the purposes of-

(a) delimiting areas within Mauritius waters which shall be reserved for fishing by Mauritian vessels or boats;

(b) prescribing any fish which may be toxic;

(c) prescribing measures for the registration of fishermen;

(d) prescribing the form and content of licences and the procedure for their issue, cancellation and revocation.

(e) prescribing measures relating to the furnishing of security for the return of any article seized;

(f) requiring a fishing vessel or boat to be equipped with specified communications, position fixing and other equipment;

(g) prescribing measures for the protection, conservation and management of marine protected areas;

(h) the levying of fees and charges;

(i) providing for safety and security measures for fishermen and contravention in case of non compliance with those measures;

(j) regulating the use of fish aggregating devices and regulating fishing around them;

(k) regulating sports and recreational fishing activities;

(l) regulating handling, storage and sale or fresh, frozen and chilled fish; and

(m) prescribing any other matter relating to fisheries for the purposes of this Act.

(2) Regulations made under this Act may provide that any person who contravenes them shall commit on offence and shall, on conviction, be liable to a fine of not less than 2,000 rupees and not more than 50,000 rupees and to imprisonment for a term not exceeding 2 years

74. Transitional provisions

A permit or licence issued under the Fisheries Act 1980 shall be deemed to have been issued under this Act.

75. Repeal

The Fisheries Act 1980 is repealed.

76. Commencement - Proclaimed by [Proclamation No. 22 of 1999] w.e.f 20.11.1999
Part III shall come into operation on 1.5.2000

(1) This Act shall come into operation on a day to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different provisions of this Act.

Passed by the National Assembly on the twenty-fourth day of November one thousand nine hundred and ninety-eight.

ANDRE POMPON
Clerk of the National Assembly

SCHEDULE
(section 19(2))

Undersized fish that may be used as bait

	Fish	*Commonly known as*
(a)	Mugil sp. & Vala Mugil spp.	Mullet
(b)	Parupeneus spp.	
(c)	Upeneus spp.	Rouget
(d)	Mulloides spp.	

Annex 106

Mees, C.C., Pilling, G.M. and Barry, C.J., "Commercial inshore fishing activity in the British Indian Ocean Territory" in Ecology of the Chagos Archipelago (ed. C.R.C. Sheppard & M.R.D. Seaward, 1999)

24 *Commercial inshore fishing activity in the British Indian Ocean Territory*

C. C. MEES, G. M. PILLING AND C. J. BARRY

A fishery has existed for a number of decades in the British Indian Ocean Territory (BIOT) targeted at demersal species, principally lethrinids, lutjanids and serranids. It occurs on the banks and around the five atolls of the Chagos Archipelago. Historical catch and effort data relating to the fishery are available since 1977 from records of Albion Fisheries Research Centre (Mauritius), and since 1991 from BIOT Authority logbook records. A joint British/Mauritian observer programme related to this fishery has operated since 1994, which, in addition to verifying catch and effort data by species, has collected biological information on the most important species caught.

This paper presents an analysis of the available research and fishery data from the bank-reef fishery on the Chagos Archipelago to the end of 1997. In recent years the fishery has yielded catches of around 300 tonnes per annum, comprised mostly of lethrinids (60% of the catch or more), which are targeted in shallow water (30–50 m) on the banks. Fishing effort is sporadic, and fin fish catch rate data presently show no indications of overfishing. Biological reference points for management indicate the status of the resource and highlight certain localities where the need for potential additional management controls is greatest. Careful monitoring of the inshore fishery is a priority of the BIOT Authorities, and management objectives and instruments are reviewed annually. The primary management objective is conservation, whilst permitting Mauritian mothership-dory hook and line ventures to fish as they have previously done. Existing management instruments are described.

INTRODUCTION

A 200 nautical mile Fisheries Conservation and Management Zone (FCMZ) was declared around the Chagos Archipelago, British Indian Ocean Territory (BIOT) on 1 October 1991, and a fisheries regime covering all BIOT fishing waters was established on the same day by the Fisheries (Conservation and Management) Ordinance, 1991. Three fisheries are recognised within the BIOT FCMZ: a commercial reef and bank associated fishery, a recreational fishery and an offshore pelagic fishery for tunas. The recreational fishery, prosecuted by personnel stationed at Diego Garcia and some visiting yachtsmen, targets both pelagic and reef associated species. Any impacts will be localised, and fishing locations differ from those targeted by commercial vessels. The fishery for demersal stocks of emperors (Lethrinidae), snappers (Lutjanidae) and groupers (Serranidae) occurring on the shallow water banks of the archipelago is referred to as the 'inshore fishery'. This paper describes commercial inshore fishing

Ecology of the Chagos Archipelago (ed. C. R. C. Sheppard & M. R. D. Seaward) 1999

operations by licensed Mauritian vessels. Licences have not in the past been given to vessels from other nations.

Fishing within the Chagos Archipelago has occurred for decades, by both local inhabitants and commercial vessels from Mauritius. The atolls were run as copra plantations, and were also minor producers of salt fish, mainly from the demersal fishery. However, with the exception of Diego Garcia, which is now a US naval facility, these locations were evacuated in the early 1970s.

A Mauritian fishery, centred principally on the banks of the Mascarene Ridge, has operated since the beginning of this century. Fishing in that region is limited by climatic conditions and typically a number of Mauritian vessels have moved to Chagos during April to October, despite strong south-east trade winds during that period. Moderate north-west winds are experienced from October to April, the wettest months. The Chagos Archipelago is situated 2,100 km from Mauritius (5–6 days steaming), but nevertheless provides alternative fishing grounds and the opportunity for continued deployment of vessels. Data relating to fishing in the Chagos Archipelago is available from Mauritian records since 1977 (Table 1) and BIOT Authority records since 1991 (Table 2).

TABLE 1 Historical catch and effort data available for the BIOT inshore fishery, 1977–1990 (from Ardill, 1986; Samboo & Maurce, 1988; Kropelein, 1979, and British High Commission, Mauritius, unpublished data relating to applications to fish, not necessarily the number of vessels in the zone).

YEAR	LICENCE APPLICATIONS	CATCH (TONNES)	YEAR	LICENCE APPLICATIONS	CATCH (TONNES)
1977		38	1984		160 – 172
1978		Na	1985		183 – 202
1979		Na	1986	5	142
1980		Na	1987	9	Na
1981		98	1988	11	Na
1982		162	1989	3	Na
1983		Na	1990	10	Na

TABLE 2 Historical details of licences issued and taken up, indicating the total effort of all vessels in the BIOT FCMZ, 1991–1997 (days in zone). A maximum of six licences may be utilised in any one year within the BIOT FCMZ. If a licence is not utilised within thirty days it becomes void, and a new licence may be issued to further applicants. Licences are not transferable.

YEAR	LICENCES ISSUED	FOR NO. VESSELS	LICENCES USED	DAYS IN ZONE	COMMENTS
1991	?	?	3	120	
1992	6	5	5	183	1 licence = extension to licence, not used
1993	8	7	4	105	1 licence = transfer to another vessel, original unused
1994	6	4	4	159	2 licences = extensions due to bad weather
1995	7	6	3	117	1 licence = experimental licence, not used
1996	8	6	4	159	(See caption)
1997	8	7	6	163	(See caption)

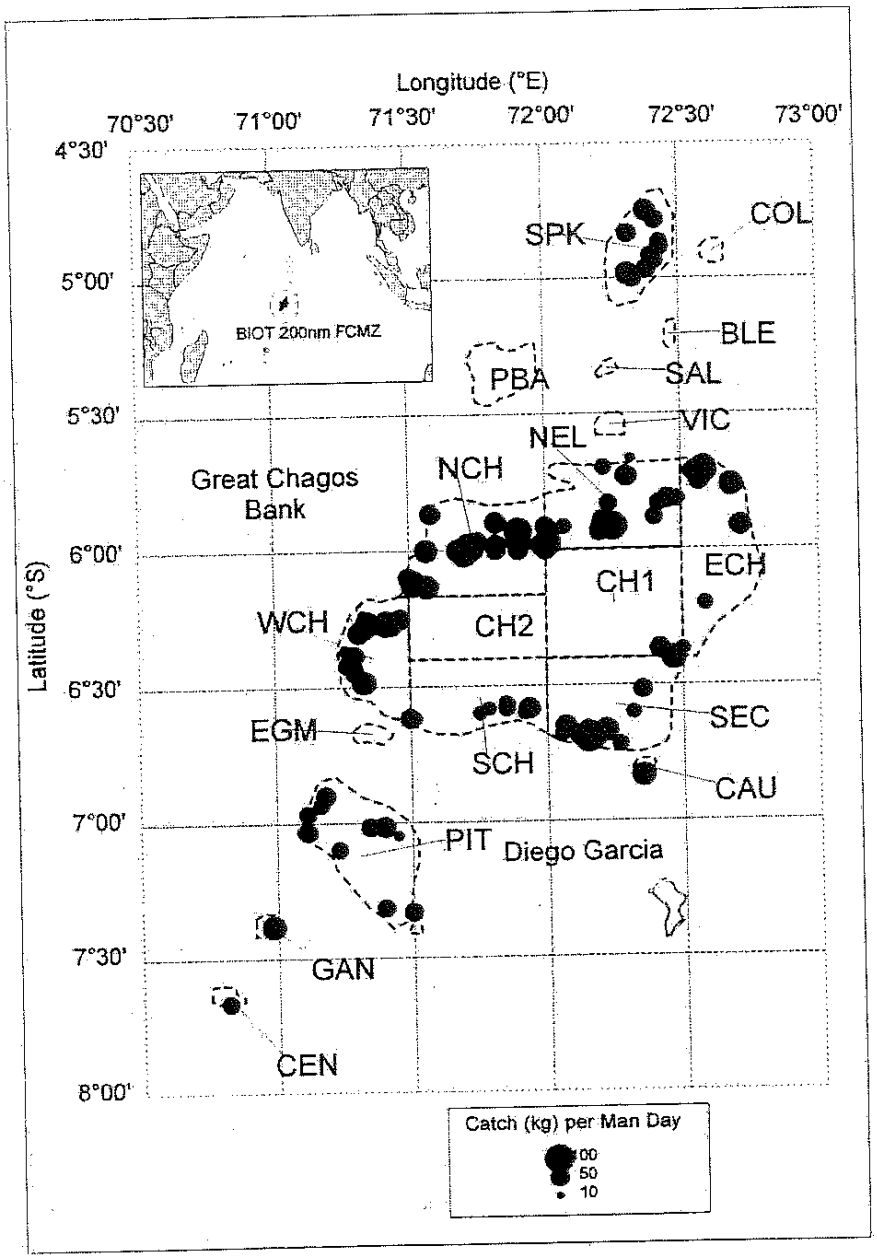

FIGURE 1 The Chagos Archipelago, indicating the statistical fishing sectors, and average dory catch rate information per day per mother-vessel relative to the anchoring position of the mother-vessel, recorded in logbooks during 1997.

CODE	LOCATION	CODE	LOCATION	CODE	LOCATION
BLE	Blenheim Reef	EGM	Egmont Islands	SAL	Salomon Islands
CAU	Cauvin Bank	GAN	Ganges Bank	SCH	South Great Chagos Bank
CEN	Centurion Bank	NCH	North Great Chagos Bank	SEC	Southeast Great Chagos Bank
CH1	Central Great Chagos Bank 1	NEL	Nelson Island	SPK	Speakers Bank
CH2	Central Great Chagos Bank 2	PBA	Peros Banhos	VIC	Victory Bank
COL	Colvocorresses Reef	PIT	Pitt Bank	WCH	West Great Chagos Bank
ECH	Eastern Great Chagos Bank				

BIOT INSHORE FISHERY

Vessels and Fishing Methods

Refrigerated mother-ships (250–350 GRT, 40–55 m in length), with blast storage facilities capable of freezing up to ten tonnes of fish per day, deploy up to 20 dories (6–8 m in length), each crewed by three fishermen employing hand-lines rigged with 3–5 baited hooks. Fishing is generally conducted in shallow water (less than 50 m deep) on the submerged banks or reefs of the atolls of the Archipelago. Demersal species of the families Lethrinidae, Lutjanidae and Serranidae are targeted. Particularly when targeting Lethrinidae, the dories drift across the shallow banks, and may fish anywhere within a 10 nm radius of the mother-vessel. Fishing also occurs for deeper water fish such as *Pristipomoides* species on the drop-off at the periphery of the banks and atolls. The mother-vessel usually changes location on a daily basis.

Characteristics of the Fishery

For ease of data analysis the inshore fishery was stratified into a number of locations on the Great Chagos Bank, and other banks and atolls (Figure 1). A number of ecologically different fishing strata have also been identified which include fishing in shallow water on the banks (BNK), in deeper water on the drop off at the periphery of the banks (DRO), and others (OTH), usually trolling in oceanic waters en-route to fishing grounds. The total area of shallow water in the Chagos Archipelago has been estimated to be 21,000 km^2 (UNEP/IUCN, 1988). However, due to strong species-habitat association for targeted fish, and patchy distribution of suitable habitat, the fishing area is considerably less than this. Fishing area was estimated for each location from Admiralty chart 03 (Table 3), totalling 8,587 km^2 over the banks and 339 km^2 in deeper water at their periphery, similar to estimates in the literature (6,480 km^2, Wheeler & Ommanney, 1953; 8,575 km^2, FAO/IOP, 1979).

Potential Yield from the Inshore Fishery

Historical data relating to the inshore fishery are sparse (Table 1). Those prior to the introduction of logsheet returns in 1991 may be unreliable. Data collected since 1991 do not enable the use of dynamic production models to establish potential yield (see below, 'catch rate data'). Thus, the potential sustainable yield for commercially important handline species on the shallow banks (0 – 35 m) is estimated by comparative means from yields observed in similar areas in the Indian Ocean. Sanders (1988) assumed the potential yield of the Chagos Bank to be equivalent to that observed on the fully exploited Saya de Malha Bank (0.22 tonnes (t) km^{-2}). In Seychelles the exploitable yield in shallow water strata was estimated to be 0.168 t km^{-2} (Mees, 1992). However, catch rates in Chagos are less than in Seychelles or on the Saya de Malha Bank. A number of factors may explain this, principally species avoidance and discards (see below 'catch and effort'). A more conservative estimate of 0.100 t km^{-2} is thus considered appropriate for Chagos, which relates to that part of the resource taken by the dories and thus accounts for any discards. Estimates of the sustainable annual yield for the whole

of the shallow sector of the Chagos Archipelago are thus 859–1,889 t (Table 3). The sustainable yield at intermediate depths (70–150 m) in Seychelles has been estimated for all line caught species at 1.375 t km^{-2} (Mees, 1992), and for *Pristipomoides filamentosus*, the principal species in the catch at that depth, at 0.716 t km^{-2} (24% of the mean biomass of 2.987 t km^{-2}; Mees, 1993). Due to the steeply sloping shelf, the area of this depth band is small, giving apparently very high yields per unit area (particularly for deeper water fish, yield may be expressed in relation to the length of the depth contour). Applying these estimates to the Chagos Archipelago, the estimated sustainable yield of all line caught fish from intermediate depths is 466 t and that of *P. filamentosus*, 243 t (Table 3).

TABLE 3 Fishing locations within the Chagos Archipelago (refer to Figure 1 for location codes): reported area, and estimated sustainable yield per annum (tonnes) by depth stratum derived from a range of yields (t km^{-2}) observed at similar locations in the Indian Ocean (Saunders, 1988; Mees, 1993).

LOCATION CODE	AREA <70 m	AREA 70-150 m	TOTAL AREA	ESTIMATED SUSTAINABLE YIELD (TONNES) <70 m AT RANGE 0.100 t km^{-2}	<70 m AT RANGE 0.168 t km^{-2}	<70 m AT RANGE 0.22 t km^{-2}	70-150 m AT RANGE 0.716 t km^{-2}	70-150 m AT RANGE 1.375 t km^{-2}
	6044	190	6234	604	1015	1330	136	261
CH1	262	0	262	26.2	44.0	57.6	0.0	0.0
CH2	75	0	75	7.5	12.6	16.5	0.0	0.0
ECH	445	57	502	44.5	74.8	97.9	40.8	78.4
NCH	1343	25	1368	134.3	225.6	295.5	17.9	34.4
NEL	1181	40	1221	118.1	198.4	259.8	28.6	55.0
SCH	1181	23	1204	118.1	198.4	259.8	16.5	31.6
SEC	895	15	910	89.5	150.4	196.9	10.7	20.6
WCH	662	30	692	66.2	111.2	145.6	21.5	41.3
	2543	149	2692	254	427	559	107	205
BLE	42	7	49	4.2	7.1	9.2	5.0	9.6
CAU	56	7	63	5.6	9.4	12.3	5.0	9.6
CEN	29	6	35	2.9	4.9	6.4	4.3	8.3
COL	14	6	20	1.4	2.4	3.1	4.3	8.3
EGM	48	6	54	4.8	8.1	10.6	4.3	8.3
GAN	16	4	20	1.6	2.7	3.5	2.9	5.5
PBA	442	25	467	44.2	74.3	97.2	17.9	34.4
PJT	1296	49	1345	129.6	217.7	285.1	35.1	67.4
SAL	17	7	24	1.7	2.9	3.7	5.0	9.6
SPK	562	27	589	56.2	94.4	123.6	19.3	37.1
VIC	21	5	26	2.1	3.5	4.6	3.6	6.9
TOTAL	8587	339	8926	859	1443	1889	243	466

MANAGEMENT OF THE BIOT INSHORE FISHERY

Management Objectives and Strategy

The objectives for management are defined in The Fisheries (Conservation and Management) Ordinance, 1991. Conservation is the primary objective whilst at the same time permitting Mauritian vessels to fish as they have previously done. It is policy to ensure that all fishing is undertaken with due regard and concern for the stability of fish stocks, conservation of bio-diversity and appropriate management of the resources for the long term benefit of users. A management plan describes management measures to achieve these objectives (Mees, 1998). Effort controls are the principal management instrument, implemented through limited licensing, closed seasons and restricted fishing areas:

- Up to six eighty-day licences may be issued each season;
- Fishing is only permitted from 1 April to 31 October;
- Fishing is only permitted with hooks and lines;
- Fishing is prohibited within any lagoons;
- Terms and Conditions are applied to all licences and stipulate, amongst others, the types of fishing activity that may be undertaken, prohibited fishing locations, the reporting requirements (radio and logbook), and requirements to carry observers.

Permanent and temporary closures are also under consideration. Management controls are implemented through an efficient management system (MRAG, 1995; 1998), elements of which include:

- Licensing, with detailed procedures for notification of vessel details, licence application and issue;
- Enforcement, through the presence of a fishery patrol vessel and routine operations of personnel on Diego Garcia, and by established radio reporting procedures for entry and exit from the zone, and activity within it;
- Communications, involving established channels for administrative procedures, and meetings with company representatives in Mauritius;
- A management information system, integrating licensing and administrative procedures with catch and effort reports to enable timely generation of reports;
- Monitoring and evaluation of the fishery, providing annual feedback to enable revision of the management plan or specific instruments;
- Research activities, to provide additional information useful for management purposes, as appropriate.

Monitoring and Evaluation – Materials and Methods

Radio and logbook reporting is a condition of licence. Information is gathered from a logbook census of catch and effort, and through a British/Mauritian observer programme. The latter has provided over thirty man-months first hand knowledge of the fishery since 1994, and observers have covered up to 50% of the total vessel fishing days in the zone in any one year.

The logbook format has changed slightly since 1991 to improve the system, both for ease of reporting by fishers, and for better analysis, but contains the same core information of catch and effort by dory and species per day (Appendix 1). However, not all species, or all habitat data are available for all years. Data collected between 1991 and 1997 were analysed according to fishing location and habitat type. It was not possible, using a generalised linear model (Hilborn & Walters, 1992) to standardise fishing effort data for the different vessels engaged in the inshore fishery. The data lacked spatial and temporal homogeneity (i.e. the vessels in the zone varied from year to year, different vessels fished at different times and locations) invalidating the model. Furthermore, the fishing master and fishermen on a vessel may also change and are more likely to indicate fishing power than the vessel itself. However, all fishing vessels are of a similar size and employ the same fishing method, and have done so since the beginning of the fishery. Fishing power is thus similar between vessels, and will not have increased over time, as is often the case in fisheries where technological advances are made in gear deployment. It was therefore considered valid to compare unstandardised catch rate data directly over time for studies within Chagos.

Throughout the Indian Ocean, bank and reef fisheries similar to those in Chagos are exploited by a number of different vessels and gear. Thus to compare spatial data across the western Indian Ocean, mother-vessel operations for a fixed time period from Mauritian Banks were standardised against vessels from Seychelles according to a generalised linear interactive model as described in Mees (1997a). For the purposes of that comparison, it was assumed that the relative fishing power of vessels observed on Mauritian Banks also applied to the same vessels in Chagos.

The observer programme provides independent verification of catch, effort and species composition data and enables better monitoring of by-catch (for example, sharks) and discards (for example, potentially ciguatoxic fish species). Additionally, length frequency (fork length to 1 cm) and weight (gutted weight, to 10 g) data, biological data (maturity and sex), and otolith samples were collected from which Biological Reference Points (indicators of the status of the stocks useful for management) may be derived.

The von Bertalanffy growth parameters (K, $L\infty$) were derived from observation of annual growth rings in the sectioned and stained otoliths of *Lethrinus mahsena* and *Aprion virescens* (otoliths prepared as described in Bedford, 1983 and Richter & McDermot, 1990). Since observer data relate to a short period of the year only (approximately two months), and length-frequency data lacked modal progression, length-based methods were not used to derive growth estimates. Growth data available in the literature were employed where either otoliths were not available, or it was not possible to validate the rings observed as annuli (e.g. *P. filamentosus*, Pilling *et al.*, in prep.).

Total mortality (Z) for each study species was derived from length converted catch curve analysis (Jones, 1984) applied to aggregated length frequency data each season. The instantaneous coefficient of natural mortality (M) was estimated empirically (Pauly, 1980) at a water temperature of 23°C (MRAG, 1996a) for intermediate depth *Pristipomoides* species, and 27°C (from the Nautical Almanac for the Indian Ocean) for all other shallow water species. Fishing mortality was derived by subtraction (F=Z-M). Catch curve analysis was also used to determine the length at which 50% of the fish were vulnerable to the gear (Lc_{50}) (Gayanillo *et al.*, 1995). A deterministic age-structured

model, described in Mees and Rousseau (1997), was employed to derive optimum values of fishing mortality (F_{opt}) at length from a modified yield per recruit analysis.

ANALYSIS OF THE INSHORE FISHERY, 1991-1997

Catch and Effort

The number of fishing licences utilised each year since 1991 only equalled the limit of six in 1997, and a maximum of 183 mother-vessel days effort for all licensed vessels occurred in 1992 (Table 2). Prior to 1991 the number of vessels entering the zone is uncertain, since available information relates only to applications to fish. The catch landed by dories to mother-vessels in the zone has varied between 38 t in 1977 (Table 1) to 319.5 t in 1996 (Table 4, Figure 2). During 1997 the catch landed directly by fishers

TABLE 4 Dory-landed catches by fishing location for the period 1991–1997. The proportion (%) of the catch derived from fishing on the banks is indicated in parentheses. Refer to Figure 1 for location codes.

LOCATION	CATCH (TONNES) 1991	1992	1993		1994		1995		1996		1997	
GREAT CHAGOS BANK												
TOTAL	58.8	255.6	122.8	(99.6)	202.1	(90.1)	166.0	(43.8)	232.1	(66.4)	234.1	(84.3)
CH1		13.9			5.5	(100.0)	6.6	(37.9)	2.6	(0.0)	11.5	(68.2)
CH2									4.3	(100.0)		
ECH			6.3	(100.0)	16.7	(84.8)	38.7	(32.3)	38.8	(48.1)	25.6	(68.4)
NCH	28.2	101.2	47.6	(98.9)	61.2	(89.3)	30.0	(49.7)	41.1	(59.4)	65.1	(90.3)
NEL	11.5	71.1	32.8	(100.0)	60.0	(81.9)	29.4	(59.2)	31.0	(80.7)	45.9	(98.3)
SCH	11.3	1.8			14.3	(100.0)	17.6	(43.8)	62.1	(43.7)	30.5	(69.3)
SEC					27.5	(100.0)	13.6	(40.8)	17.1	(80.4)	13.8	(80.7)
WCH	7.7	67.6	36.1	(100.0)	16.9	(100.0)	30.1	(40.8)	35.0	(69.2)	41.8	(81.6)
OTHER BANKS												
TOTAL	22.5	47.1	74.7	(90.1)	100.0	(92.4)	51.5	(59.6)	87.3	(38.8)	60.6	(70.7)
BLE			4.8	(100.0)	2.3	(100.0)						
CAU					15.7	(100.0)	2.1	(37.6)	8.0	(26.4)	4.0	(40.5)
CEN	2.9	2.4							10.6	(0.0)	2.4	(38.1)
COL			3.5	(100.0)	2.8	(71.6)	1.2	(0.0)				
EGM		1.1	0.8	(100.0)	2.6	(100.0)						
GAN									8.2	(0.0)	4.1	(0.0)
PBA		20.8	18.0	(76.0)	23.3	(76.1)	7.2	(43.9)				
PIT	11.7	10.7	5.1	(100.0)	21.5	(100.0)	7.4	(92.3)	55.4	(45.4)	26.5	(67.0)
SAL					1.7	(0.0)	0.8	(13.3)				
SPK	7.9	12.1	42.6	(92.3)	30.1	(100.0)	24.1	(65.2)	3.3	(43.5)	23.6	(95.5)
VIC							8.8	(46.6)	1.8	(0.0)		
UNK	217.9	2.4	2.2	(100.0)	2.8	(100.0)						
TOTAL	299.2	305.2	199.7	(95.9)	304.9	(90.9)	217.5	(47.6)	319.5	(60.1)	294.8	(81.5)

operating from the mother-vessels was also recorded (7.27 t) for the first time. Fishing effort since 1991 has varied between 3910 man-days in 1993 and 7893 man-days in 1992 (Table 5). The landed catch is well below the lower estimate of sustainable yield (Table 3).

Observer records have verified that landed catches recorded in logbooks are correct. However, catches recorded during the observer programme and in vessel logbooks exclude discards made at sea by the dories. Due to the potential for ciguatoxic fish poisoning, the Mauritian authorities prohibit the landing of certain fish, including a number available to the banks' handline fishery in Chagos: *Lutjanus bohar*, *Lutjanus gibbus*, *Lutjanus monostigma*, *Lutjanus sebae*, *Anyperodon leucogrammicus*, *Cephalopholis argus*, *Epinephelus areolatus*, *Epinephelus fuscoguttatus*, *Plectropomus maculatus* (>2.6 kg), *Variola louti* (>2.6 kg). The mortality of discarded fish is likely to be high.

From observations in 1997, it was estimated that discards could constitute up to 30% of the catch for certain individual dories, depending upon the fishing location: for those dories targeting lutjanids and serranids in coraline areas discards are generally higher than for dories drifting over the bank for lethrinids. Total discards for all dories are estimated to be around 8–12% of the catch taken. Due to this practice, landed catches underestimate the total mortality attributable to fishing.

In addition to discarded fin-fish, only limited shark meat was landed to the mother vessels, e.g. 0.2% of the total catch in 1997, but observers counted fins for 129 sharks

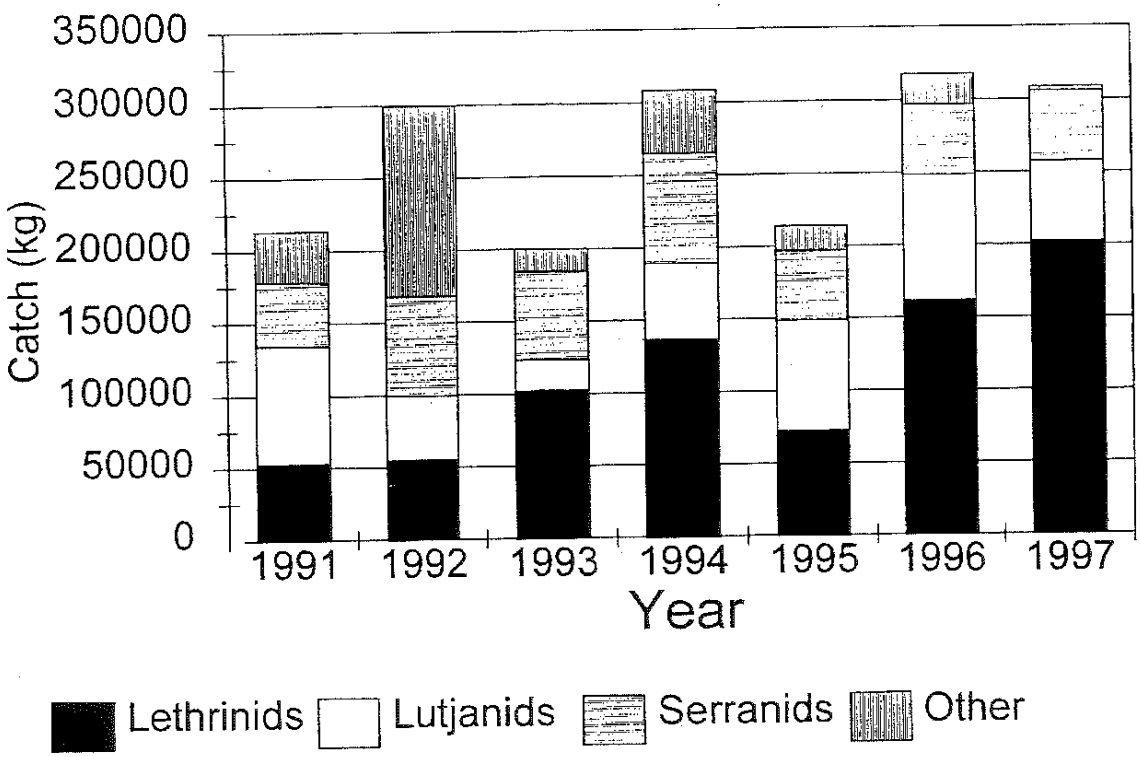

FIGURE 2 Total landed catch (kg) for the BIOT inshore fishery per annum by family, 1991–1997.

TABLE 5 Distribution of effort by location (refer to Figure 1 for location codes) for the BIOT inshore fishery, 1991–1997. The proportion (%) of the effort from fishing on the banks is indicated in parentheses.

LOCATION	MAN DAYS											
	1991	1992	1993		1994		1995		1996		1997	
GREAT CHAGOS BANK												
CH1	0	0	0	(0.0)	108	(100.0)	103	(42.7)	56	(0.0)	200	(74.5)
CH2	0	0	0	(0.0)	0	(0.0)	0	(0.0)	56	(100.0)	0	(0.0)
ECH	0	0	90	(100.0)	324	(83.3)	674.5	(36.9)	642	(53.6)	453	(72.6)
NCH	582	2388	1031	(95.4)	1399	(89.6)	715	(52.5)	789	(56.7)	1093	(88.5)
NEL	247	1774	633	(100.0)	1045	(85.7)	555.5	(66.5)	572.5	(75.2)	952	(98.2)
SCH	212	486	0	(0.0)	316	(100.0)	255.5	(45.2)	469.5	(44.6)	390	(58.5)
SEC	0	0	0	(0.0)	427	(100.0)	366.5	(43.2)	1089.5	(71.1)	544.5	(83.2)
WCH	159	1468	772	(100.0)	460	(100.0)	598	(39.5)	568	(57.5)	713.5	(78.6)
OTHER BANKS												
?LE	0	0	88	(100.0)	51	(100.0)	0	(0.0)	0	(0.0)	0	(0.0)
?AU	0	0	0	(0.0)	221	(100.0)	52.5	(34.3)	176	(34.7)	57	(47.4)
CEN	54	59	0	(0.0)	0	(0.0)	0	(0.0)	140	(0.0)	57	(31.6)
COL	0	0	88	(100.0)	105	(48.6)	25.5	(0.0)	0	(0.0)	0	(0.0)
EGM	0	45	44	(100.0)	109	(100.0)	0	(0.0)	0	(0.0)	0	(0.0)
GAN	0	0	0	(0.0)	0	(0.0)	0	(0.0)	112	(0.0)	57	(0.0)
PBA	0	967	398	(66.1)	799	(71.0)	363	(51.8)	0	(0.0)	0	(0.0)
PIT	223	350	148	(100.0)	665	(100.0)	182	(90.9)	995.5	(49.0)	611	(66.6)
SAL	0	0	0	(0.0)	49	(0.0)	50	(18.0)	0	(0.0)	0	(0.0)
SPK	204	297	573	(92.3)	581	(100.0)	466	(65.1)	76	(55.9)	479	(96.2)
VIC	0	0	0	(0.0)	0	(0.0)	162	(42.6)	56	(0.0)	0	(0.0)
UNK	3921	59	45	(100.0)	51	(100.0)	0	(0.0)	0	(0.0)	0	(0.0)
TOTAL	5602	7893	3910	(94.2)	6710	(89.8)	4569	(50.4)	5798	(56.6)	5607	(80.9)

(mostly black and white tip reef sharks, 61 from banks and 68 from the drop off) suggesting some carcasses had been discarded at sea. Sharks are not targeted and are an unwanted by-catch since they damage the light fishing gear employed for the target species.

In 1996, 38 sharks were caught during 1094 man-days of fishing recorded by the observers (5798 man-days in total by all vessels). In 1997, 129 sharks were caught in 2522 man-days (5607 man-days in total by all vessels). Assuming the other vessels not covered by observers had similar by-catches of shark, the total caught would have been 201 sharks in 1996 and 286 in 1997. Observer data indicated that the average weight of individual reef sharks was approximately 10 kg (range 2–95 kg), at a fork length of about 100 cm (range 50–189 cm). Thus the total weight of sharks landed in 1996 and 1997 was approximately 2 t and 2.9 t respectively.

Insufficient fishery data are available to enable a shark resource evaluation for Chagos, but by-catches from licensed Mauritian vessels may be considered small compared with recorded catches elsewhere in the Indian Ocean; for example, shark catches in Seychelles are reported to range from 21 t (1984) to 117 t (1994) (Nageon de Lestang,

1998), whereas the fishable area of the Mahe Plateau, 26,500 km^2 (MRAG, 1996a), from which most of the catch is derived, is only approximately three times that of Chagos. Anderson *et al.* (1998) describe reduced shark numbers in Chagos between 1977 and 1996. A more significant impact on shark resources may relate to unlicensed fishing activities in the past, principally by vessels from South Asia. These are known to have targeted shark resources, but the total volume of removals cannot be assessed accurately. In order to address this issue, the BIOT Authorities have increased surveillance through the year round presence of a Fisheries Patrol Vessel.

From fishing logbook data, the greatest catch and effort related to the Great Chagos Bank (approximately 60–80%, Tables 4 and 5) except for 1991 when other banks were targeted. Northern Great Chagos, including Nelson Island, and Western Great Chagos are the most frequently fished locations on the Great Chagos Bank, and Pitt and Speakers Banks elsewhere. Other locations are fished intermittently. As a typical example, the locations fished during 1997 are illustrated in Figure 1.

Fishing occurred predominantly on the banks (typically 80–95%) except when particular vessels targeted the lutjanid fish *P. filamentosus* in certain years (1995–6, Tables 4 and 5). Habitat affects the species composition. Discounting 1991 and 1992 prior to modification of logsheets, and during which time poor species reporting occurred, lethrinids dominate the catch (Figure 2, typically 45–65%). Lutjanids typically constitute 10–18% of the catch, serranids 15–25% and other species 0–10%. The proportion of lutjanids was relatively high during 1995 (35%) and 1996 (27%) due to targeting effects.

Observer data provides more detail on species composition. For example, in 1997, 36 species from the families Lethrinidae, Lutjanidae and Serranidae were observed. Lethrinids predominated in the catch (59.1%), then lutjanids (23.4%), serranids (16%) and others (1.3%). The majority of the catch comprised two species, *Lethrinus mahsena* and *Lethrinus rubrioperculatus*. Other important species were *Pristipomoides filamentosus*, and *Variola louti*. However, observer data will be biassed according to the targeting strategy of the vessels boarded.

Catch Rate Data

The overall catch rate from the Chagos inshore fishery in 1977 was reported to be 57 kg per man-day (Wijkstom & Kropelein, 1979) and has remained around this value since 1991 (39 kg per man-day in 1992 – 55 kg per man-day in 1996, Figure 3). Annual variations in catch rate may be related to the skill of the different crew employed each voyage, climatic factors and habitat. In 1997 catch rates from the drop off were 50 kg per man-day compared with 55 kg per man-day on the banks.

Assuming constant catchability, catch rates are an index of resource abundance. Lightly fished locations such as Cauvin and Ganges Banks produced the highest catch rates (e.g. 69.7 and 72.1 kg per man-day respectively in 1997) whilst frequently fished locations such as South Great Chagos and Pitt Bank had lower catch rates (e.g. 35.3 and 43.4 kg per man-day respectively in 1997, Figure 3). However, these observations are not consistent (see Cauvin Bank in 1995 and 1996, Figure 3). It would appear that fishing pressure alone cannot explain these observed differences, and that regional differences in catch rate occur, possibly related to local environmental characteristics. West Great

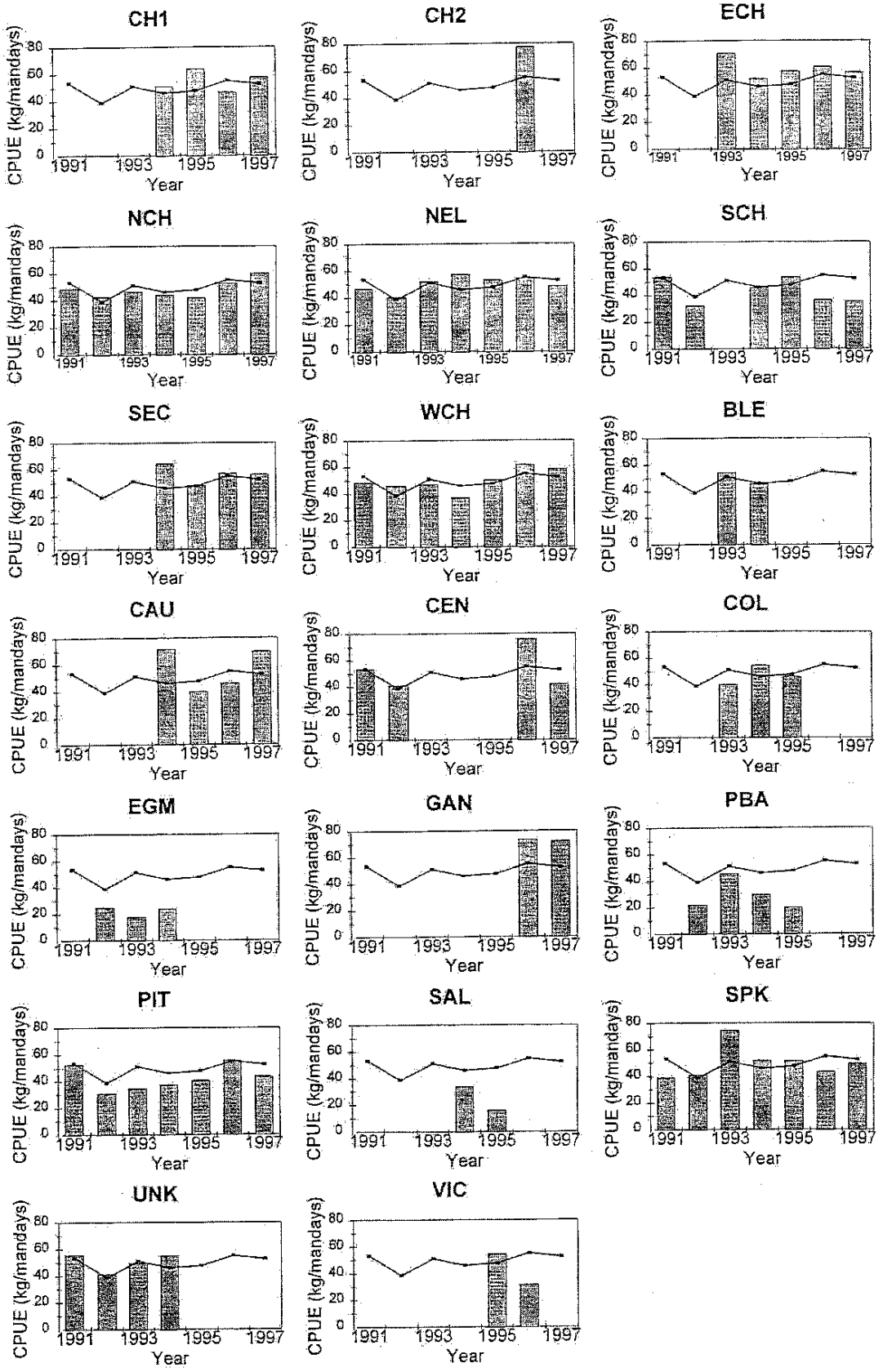

FIGURE 3 Mean dory catch rate (kg per man-day) per year and location (bars) compared to the mean catch rate per year over all locations in Chagos (line). See Figure 1 for location codes.

Chagos Bank, for example, is one of the most popular and frequently visited locations, and catch rates at that location were higher than the average in 1997 (58.5 kg per man-day). Figure 1 indicates the catch rate distribution by bank within the archipelago in 1997.

Whilst catch rates have fluctuated over time, they do not indicate any particular decline at any location (Figure 3) and it was not possible to fit a production model to the data. The patchy distribution of demersal species and the ability of fishing vessels to switch between patches within an area might allow overall catch rates to be maintained, despite localised depletion: mothership-dory fishing ventures may exert high fishing pressure over a short period of time in a discrete location. Thus, if a vessel remains in one general location for a number of days, then it may be possible to detect short term depletion at that location. Daily catch rate data, dis-aggregated by habitat, were plotted to investigate the potential to derive an estimate of biomass from a constant catchability depletion model (Polovina, 1986; Mees, 1993; 1997a). Due to the fact that the mother-vessels often move locations twice daily, data did not fit the requirements of the model and biomass could not be estimated.

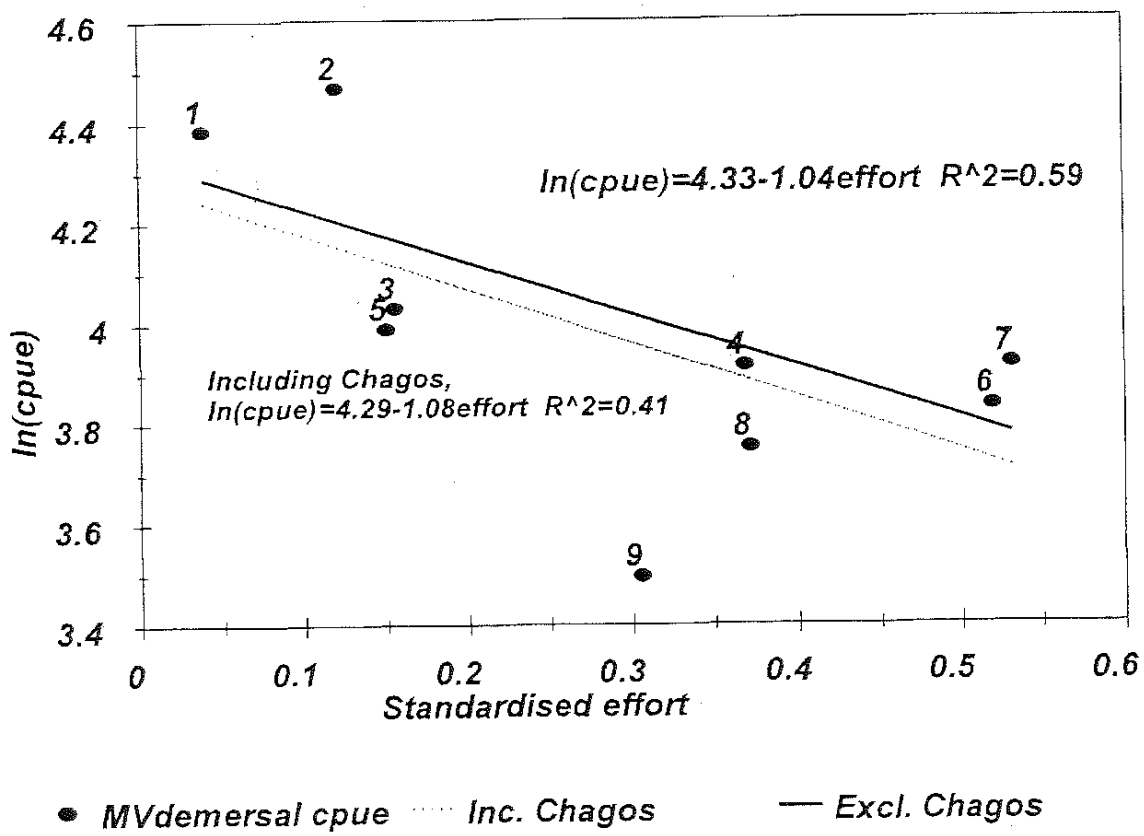

FIGURE 4 The natural logarithm of standardised catch rates (ln Std. CPUE, kg per man day) for mother-vessel dory fishing operations in Seychelles, Mauritius and Chagos against mean annual standardised effort (man-days km^{-2} yr^{-1}), with regression line fitted (including and excluding Chagos), for data aggregated over the period 1992–1994 (1. Astove/Cosmoledo, 2. Providence/ Farquahar, 3. Amirantes, 4. Mahe Plateau, 5. Banks south of Mahe Plateau, 6. Saya de Malha, 7. Nazareth, 8. St. Brandon 9. Chagos Archipelago).

A spatial comparison throughout the western Indian Ocean of standardised mother-vessel dory catch rates for all demersal species indicated that those in Chagos were lower than expected relative to the amount of prior fishing effort (Figure 4). More detailed examination by family guild indicated that this related principally to lutjanid species whilst the catch rate of serranids, for example, was consistent with prior effort (Mees, 1997b). Oceanic primary productivity around Chagos is less than at other locations in the Indian Ocean (Cushing, 1971), but catch rate data were poorly correlated

TABLE 6 Biological parameter estimates derived for *Lethrinus mahsena* caught at various locations (refer to Figure 1 for location codes) in Chagos during the period 1994–1997. Parameters indicating management concern are in bold. (Source of growth parameter estimates: a = Dalzell *et al.* 1992, Yemen; b = Bautil & Samboo, 1988, Mauritius; c = Otoliths from Chagos, Pilling, PhD thesis, *in prep.*)

	ECH	NEL		SCH		SEC		WCH		PIT		
	1994(a)	1996(a)	1996(b)	1997(a)	1997(b)	1997(a)	1997(b)	1996(a)	1996(b)	1994(a)	1997(a)	1997(b)
K	0.32	0.32	0.1	0.32	0.1	0.32	0.1	0.32	0.1	0.32	0.32	0.1
L inf	58.9	58.9	61	58.9	61	58.9	61	58.9	61	58.9	58.9	61
Lmin	19	24	24	20	20	23	23	26	26	19	20	20
Lmax	52	50	50	46	46	46	46	50	50	52	48	48
Lc50	-	30.4	30.5	27.2	27.3	34	34	37	36.7	-	26	26.1
Lc/Linf (%)		51.6	50	**46.2**	**44.8**	57.7	55.7	62.8	60.2		**44.1**	**42.8**
N	214	226	226	196	196	292	292	74	74	215	230	230
Z	0.77	1.06	0.35	1.61	0.54	2.84	0.97	2.6	**0.61**	1.15	1.69	0.57
M	0.69	0.69	0.32	0.69	0.32	0.69	0.32	0.69	0.32	0.69	0.69	0.32
F	0.08	0.37	0.03	**0.92**	0.22	**2.15**	0.65	**1.91**	0.29	0.46	1	0.25
Fopt		~0.4		~0.3		~0.7		~0.7			~0.3	
F/Z	0.1	0.35	0.09	0.57	0.41	0.76	0.67	0.73	0.48	0.4	0.59	0.44
F/Mopt		~1.2	~1.2	~1	~1	~1.5	~1.5	~2	~2		~1	~1
F/M	0.12	0.54	0.09	**1.33**	0.69	**3.12**	1.94	**2.77**	0.91	0.67	**1.45**	0.78

	ALL					
	1995(a)	1996(a)	1996(b)	1997(a)	1997(b)	1997(c)
K	0.32	0.32	0.1	0.32	0.1	0.07
L inf	58.9	58.9	61	58.9	61	67
Lmin	23	19	19	20	20	18
Lmax	49	54	54	50	50	52
Lc50	29.4	26.5	26.5	34	34.2	24.1
Lc/Linf (%)	49.9	45	43.4	57.7	56.1	**36.0**
N	718	554	554	1359	1359	645
Z	0.92	1.14	0.39	1.11	0.38	0.44
M	0.69	0.69	0.32	0.69	0.32	0.25
F	0.23	0.45	0.07	0.42	0.06	0.19
Fopt	~0.4	~0.3	~0.3	~0.7	~0.7	~0.7
F/Z	0.25	0.39	0.18	0.38	0.16	0.43
F/Mopt	~1.2	~1	~1	~1.8	~1.8	~1.8
F/M	0.33	0.75	0.22	0.61	0.19	0.76

with this variable (MRAG, 1996b). Lower catch rates thus seem to be consistent with the effects of discarding and targeting (species avoidance also occurs) related to potentially ciguatoxic lutjanid fish in particular, rather than lower productivity.

Biological Information

Biological reference points, that is, key population demographic parameters that highlight certain aspects of the status of the resources and provide guidelines for management, were derived for key species in the catch from information collected during observer programmes (Tables 6 and 7). Lc_{50} and fishing mortality (F) are key parameters which should be established for principal species in the catch. Length at maturity (Lm_{50}) is also useful, but where unknown, management may be based on knowledge of Lc_{50}.

Where length at maturity (Lm_{50}) is known and Lc_{50} is about Lm_{50}, fishing mortality (F) should not exceed twice the natural mortality (M). Where Lc_{50} is greater than Lm_{50} effort controls are less important and overfishing is unlikely to occur. However, where the reverse is true, careful control of the level of effort is required. Yield per recruit analyses indicate the optimum level of fishing mortality (F_{opt}) at any given Lc_{50}, and estimates derived in MRAG (1996c) are indicated in Tables 6 and 7.

TABLE 7 Biological parameter estimates derived for *Pristipomoides filamentosus*, *Aprion virescens*, *Variola louti* and *Pristipomoides multidens* caught at various locations (refer to Figure 1 for location codes) in Chagos during the period 1994–1997. Parameters indicating management concern are in bold.
(Source of growth parameter estimates: *P. filamentosus*, Mees, 1993, Seychelles; *A. virescens* a = Van der Knapp *et al.* 1991, Maldives; b = Mees, 1992, Seychelles; c = Otoliths from Chagos, Pilling, PhD thesis, *in prep.* (note, Z may be low due to lack of small individuals in sample); *V. louti*, Munro & McB Williams, 1985, Papua new Guinea; *P. multidens*, Manooch, 1987, Australia.)

PARAMETER	*Pristipomoides filamentosus*						*Aprion virescens*				*Variola louti*	*Pristipomoides multidens*
	1994		1995		1997		1994(a)	1997(a)	1997(b)	1997(c)	1997	1995
	NCH	CH1	ALL	PIT	SEC	ALL	NCH	ALL	ALL	ALL	ALL	ALL
K	0.29	0.29	0.29	0.29	0.29	0.29	0.35	0.35	0.26	0.09	0.18	0.22
L inf	81.7	81.7	81.7	81.7	81.7	81.7	78	78	104	93.7	64	59
Lmin	29	29	25	35	26	25	29	33	33	33	24	34
Lmax	73	73	75	73	67	73	79	88	88	88	54	59
Lc_{50}			37.2	45.7	34.9	40.2		48.3	49.9	39.3	38.3	47.9
Lc_{50}/Linf (%)			45.5	55.9	**42.7**	**49.2**		61.9	**47.9**	**0.4**	59.8	81.1
N	433	683	1239	93	317	893	102	354	354	354	148	106
Z	0.83	0.69	1.12	1.93	1.16	1.2	0.82	0.88	1.73	0.17	0.79	0.65
M	0.55	0.55	0.55	0.55	0.55	0.55	0.68	0.68	0.51	0.27	0.46	0.50
F	0.28	0.14	0.57	1.38	0.61	0.65	0.14	0.2	**1.22**	M>Z	0.33	0.15
F_{opt} at Lc			~0.65	~2	~0.6	~0.9		~0.7	~0.7			
F/Z	0.34	0.20	0.51	0.72	0.53	0.54	0.17	0.23	0.71		0.42	0.23
$(F/M)_{opt}$			~1	~1.5	~1	~1.2		~2	~1.1		~2	>2
F/M	0.51	0.25	1.04	2.51	1.11	1.18	0.21	0.29	2.39	0.72	0.30	

Lm_{50} estimates have not been derived for species from Chagos and are assumed to be equivalent to 50% of the asymptotic length, $L\infty$ (Grimes, 1987). Where Lm_{50} is unknown, a scale of fishing mortalities has been derived, as a guideline to management, appropriate for different values of Lc_{50} (MRAG, 1996c). Where $Lc_{50}=0.5L\infty$, fishing mortality should not exceed natural mortality (ie $F/M \leq 1$). The guidelines developed permit the calculation of appropriate effort levels (F/M values) at any given value of Lc_{50}. For the Lc_{50} values observed in various locations in Chagos, this is indicated in Tables 6 and 7 as F/M_{opt}.

It has been necessary to employ growth parameter estimates from the literature (see above). However, the outputs of stock assessment models (biological parameters such as total mortality, Z) which employ growth parameter inputs are highly sensitive to changes in those estimates, significantly affecting management outputs (Mees & Rousseau, 1997). Consequently there are uncertainties associated with the resource status and management indicators for Chagos. For *L. mahsena*, Lc_{50} was less than half the asymptotic length at South Great Chagos, Pitt Bank, and for data aggregated over all locations in 1995 and 1996. Fishing mortality (F and F/M) was higher than the optimum for the Lc_{50} value at South Great Chagos Bank (1997), West Great Chagos Bank (1996), Pitt Bank (1997) and overall (1996), based on the more conservative estimates of fishing mortality derived from growth parameters. The least conservative estimates indicated that fishing mortality was less than the optimum at all locations each year (Table 6), and this was also the case for 1997 when an independent estimate of growth (Pilling, *in prep.*) was derived from otoliths. Similarly for other species studied, fishing mortality was less than the optimum except for *P. filamentosus* at Pitt Bank in 1997, and for the conservative estimate derived for *A. virescens* from all locations in 1997. Lc_{50}, however, was generally low for these two species.

CONCLUSIONS

Since the introduction of the Fisheries Conservation and Management Zone in 1991, the inshore fishery of the Chagos Archipelago has been subject to a rigorous management regime. Conservative management targets have been set to ensure that the primary aim of conservation is met. Fishery and observer data are analysed annually and provide feedback to guide management planning. This paper has provided a summary of the history of the fishery since 1977, and has indicated its present status.

Effort controls are the primary management instrument in Chagos. This form of control is most appropriate: without a limit on the catch that may be taken, there is no incentive to under-report landings, which can be a problem when catch controls are applied. Indeed, observer data indicate that under-reporting does not occur. Landed catches from the fishery are well below the most conservative estimate of sustainable yield, equivalent to 23-35% of the maximum sustainable yield. Catch has exceeded the lower estimate of sustainable yield at some of the smaller banks in certain years (e.g. Centurion Bank and Ganges Banks in 1996, Victory Bank in 1995), but fishing is intermittent at these locations. On neither the larger banks nor the sub-sectors of the Great Chagos Bank has catch exceeded sustainable yield in any year (10–40% of yield overall for the Great Chagos Bank).

Catch rate data did not indicate any consistent decrease in catch per unit effort over time at any location, and it was not possible to obtain independent assessments of the sustainable yield of handline caught species from production models. Biological reference points were also used to evaluate the status of the inshore resources. The results were subject to uncertainty, but generally indicated that fishing mortality was below the optimum required to achieve exploitation at the level of sustainable yield, i.e. they indicated that there was potential to increase effort if this is considered desirable. Accurate estimates of growth parameters from Chagos fish species will reduce the uncertainty in management outputs. However, whilst that uncertainty remains, a cautious approach to management is adopted, and consistent with the aim of conservation, no increases in fishing effort are planned.

Both catch rate data and biological reference points indicate that the level of exploitation in the Chagos inshore fishery is within sustainable limits. However, catch rate data do suggest some partial impacts of fisheries at some frequently fished locations such as Pitt Bank and South Great Chagos Bank where lower catch rates were observed, although such observations are not consistent for all frequently visited sites, suggesting environmental effects are also important. Absolute catch data highlight smaller banks that will need to be monitored closely in the future. Together, these data suggest suitable locations for experimental closure. Fishing within lagoons is prohibited, and closures within targeted fishing grounds are presently under consideration as an additional management tool.

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Annex 107

Convention on Biological Diversity, Marine Coastal and Biological Diversity, COP Decision VII/5 (2004)

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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
Seventh meeting
Kuala Lumpur, 9-20 and 27 February 2004
Agenda item 18.2

DECISION ADOPTED BY THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY AT ITS SEVENTH MEETING

VII/5. Marine and coastal biological diversity

Review of the programme of work on marine and coastal biodiversity

The Conference of the Parties

1. *Takes note* that progress has been made in the implementation of the programme of work at the national, regional and global levels and that facilitation of implementation has been undertaken by the Secretariat;

2. *Recognizes* that the programme of work on marine and coastal biological diversity must incorporate a diverse range of tools and approaches and address the three objectives of the Convention, and notes the need to ensure integration between the programmes of work on protected areas and on marine and coastal biological diversity, and in particular the programme element on marine and coastal protected areas, to ensure effective coordination in their implementation;

3 *Agrees* that the programme of work on marine and coastal biological diversity should be applied and interpreted consistently with national law, and where applicable, international law, including the United Nations Convention on the Law of the Sea;

4. *Decides* that the programme elements of the programme of work still correspond to global priorities, which are not fully implemented, and therefore *extends* the time period of the programme of work by an additional six years, taking into account the multi-year programme of work of the Conference of the Parties up to 2010;

5. *Notes* that the programme of work has been refined to take into account recent developments and new priorities and *endorses* for the guidance of Parties and any other relevant organizations or bodies the elaborated programme of work as presented in annex I to the present decision and its appendices 1-5, noting that Parties will implement those suggested activities that are consistent with their national priorities;

6. *Welcomes* the entry into force of the Agreement on the Conservation of Albatrosses and Petrels, and *notes* the adoption of the International Convention for the Control and Management of

/...

Ships' Ballast Water and Sediments under the International Maritime Organization and *encourages* Parties to the Convention on Biological Diversity and other Governments to consider ratifying these treaties;

7. *Agrees* that further technical advice is required to support the implementation of the programme elements related to sustainable use and to support the work of developing countries in achieving sustainable use of their marine and coastal areas, including in relation to tourism and fishing, and *requests* the Executive Secretary to work with the Food and Agriculture Organization of the United Nations and other relevant organizations to develop that advice and support;

8. *Taking into account* the report of the Ad Hoc Technical Expert Group on biodiversity and Climate Change and the recommendations of the Subsidiary Body on Scientific, Technical and Technological Advice at its ninth meeting and decision VII/15 of the Conference of the Parties at its seventh meeting on biodiversity and climate change, *agrees* that the programme of work on marine and coastal biodiversity should address issues related to biodiversity and climate change, and *further encourages* Parties to make use of it as relevant source of useful information and take measures to manage coastal and marine ecosystems, including mangroves, seagrass beds and coral reefs so as to maintain their resilience to extreme climatic events;

9. Recognizing the particular significance of this programme of work to small island developing States, *invites* funding institutions, and development agencies to provide financial support for the implementation of the elaborated programme of work on marine and coastal biodiversity, and its annexes and appendices;

Marine and coastal protected areas

10. *Welcomes* the report of the Ad Hoc Technical Expert Group on Marine and Coastal Protected Areas (UNEP/CBD/SBSTTA/8/INF/7), 1/ *expresses its gratitude* to the Governments of New Zealand and the United States of America, and the World Conservation Union (IUCN), for their financial, organizational and technical support for this work, and *expresses its gratitude* to the Chair and members of the Ad Hoc Technical Expert Group for their work;

11. *Notes* that marine and coastal biodiversity is under rapidly increasing and locally acute human pressure, such that globally, regionally and nationally marine and coastal biodiversity is declining or being lost. One of the reasons for this level of threat is the very low level of development of marine and coastal protected areas;

12. *Notes* that marine and coastal protected areas have been proven to contribute to:

(a) Protecting biodiversity;

(b) Sustainable use of components of biodiversity; and

1/ The Ad Hoc Technical Expert Group adopted the following definition of "marine and coastal protected area", which incorporates all of the IUCN categories of protected areas:

(a) "Marine and coastal protected area' means any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection that is surroundings.

(b) "Areas within the marine environment include permanent shallow marine waters; sea bays; straits; lagoons; estuaries; subtidal aquatic beds (kelp beds, seagrass beds; tropical marine meadows); coral reefs; intertidal muds; sand or salt flats and marshes; deep-water coral reefs; deep-water vents; and open ocean habitats."

(c) Managing conflict, enhancing economic well-being and improving the quality of life;

13. *Notes* that there are increasing numbers of marine and coastal protected areas, but in many cases they have not been effective because of problems related to their management (including as a result of lack of resources), size and habitat coverage;

14. *Notes also* that according to available data, marine and coastal ecosystems are severely underrepresented as protected areas, and these protected areas probably protect a very small proportion of marine and coastal environments globally and consequently make a relatively small contribution to sustainable management of marine and coastal biodiversity;

15. *Takes note with appreciation* of the joint note of the International Coral Reef Initiative and the Convention on Biological Diversity (UNEP/CBD/COP/7/INF/26) prepared pursuant to decision VI/3 of the Conference of the Parties on the International Coral Reef Initiative resolutions on small island developing States (annex I to the note) and on cold water coral reefs (see annex II to the note);

Goals of marine and coastal protected areas

16. *Agrees* that marine and coastal protected areas are one of the essential tools and approaches in the conservation and sustainable use of marine and coastal biodiversity;

17. *Notes* that there is an international body of evidence demonstrating that those marine and coastal protected areas where extractive uses are excluded have benefits for fisheries in surrounding areas, and in many cases for communities, and for sustainable tourism and other economic activities within and outside the marine and coastal protected area;

18. *Agrees* that the goal for work under the Convention relating to marine and coastal protected areas should be:

> The establishment and maintenance of marine and coastal protected areas that are effectively managed, ecologically based and contribute to a global network 2/ of marine and coastal protected areas, building upon national and regional systems, including a range of levels of protection, where human activities are managed, particularly through national legislation, regional programmes and policies, traditional and cultural practices and international agreements, to maintain the structure and functioning of the full range of marine and coastal ecosystems, in order to provide benefits to both present and future generations.

19. *Notes* that the Plan of Implementation of the World Summit on Sustainable Development promotes the conservation and management of the oceans, and agreed to develop and facilitate the use of diverse approaches and tools, including the ecosystem approach, the elimination of destructive fishing practices, the establishment of marine protected areas consistent with international law and based on scientific information, including representative networks, by 2012 and time/area closures for the protection of nursery grounds and periods, proper coastal land use, and watershed planning, and the integration of marine and coastal areas management into key sectors; and *agrees* to

2/ A global network provides for the connections between Parties, with the collaboration of others, for the exchange of ideas and experiences, scientific and technical cooperation, capacity building and cooperative action that mutually support national and regional systems of protected areas which collectively contribute to the achievement of the programme of work. This network has no authority or mandate over national or regional systems.

adopt this approach for the work of the Convention on marine and coastal protected areas, and to develop a strategy to meet this goal, including indicators of progress;

National framework of marine and coastal protected areas

20. *Aware* that marine and coastal protected areas should be part of a wider marine and coastal management framework, *urges* Parties and other Governments, as appropriate, to make efforts to adopt, as a matter of high priority (while taking into account the resource limitations of small island developing States), such a framework, taking into account appendix 3 to annex I to the present decision;

21. *Agrees* that an effective marine and coastal biodiversity management framework as set out in appendix 3 to annex I to the present decision would comprise sustainable management practices and actions to protect biodiversity over the wider marine and coastal environment, including integrated networks of marine and coastal protected areas consisting of:

(a) Marine and coastal protected areas, where threats are managed for the purpose of biodiversity conservation and/or sustainable use and where extractive uses may be allowed; and

(b) Representative marine and coastal protected areas where extractive uses are excluded, and other significant human pressures are removed or minimized, to enable the integrity, structure and functioning of ecosystems to be maintained or recovered;

22. *Agrees* that the balance between categories (a) and (b) marine and coastal protected areas, in paragraph 21 above would be selected by the country concerned;

23. *Notes* that the Ad Hoc Technical Expert Group on marine and coastal protected areas advised that certain objectives of marine and coastal protected areas, such as scientific reference areas can only be accomplished through the establishment of category (b) marine and coastal protected areas, and *encourages* Parties to take this advice into account when determining an appropriate balance between categories (a) and (b);

24. *Notes* that there are some benefits of the framework that can be provided with any degree of certainty only by including highly protected areas, and that to achieve the full benefits a network needs to include representative and distinctive areas and contain a sufficient area of the coastal and marine environment to be effective and ecologically viable;

25. *Agrees* that key factors for achieving effective management of marine and coastal protected areas include effective governance, clear national legal or customary frameworks to prevent damaging activities, effective compliance and enforcement, ability to control external activities that affect the marine and coastal protected area, strategic planning, capacity-building and having a sustainable financing for management;

26. *Urges* Parties to urgently address, through appropriate integrated marine and coastal management approaches, all threats, including those arising from the land (e.g. water quality, sedimentation) and shipping/transport, in order to maximize the effectiveness of marine and coastal protected areas and networks in achieving their marine and coastal biodiversity objectives taking into account possible effects of climate change such as rising sea levels;

27. *Agrees* that the full participation of indigenous and local communities and relevant stakeholders is important for achieving the global goal, and for the establishment and maintenance of individual marine and coastal protected areas and national and regional networks in line with decision VII/28 on protected areas;

28. *Notes* the technical advice provided by the Ad Hoc Technical Expert Group, contained in annex II to the present decision and in its report, relating to marine and coastal protected areas within national jurisdiction, and *urges* Parties and Governments to utilize that advice in their work to establish marine and coastal protected areas networks;

Marine protected areas in areas beyond national jurisdiction

29. *Notes* that there are increasing risks to biodiversity in marine areas beyond national jurisdiction and that marine and coastal protected areas are extremely deficient in purpose, numbers and coverage in these areas;

30. *Agrees* that there is an urgent need for international cooperation and action to improve conservation and sustainable use of biodiversity in marine areas beyond the limits of national jurisdiction, including the establishment of further marine protected areas consistent with international law, and based on scientific information, including areas such as seamounts, hydrothermal vents, cold-water corals and other vulnerable ecosystems;

31. *Recognizes* that the law of the sea provides a legal framework for regulating activities in marine areas beyond national jurisdiction and *requests* the Executive Secretary to urgently collaborate with the Secretary-General of the United Nations and relevant international and regional bodies in accordance with their mandates and their rules of procedure on the report called for in General Assembly resolution 58/240, paragraph 52, and to support any work of the General Assembly in identifying appropriate mechanisms for the future establishment and effective management of marine protected areas beyond national jurisdiction;

Assessment, monitoring and research priorities

32. *Notes* that the research priorities and pilot projects set out in appendix 4 to annex I to the present decision would provide important assistance to national and, where appropriate, regional efforts to establish and maintain marine and coastal protected areas and national and regional networks, and that research programmes on the conservation of marine and coastal biodiversity resources are needed while setting up national biodiversity research priorities;

33. *Agrees* to incorporate the research priorities and pilot projects contained in appendix 4 to annex I to the present decision into the programme of work on marine and coastal biodiversity, and *requests* the Executive Secretary to identify partners to adopt the research priorities and undertake these projects as a matter of urgency;

34. *Notes* that it is necessary to develop research programmes on the conservation of marine biological diversity resources beyond marine and coastal protected areas, with a view to establishing protected-area networks;

International support for the creation of networks of marine and coastal protected areas

35. *Urges* Parties, other Governments and relevant organizations to provide active financial, technical and other support for the establishment of a global system of marine and coastal protected area networks and the implementation within it of relevant provisions contained in this decision, including identification and removal of barriers to the creation of marine and coastal protected areas, and removal of perverse incentives for unsustainable activities in the marine and coastal environment, pursuant to decision VI/15, on incentive measures, within the framework of relevant marine-related international law;

36. *Decides* to examine the need for support through the financial mechanism to developing country Parties, in particular the least developed and small island developing States among them, for country-driven activities aimed at enhancing capabilities for activities relating to the establishment and maintenance of marine and coastal protected areas and networks of marine and coastal protected areas and in particular to assist Parties to develop systems to make their marine and coastal protected area networks self-sustaining in the medium to long term;

37. *Notes* that further technical advice related to network design and in particular ecological coherence of networks may be needed to assist Parties in implementation work, and requests the Executive Secretary, in consultation with the Bureau of Subsidiary Body on Scientific, Technical and Technological Advice, to identify appropriate mechanisms for developing this advice;

Monitoring progress toward the global goal

38. *Invites* the World Conservation Monitoring Centre of the United Nations Environment Programme, in collaboration with relevant organizations and authorities, to provide and maintain up-to-date information on marine and coastal protected areas, in line with the proposed categories for inventory and contextual information set out in annex III below, to provide a basis for the assessment work under the Convention;

39. *Requests* the Executive Secretary to provide an assessment of progress toward the global goal, as part of reporting on the programme of work on marine and coastal biological diversity;

Mariculture

40. *Welcomes* the summary report of the Ad Hoc Technical Expert Group on Mariculture (UNEP/CBD/SBSTTA/8/9/Add.2) and the full report of the Group as presented as an information document for the eighth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (UNEP/CBD/SBSTTA/8/INF/6);

41. *Expresses its appreciation* to the Food and Agriculture Organization of the United Nations (FAO) for the technical support and meeting facilities provided for the meeting of the Ad Hoc Technical Expert Group on Mariculture;

42. *Takes note* of the negative biodiversity effects of mariculture, as described in section II of the summary report of the Ad Hoc Technical Expert Group on Mariculture, and of the methods and techniques available for their mitigation, as described in section III of that summary report;

43. *Notes also* that, in section IV of the summary report, the Ad Hoc Technical Expert Group identified some positive effects for biodiversity of some forms of mariculture with native species;

44. *Urges* Parties and other Governments to adopt the use of relevant methods and techniques for avoiding the adverse effects of mariculture on marine and coastal biological diversity, and incorporate them into their national biodiversity strategies and action plans;

45. *Recognizes* the complexity of mariculture activities, the highly variable circumstances of different geographical areas, mariculture practices and cultured species, as well as social, cultural and economic conditions, which will influence mitigation options, and, accordingly, taking into account the special needs of and the difficulties faced by stakeholders in developing countries, *recommends* that Parties and other Governments adopt the use of the following specific methods, techniques or practices for avoiding the adverse biodiversity-related effects of mariculture:

(a) The application of environmental impact assessments, or similar assessment and monitoring procedures, for mariculture developments, with due consideration paid to the scale and nature of the operation, as well as carrying capacities of the environment, taking into account the guidelines on the integration of biodiversity considerations in environmental impact assessment legislation and/or processes and in strategic impact assessment, endorsed by the Conference of the Parties in its decision VI/7 A, as well as the recommendations endorsed in decision VI/10, annex II, on the conduct of cultural, environmental and social impact assessments regarding developments proposed to take place on, or which are likely to impact on, sacred sites and on lands and waters traditionally occupied or used by indigenous and local communities. There is a need to address the likely immediate, intermediate and long-term impacts on all levels of biodiversity;

(b) Development of effective site-selection methods, in the framework of integrated marine and coastal area management, taking into account the special needs and difficulties encountered by stakeholders in developing countries;

(c) Development of effective methods for effluent and waste control;

(d) Development of appropriate genetic resource management plans at the hatchery level and in the breeding areas, including cryopreservation techniques, aimed at biodiversity conservation;

(e) Development of controlled low-cost hatchery and genetically sound reproduction methods, made available for widespread use, in order to avoid seed collection from nature, where appropriate. In cases where seed collection from nature cannot be avoided, environmentally sound practices for spat collecting operations should be employed;

(f) Use of selective fishing gear in order to avoid or minimize by-catch in cases where seed are collected from nature;

(g) Use of native species and subspecies in mariculture;

(h) Implementation of effective measures to prevent the inadvertent release of mariculture species and fertile polyploids, including, in the framework of the Cartagena Protocol on Biosafety, living modified organisms (LMOs);

(i) Use of proper methods of breeding and proper places of releasing in order to protect genetic diversity;

(j) Minimizing the use of antibiotics through better husbandry techniques;

(k) Ensuring that fish stocks used for fish meal and fish oil are managed in such a way as to be sustainable and to maintain the trophic web;

(l) Use of selective methods in industrial fisheries to avoid or minimize by-catch;

(m) Considering traditional knowledge, where applicable as a source to develop sustainable mariculture techniques;

46. *Urges* Parties and other Governments to adopt relevant best management practices and legal and institutional arrangements for sustainable mariculture, taking into account the special needs and difficulties encountered by stakeholders in developing countries, in particular through implementing Article 9 of Code of Conduct on Responsible Fisheries, as well as other provisions in the Code dealing

with aquaculture, recognizing that it provides necessary guidance to develop legislative and policy frameworks at the national, regional and international levels;

47. *Requests* the Executive Secretary to undertake a comprehensive review of relevant documents on best practices relevant to mariculture, and to disseminate the results, as well as relevant case studies, through the clearing-house mechanism prior to the tenth meeting of the Subsidiary Body on Scientific, Technical and technological Advice;

48. *Agrees* to incorporate the research and monitoring priorities identified by the Ad Hoc Technical Expert Group on Mariculture as outlined in appendix 5 to annex I to the present decision into the programme of work on marine and coastal biological diversity;

49. *Recommends* that the Executive Secretary, in collaboration with the Food and Agriculture Organization of the United Nations and other relevant organizations, explore ways and means for implementing these research and monitoring priorities, including an evaluation of means through which mariculture can be used to restore or maintain biodiversity;

50. *Recommends* that the Executive Secretary, in collaboration with the Food and Agriculture Organization of the United Nations and other relevant organizations, harmonize the use of terms in regard to mariculture by further developing and adopting the glossary of the Food and Agriculture Organization of the United Nations;

51. *Expresses its support* for regional and international collaboration to address transboundary impacts of mariculture on biodiversity, such as spread of disease and invasive alien species;

52. *Decides* to promote technical exchange and training programmes, and transfer of tools and technology;

53. *Decides* to examine the need for support through the financial mechanism to developing country Parties for country-driven activities aimed at enhancing capabilities to mitigate the adverse effects of mariculture on biological diversity;

Conservation and sustainable use of deep seabed genetic resources beyond national jurisdiction: issues arising from the study of the relationship between the Convention on Biological Diversity and the United Nations Convention on the Law of the Sea

54. *Requests* the Executive Secretary, in consultation with Parties and other Governments and the International Seabed Authority, and in collaboration with international organizations, such as the United Nations Division for Ocean Affairs and the Law of the Sea, the United Nations Environment Programme, and the Intergovernmental Oceanographic Commission of the United Nations Educational, Cultural and Scientific Organization, if appropriate, to compile information on the methods for the identification, assessment and monitoring of genetic resources of the seabed and ocean floor and subsoil thereof, in areas beyond the limits of national jurisdiction; compile and synthesize information on their status and trends including identification of threats to such genetic resources and the technical options for their protection; and report on the progress made to the Subsidiary Body on Scientific, Technical and Technological Advice;

55. *Welcomes* United Nations General Assembly resolution 58/240 of December 2003 and *invites* the Parties to raise their concerns regarding the issue of conservation and sustainable use of genetic resources of the deep seabed beyond limits of national jurisdiction at the next meeting of the General Assembly and *further invites* the General Assembly to further coordinate work relating to

conservation and sustainable use of genetic resources of the deep seabed beyond the limits of national jurisdiction;

56. *Invites* Parties and other States to identify activities and processes under their jurisdiction or control which may have significant adverse impact on deep seabed ecosystems and species beyond the limits of national jurisdiction, in order to address Article 3 of the Convention;

Conservation and sustainable use of biological diversity in marine areas beyond the limits of national jurisdiction

57. *Recalling* paragraph 32 (a) and (c) of the Plan of Implementation from the World Summit on Sustainable Development, that calls on the international community to "maintain the productivity and biodiversity of important and vulnerable marine and coastal areas, including in areas within and beyond national jurisdiction";

58. *Notes* that United Nations General Assembly in paragraph 51 of its resolution 58/240, has reiterated "its call for urgent consideration of ways to integrate and improve, on a scientific basis, the management of risks to the marine biodiversity of seamounts, cold water coral reefs and certain other underwater features";

59. *Recalls* paragraph 52 of General Assembly resolution 58/240, in which the Assembly "invites the relevant global and regional bodies, in accordance with their mandate, to investigate urgently how to better address, on a scientific basis, including the application of precaution, the threats and risks to vulnerable and threatened marine ecosystems and biodiversity beyond national jurisdiction; how existing treaties and other relevant instruments can be used in this process consistent with international law, in particular with the Convention, and with the principles of an integrated ecosystem-based approach to management, including the identification of marine ecosystem types that warrant priority attention and to explore a range of potential approaches and tools for the protection and management";

60. *Concerned about* the serious threats to the biological diversity, *stresses* the need for rapid action to address these threats on the basis of the precautionary approach and the ecosystem approach, in marine areas beyond the limits of national jurisdiction, in particular areas with seamounts, hydrothermal vents, and cold-water corals, other vulnerable ecosystems and certain other underwater features, resulting from processes and activities in such areas;

61. *Calls upon* the General Assembly and other relevant international and regional organizations, within their mandate, according to their rules of procedure, to urgently take the necessary short-term, medium-term and long-term measures to eliminate/avoid destructive practices, consistent with international law, on scientific basis, including the application of precaution, for example, consideration on a case by case basis, of interim prohibition of destructive practices adversely impacting the marine biological diversity associated with the areas identified in paragraph 60 above;

62. *Recommends* Parties to also urgently take the necessary short-term, medium-term and long-term measures to respond to the loss or reduction of marine biological diversity associated with the areas identified in paragraph 60 above.

Annex I

Annex 108

Extract from Law of the Sea Bulletin No. 54, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 2004

Bulletin No. 54

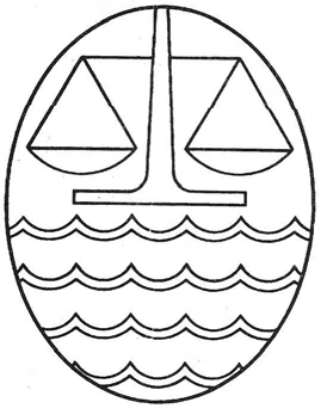
Law *of the* Sea

Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs

United Nations

Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs

Law *of the* Sea



Bulletin No. 54

United Nations
New York, 2004

NOTE

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Furthermore, publication in the Bulletin of information concerning developments relating to the law of the sea emanating from actions and decisions taken by States does not imply recognition by the United Nations of the validity of the actions and decisions in question.

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2. Statement of the position of the Government of the Republic of Mauritius with respect to the deposit by the United Kingdom of Great Britain and Northern Ireland of a list of geographical coordinates of points pursuant to article 75, paragraph 2, of the United Nations Convention on the Law of the Sea, 14 April 2004[2]

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to bring to his attention, in his capacity as depositary of the 1982 United Nations Convention on the Law of the Sea ("the Convention"), the following statement of the position of the Government of the Republic of Mauritius with respect to the deposit by the United Kingdom of Great Britain and Northern Ireland to the United Nations Secretariat of a list of geographical coordinates of points pursuant to article 75, paragraph 2, of the Convention, as reported in Circular Note M.Z.N. 46.2004-LOS (Maritime Zone Notification) dated 12 March 2004.

The Government of the Republic of Mauritius wishes to protest strongly against this declaration inasmuch as it considers that, by depositing the list of geographical coordinates of points defining the outer limits of the so-called Environment (Protection and Preservation) Zone with the Secretary-General of the United Nations pursuant to article 75, paragraph 2, of the Convention, the United Kingdom of Great Britain and Northern Ireland is purporting to exercise over that zone rights which only a coastal state may have over its exclusive economic zone.

The Government of the Republic of Mauritius wishes to reiterate in very emphatic terms that it does not recognize the so-called "British Indian Ocean Territory" which was established by the unlawful excision in 1965 of the Chagos Archipelago from the territory of Mauritius, in breach of the United Nations General Charter, as applied and interpreted in accordance with resolution 1514 (XV) of 14 December 1960, resolution 2066 (XX) of 16 December 1965, and resolution 2357 (XXII) of 19 December 1967.

The Government of the Republic of Mauritius has, over the years, consistently asserted, and hereby reasserts, its complete and full sovereignty over the Chagos Archipelago, including its maritime zones, which forms part of the national territory of Mauritius.

The Government of the Republic of Mauritius therefore unequivocally protests against the deposit of the charts and coordinates of the so-called Environment (Protection and Preservation) Zone by the United Kingdom pursuant to Article 75, paragraph 2 of the Convention and against the exercise by the United Kingdom of Great Britain and Northern Ireland of any sovereignty, rights or jurisdiction within the territory of Mauritius.

The Government of the Republic of Mauritius would appreciate if the above declaration could be duly recorded, circulated and published in the Law of the Sea Bulletin No.54, the Law of the Sea Information Circular and any other relevant publication issued by the United Nations.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

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[2] Note No. 4780/04 (NY/UN/562) dated 14 April 2004 from the Permanent Mission of the Republic of Mauritius to the United Nations.

Annex 109

Note dated 2 July 2004 by Henry Steel, "Fishing by Mauritian Vessels in BIOT Waters"

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Fishing by Mauritian Vessels in BIOT Waters

NOTE

So far as I am aware, the only written agreement (or, more accurately, written record of an agreement) on this matter is what is contained in the record of the Lancaster House discussions in September 1965 which laid the ground for Mauritius independence. It was during those discussions that Mauritian Ministers gave their consent to the detachment of the Chagos Archipelago from Mauritius for the purpose of their incorporation into the proposed BIOT. The record shows that, in return for that consent, the British Government agreed to accept a number of obligations, one of which was the following:

"the British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

(a) ... ...

(b) Fishing Rights;

(c) ... ...".

The phrase "Fishing Rights" was interpreted as intended to refer to "traditional" fishing – the alternative phrase "artisanal fishing" is sometimes to be found in the relevant FCO papers – and was treated as therefore covering fishing in BIOT's inshore waters (other than in the vicinity of Diego Garcia). Accordingly, when BIOT first established a fisheries zone in 1969 (a 9-mile zone contiguous to the 3-mile territorial sea) and subsequently, in 1971, prohibited fishing in it by outsiders, Mauritian fishing vessels were exempted from the prohibition. When, in 1984, a proper licensing system was introduced, the practice was then adopted of requiring Mauritian vessels to obtain licences for fishing in the 12-mile zone but to issue them free. It was also decided that there was no reason not to issue such licences to Mauritian vessels engaged in purse-seine fishing for tuna in that zone (though this

would presumably not have been "traditional" fishing for them). When, finally, the 200-mile Fisheries (Management and Conservation) Zone was established in 1991, the practice eventually adopted (apparently after some confusion or uncertainty) was to extend the existing system (ie to require licences for Mauritian vessels but to issue them free) to cover all Mauritian vessels seeking to fish in the zone, including those engaged in tuna-fishing. That remains the practice.

A problem has arisen in recent years concerning foreign-owned but Mauritius-flagged vessels. The policy adopted has been to treat such a vessel as entitled to the concession if there is a genuine joint-venture (ie where there is a genuine Mauritian share in the enterprise) but to refuse the concession to a vessel that is wholly foreign-owned and foreign-operated and that is registered in Mauritius purely for convenience.

Henry Steel

2 July 2004

Annex 110

Klein, N., Dispute Settlement in the UN Convention on the Law of the Sea (Cambridge University Press, 2005)

settlement procedures.[80] First, the settlement of disputes was to be based on law to avoid disputes being settled through the political and economic pressures of the more powerful States. Second, the greatest possible uniformity in the interpretation of the Convention would be sought through compulsory dispute settlement. Third, exceptions would be carefully determined in order to enhance the obligatory character of the settlement regime. Finally, the system of dispute settlement had to constitute an integral part of the Convention rather than be included as an optional protocol. The President of the Conference then took the initiative in 1976 to include a set of provisions relating to dispute settlement in the Informal Single Negotiating Text as a procedural device to serve as the basis of discussions.[81] The most difficult issues to be resolved during the ensuing negotiations were the available fora for dispute settlement as well as procedures in relation to the delimitation of extended maritime zones and the exercise of coastal States' sovereign rights in the Exclusive Economic Zone ("EEZ"). As negotiations on dispute settlement progressed, the interconnection beteen substance and procedure became more pronounced. Questions of substance were left unresolved until questions of dispute settlement were settled, or were concurrently finalized.

Eight years of negotiations culminated in the adoption of the Convention in New York on April 30, 1982 by a vote of 130 to 4, with 17 abstentions. The four negative votes were cast by the United States, Israel, Venezuela, and Turkey. The States abstaining at that time included the United Kingdom, the Netherlands, Belgium, the Federal Republic of Germany, Italy, Spain, and the majority of eastern European countries. The Convention was then opened for signature in December 1982.[82] The United States, along with the majority of industrialized nations, decided not to sign UNCLOS at this time because of their dissatisfaction with the provisions in Part XI of the Convention relating to the deep

[80] Ambassador R. Galindo Pohl summarized these themes in 1974, cited in A. O. Adede, *The System for Settlement of Disputes Under the United Nations Convention on the Law of the Sea* (1987), p. 39.

[81] Memorandum by the President of the Conference on doc. A/CONF.62/WP.9, UN Doc. A/CONF.62/WP.9/Add.1 (1976), reprinted in 5 *Third United Nations Conference on the Law of the Sea: Official Records* at 122, ¶ 6, UN Sales No. E.76.V.8 (1984).

[82] One hundred and seventeen countries and a UN body representing Namibia and the Cook islands signed the Convention; twenty-three countries attending the ceremony did not sign, including the United States, and twenty-four countries did not even attend the ceremony.

Annex 111

Second Reading of Maritime Zones Bill (No. I of 2005), 15 February 2005

Debate No. 02 of 15.02.05

PUBLIC BILLS

First Reading

On motion made and seconded the following Bills were read a first time -

(a) The Central Water Authority (Amendment) Bill (No. II of 2005)
(b) The Regulatory Authorities Appeal Tribunal Bill (No. III of 2005)

Second Reading

THE MARITIME ZONES BILL (NO. I OF 2005)

Order for Second Reading read.

The Prime Minister: Mr Speaker, Sir, I beg to move that the Maritime Zones Bill (No. I of 2005) be read a *second* time.

The purpose of this Bill is to incorporate in the laws of Mauritius the relevant Articles of the United Nations Convention on the Law of the Sea, commonly known as UNCLOS, to which Mauritius is a party. The Bill also makes provision for the exercise by Mauritius of its sovereign rights and jurisdiction over its maritime zones and the delineation of their outer limits as provided in the Convention.

Presently, matters relating to Maritime Zones of the State of Mauritius and their delimitation are governed by several pieces of legislation, namely the Territorial Sea Act of 1970, the Continental Shelf Act of 1970 and the Maritime Zones Act of 1977. All these Acts, the House will note, were drafted before the United Nations Convention on the Law of the Sea came into force in November 1994. Mauritius adhered to the Convention shortly after it was open for signature in December 1982. However, we did not take the necessary steps to update our maritime legislation and the situation remained the same even after the Convention had come into force in 1994.

It was only in 2001 that action was initiated to update our maritime legislation in order to -

- firstly, bring them in line with the provisions of UNCLOS;
- secondly, take full advantage of the possibilities provided for by UNCLOS by maximizing the extent of our maritime zones, namely our Territorial Waters, Exclusive Economic Zone and Continental Shelf, and
- thirdly, enter into maritime boundary delimitation negotiations with neighbouring states in conformity with the provisions of UNCLOS in order to safeguard our national rights and interests whilst fostering harmonious and long-term international relationship with our neighbours.

The need to amend our maritime legislation has also become urgent in view of the fact that Mauritius proposes to submit shortly to the United Nations Commission on the Limits of the Continental Shelf a claim for the extension of our Continental Shelf. And in this connexion, the necessary bathymetric and geological surveys have already been carried out by the Mauritius Oceanography Institute.

In view of the complexity of the task of drafting a highly technical piece of legislation, the Government of Mauritius sought, and obtained, the assistance of a team of specialised legal experts from the Commonwealth Secretariat to -

- undertake a detailed review of our current maritime legislation;
- compare our existing maritime zones legislation with the relevant provisions of UNCLOS and with similar legislation enacted by other comparable, Commonwealth, Small Islands Developing States;
- draft a new single Maritime Zones Bill which is in conformity with UNCLOS and which reflects current international State practice, and
- consider other related national legislations and to make recommendations for any review or amendment they may require.

Mr Speaker, Sir, the draft submitted by the Commonwealth Secretariat was subsequently examined by a Committee of officials. The comments made by various organisations were transmitted to the Commonwealth Secretariat which submitted a fresh draft incorporating the comments made.

The Maritime Zones Bill redefines the baselines from which new Maritime Zones are to be delimited. Whilst the current legislation refers to a system of straight baselines, the new Bill makes provision for the use of straight baselines,

closing baselines, archipelagic baselines and a combination of baselines which will enable us to maximize the extent of our maritime zones.

The Bill extends the sovereignty of Mauritius over its internal waters, its archipelagic waters and also to the airspace over these waters as well as to the beds and subsoil and the resources contained in them.

The Bill makes provision for a contiguous zone. This is a zone contiguous to the territorial sea where a Coastal State may exercise control for preventing and punishing infringement of its laws and regulations concerning customs, fiscal, immigration or sanitary matters within its territory.

Mr Speaker, Sir, the international community is now showing an increasing interest in the protection of underwater cultural heritage and the declaration of a cultural zone is a tool for contributing to the achievement of this objective. The Bill makes provision for a maritime cultural zone in the same area as the contiguous zone. This will enable Mauritius to assert its jurisdiction for the cultural purpose of protecting objects of archeological and historical nature found at sea.

The Bill makes better provision for the exploration and exploitation of resources in our exclusive economic zone. It defines more explicitly the sovereign rights and jurisdictional competencies that Mauritius is vested with in its exclusive economic zone. The rights and jurisdiction will be exercised in accordance with international laws and, in particular, with UNCLOS.

Moreover, the Continental Shelf of Mauritius is redefined in accordance with UNCLOS. Our present maritime legislation limits the extent of the Continental Shelf to 200 nautical miles. Under UNCLOS, however, where the continental margin extends beyond 200 nautical miles from the baselines, the Coastal States may delineate their Continental Shelf to a width greater than 200 miles up to a maximum of 350 miles. But, as I indicated earlier, the claim for extension must be submitted for consideration by the UN Commission on the Limits of the Continental Shelf.

The Bill regulates marine scientific research in our maritime zones. It establishes procedures to ensure that consent for such research is not delayed or denied unreasonably. It ensures that any person who is given consent for marine scientific research to make the results of his work available to the Government of Mauritius. It also provides that Intellectual Property Rights that Mauritius has in

the use of any living or non-living resources are recognised and vested in Mauritius.

The Bill maintains the concept of historic waters. UNCLOS, I must point out, does not contain anything substantial on the establishment of the regime of historic waters. Therefore, the matter remains to be determined under customary international law through the process of assertion and recognition. I am advised that the maintenance of the concept of historic waters in the Bill will safeguard the rights and interests of Mauritius over areas where Mauritian fishermen have been traditionally fishing.

Finally, the Bill prescribes higher penalties for infringement of the law.

Mr Speaker, Sir, this Bill lays down the foundation for a rational exploitation of our marine resources. We have been endowed with a vast expanse of the Indian Ocean and we may increasingly have to depend on the resources of the sea in future to sustain our process of economic development and to provide gainful employment for our people. Moreover, the Bill also enables us to engage in meaningful boundary delimitation negotiations with our neighbours.

Let me thank and congratulate, Mr Speaker, Sir, the Secretary for Home Affairs and the staff at my Ministry, and even more the staff at the State Law Office who have worked very hard and produced a state-of-the-art modern piece of legislation.

With these comments, I commend the Bill to the House.

The Deputy Prime Minister rose and seconded.

(3.32 p.m.)

Dr. A. Boolell (Second Member for Vieux Grand Port & Rose Belle): Mr Speaker, Sir, I grant the Prime Minister's right when he says that this Bill lays down the foundation for a rational exploitation. Secondly, that we should avoid confrontation, promote compromise and hope for successful outcome and, therefore, the reason as to why we have to tread cautiously when it comes to the delimitation of our maritime zone.

Mr Speaker, Sir, this is a major Bill with wide implications, be it at bilateral, regional or international level; and since no man is an island onto oneself and no

country can take unilateral action to extend sovereignty over maritime zone, therefore, we have to tread very, very cautiously. And since we don't have the power to punch above our weight, the incorporation of this Bill into our domestic legislation is very vital.

However comprehensive the Bill is, incorporating international treaty to which, as the Prime Minister has said, Mauritius is party and now this is entrenched into our domestic laws. And in doing so, it allows for –

(a) the enforcement before domestic court of provisions of the treaty, and

(b) it enables Parliament to use authority to the Prime Minister to prescribe regulations for implementation of various provisions of the treaty.

But, here, we would expect the Prime Minister, irrespective of the Prime Minister of the day, to use the discretionary power with utmost care. In fact, it would have been better if the Prime Minister could prescribe regulations after consultation with the President and we assume that, whenever regulation is going to be prescribed there would be collective decisions taken by the Cabinet.

The United Nations Convention on the Law of the Sea does codify international law and provisions of earlier Law of Sea Treaties as the Prime Minister has said. And, as I have stated, to a large extent, it should promote, compromise and a successful outcome. Since there are provisions now in respect of a new definition, when we talk of Archipelagic waters, this takes into consideration the constitutional definition of Mauritian territory and it helps to reassert our rights over both Diego Garcia and Tromelin vis-à-vis…

The Prime Minister: Not Diego Garcia, Chagos Archipelago.

Dr. Boolell:…It helps to reassert our rights over Chagos Archipelago and Tromelin vis-à-vis occupying powers.

Mr Speaker, Sir, the hon. Prime Minister stated earlier that there was a commitment and we have honoured our commitment in respect of provision of UNCLOS, concerning claim for an extended continental shelf. The Prime Minister is right to say that we have to tread very cautiously, that Mauritius has been able to honour its obligation and we are glad that the United Nations has agreed to an

extension of this delay and we have until 2009 to put a claim for extended Continental Shelf. But when we talk of putting in a claim, Mr Speaker, Sir, we obviously have to take on board the fact that no one will make any concession to us. And, therefore, the provisions of the legislation are very important to ensure that matters can be settled amicably - I have been told that there are provisions within the UNCLOS to sort out matters of dispute, Mr Speaker, Sir.

On the other hand, Mr Speaker, Sir, since this legislation is very complex and Government rightly has appealed to resource persons to prepare the legislation, but we also have to pay tribute to the Director of the Institute of Oceanography and other resource persons. Because, with the new definition and new scientific data and facts available, today, as I have stated, it is easier for us to lay a legitimate sovereign claim over territories which belong to us, but which can be matters of dispute.

Sir, the mapping of our Continental Shelf has been carried out in a very professional manner and that has strengthened our case whenever we have to put our case forcefully at the international forum, Mr Speaker, Sir. But, inasmuch as much has been done, there is still a lot that needs to be done, because when we talk of legal arsenal, we also have to set up the institutional framework; because we have to strengthen our political implication. And, therefore, we need to have the clout to be able to put across our case forcefully. Otherwise, it would be too easy for the British, for example, to come with an order in Council just simply to provoke a set-back in British/Mauritian relations, Mr Speaker, Sir.

Mr Speaker, Sir, I would have liked the provisions of the UNCLOS to be annexed to the Bill. I grant you that it is a huge document which is available on the net, but not many people know it. At one time Port-Louis was described as a *port pirate*, Mr Speaker, Sir. hon. Gayan stated in a statement that this was factually and legally wrong and not in conformity with the definition of piracy contained in Article 101 of United Nations Convention on the Law of the Sea.

Mr Speaker, Sir, we know very well that much needs to be done to ensure that Mauritius earns the reputation of being a port where there is no illegal transhipment. I know that Government has been addressing this matter very forcefully as to whether we should become a Member of the CAMLR and that we should also provide the relevant document. I know that is being done, but at the same time, we have to see to it, if we want to turn our port into a relevant fishing hub, that we adhere strongly to the provisions of the Convention, Mr Speaker, Sir.

There is the other matter that needs to be addressed - the issue of surveillance. Since we don't have the relevant resources, we have to rely upon reliable friends, Mr Speaker, Sir, upon our neighbours and we constantly have to strengthen the ties as to whether this matter can be addressed at the level of the Indian Ocean Commission or at bilateral level. All these issues have to be addressed. The legislation of UNCLOS strengthens our case to make it easy for all parties concerned, who are signatory to the UNCLOS, to see to it that the outcome is result oriented and that there is less controversy.

The other issue that needs to be addressed, Mr Speaker, Sir, is the protection of our Exclusive Economic Zone. When we go through the Bill that was debated in 1977, at that time, Mr Speaker, Sir, we hardly had the fishing guard; we have moved on, we have made tremendous progress. Today, we have the National Coast Guard, but again on our own we are limited. So, we have no choice, but to pool resources together with friendly countries to be able to protect our Exclusive Economic Zone. Today, Mr Speaker, Sir when we talk of our Exclusive Economic Zone, extension of the Continental Shelf, Mauritius becomes a very huge country indeed, with tremendous potential for exploitation, exploitation of living and non living marine life. Mr Speaker, Sir, we have legitimate claim in respect of what is spelt out in our Constitution, in our legitimate sovereign claim to our territories, to islands which are inhabited and to those which are not inhabited. Today, the Prime Minister is right to say that we have to protect the wealth of the sea. It is true that when the Maritime Zones Bill was introduced in 1977, we hardly knew about the wealth of the sea except, of course, for hydro carbon which can be pumped from the sea.

Today, we are talking of protection of the wealth, Mr Speaker, Sir. I am glad that we have introduced legislation in respect of intellectual property rights, but whether this extends to the protection of our living and non living marine organisms is a matter that can be spelt out at a later stage by the Prime Minister. Why do I say protection of the marine life, Mr Speaker, Sir? It is because there is a lot of research which is ongoing, Mr Speaker, Sir. Lately here has been medicinal research being carried out, clinical trials ongoing because the sea can provide us with cures for many illnesses, Mr Speaker, Sir.

Mr Speaker, Sir I will deliberately skip matters that are controversial in respect of sovereignty claim, but suffice it to say that the incorporation of the UNCLOS within our domestic legislation enables us to put up a brave fight and to strengthen our case when we have to raise the matter at international forum.

I thank you very much.

(3.45 p.m.)

The Attorney-General and Minister of Justice & Human Rights (Mr E. Leung Shing): Mr Speaker, Sir, this Bill provides for the United Nations Convention of the Law of Sea (UNCLOS), an international treaty to have force law in Mauritius. Mr Speaker, Sir, the incorporation and implementation of UNCLOS in Mauritius is long overdue. Why is it long overdue, it is because this Convention was signed in Montegobe in Jamaica in 1982? It came into force in November 1994. This Convention, which has been signed, is a culmination of very arduous negotiations, involving the participation of more than 150 countries. It would be very useful to note that our friend, hon. Minister Gayan took a very active part in the negotiations of this Convention.

Mr Speaker, Sir although the concept of the sea, being the common heritage of mankind propounded by the State of Malta and which has not been universally accepted, yet this Convention represents a momentous attempt to achieve a just and equitable international economic order governing ocean space. This Convention contains 320 articles, nine annexes, governing all aspects of ocean space from delimitation to environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters. It also includes the codification of customary norms and the progressive development of international law. This is the reason why I early on said, it is a major Bill and it should have been introduced in the House a long time ago.

Mr Speaker, Sir, during the negotiation of the Convention in the 70^{s}, although there were no Conventions which had been adopted, Mauritius, at the time, passed three laws - the Territorial Sea Act 1970, the Continental Shelf Act 1970 and the Maritime Zone Act 1977. The reason why it was done is now very obvious. There was a reason why we had to do that. This was done in order to preserve and reinforce our position in various areas of our maritime zones, for example, the Continental Shelf. The House will remember that in the 1970^{s} there was the oil crisis. The Seven Sisters, Texaco and Mobile Exon were very interested to explore and exploit any oil resources to be found within the maritime zone of Mauritius. Texaco even signed at the time a MoU with Mauritius to explore, but not to exploit. Even at the time they sent a few boreholes. Unfortunately all the work stopped because in the meantime, the oil crisis had disappeared, but there were one major logistical problem, Mr Speaker, Sir. The logistical problem was

that it was very difficult to convey over the sea oil over such a long distance. There was no technology at the time, which would enable one of the Seven Sisters, that is, Texaco to convey that oil. I am not saying that we have discovered oil at the time. No. Would I be prepared to venture to say that Texaco had discovered oil, but they had stopped oil exploitation because there was that logistical problem, which relates to the fact that it was very difficult to convey oil over the sea, over such a long distance. Surely after the adoption of this Bill, after we have signed our EEZ and deposited our Chart, I am sure, we shall pursue the matter further.

Mr Speaker, Sir, under this Bill, the three enactments will be repealed and provisions will be made for a definition of maritime zones. What would be the maritime zones under the Bill is "archipelagic waters, contiguous zones, continental shelf, exclusive economic zone, historic waters, internal waters, maritime cultural zone and territorial sea".

Mr Speaker, Sir, the House will note that the concept of historic waters does not appear specifically in that Convention, but it does exist under international customary law. This has been adverted to by the hon. Prime Minister in his speech. The reason as to why we had to include historic waters is obvious and clear. Obvious and clear because we have Saya de Malha bank which is to be found partly on international seas; only part of it is to be found within our EEZ.

However, with regard to the bank of Saya de Malha, Mauritius has always been issuing fishing licences to bank fishing companies to fish on those banks; there has never been any protest from the international community or from any foreign State. Historically, therefore, Mr Speaker, Sir, de facto, Saya de Malha bank is Mauritian; and we will continue to exercise sovereignty over that bank.

Mr Speaker, Sir, I do not propose to deal with every clause of the Bill. I shall content myself to referring to three matters of a very important and vital interest in view of legal implications and economical interest to Mauritius.

First of all, we will refer to the drawing of baselines, Mr Speaker, Sir. In the Maritime Zones Act of 1977, only one method was provided for - the drawing of straight baselines. Now we are going to have three methods of drawing baselines. The reason why we are adopting these three methods is that it will give Mauritius a wider expanse, the opportunity of claiming a wider expanse over the ocean. This is one of the reasons why these three methods include the straight baselines, which is already included in the 1977 Act, the normal baselines and a combination of straight archipelagic and normal baseline. So, we are adapting these baselines in the interest of Mauritius so that we can claim a bigger expanse over the ocean. These methods will enable us to do so.

Mr Speaker, Sir, once the new Act is passed and baselines determined according to the three methods I have just adverted to Mauritius will then be able to pursue negotiations with the Seychelles, with a view to effecting a determination of the EEZ between the two States. We will do so by agreement. Negotiations have already been started late last year and it will continue. We have not only that particular negotiation which we will have to undertake, there is another one of very great importance to Mauritius. Further to the North, we have the Chagos Archipelago, which is very near the Maldives. We have sovereignty over Chagos; we have therefore to determine our EEZ vis-à-vis the Maldives concerning the Chagos Archipelago. There again, Maldives is a very friendly State. We will have to undertake friendly negotiations with a view to determining the delimitation of our EEZ between Maldives and Mauritius, that is, Diego over which we have sovereignty, Mr Speaker, Sir.

Mr Speaker, Sir, there is a second matter to which I would like to refer, that is, the archipelagic waters. It is my understanding that technical studies carried out with the assistance of the Commonwealth Secretariat have revealed that Mauritius can draw archipelagic baselines around some of its islands and, particularly, around Chagos Archipelago in line with the criteria sets out in the United Nations Convention of the law of the sea. The waters enclosed by the archipelagic baselines will be known as archipelagic waters; and Mauritius will enjoy sovereignty over these waters as well as the airspace over these archipelagic waters, the bed and subsoil and the resources contained therein. This is the purport of this Bill. We will have sovereignty over archipelagic waters, over the subsoil, over the airspace, over the bed of these archipelagic waters. This is the reason why I have earlier submitted that it is important that we pass that law. I am very pleased to see that even hon. Arvin Boolell seems to agree and he has already stated earlier on that he will go along and support this Bill.

Mr Speaker, Sir, we are all aware that this Government is making every effort to be able to exercise again our sovereignty over the Chagos Archipelago. I have had the privilege of participating, together with my officers and the Secretary for Foreign Affairs, in discussions with Professor Ian Brownlie. We must take our hats off tothe advice which have been given. We must really bow very low in front of Professor Ian Brownlie for that invaluable advice which has been given to us and which will enable us to pursue this case which we propose to bring in the appropriate forum.

Members of the House will also be aware of some of the bold steps, which have been taken by the hon. Prime Minister in this connection. Never before have we succeeded in making of the Chagos Archipelago issue such a live issue on the

international diplomatic scene and in our bilateral relations with the United Kingdom.

Mr Speaker, Sir, there is another issue which we will have to deal with. It relates to Tromelin. Mr Speaker, Sir, I cannot help expressing the fervent hope that France will also agree to resume high level talks with us in relation to Tromelin**.**

Mr Speaker, Sir, the third matter of interest under Article 76 of UNCLOS, is in relation to Continental Shelf. Continental Shelf comprises the seabed, the subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin.

In the case of Mauritius, there are reasonable grounds, Mr Speaker, Sir, to believe that the outer edge of the continental margin may extend beyond 200 nautical miles from the baselines. However, we will have to provide scientific evidence of this. And, to this end, the Government of Mauritius has, through the Mauritius Oceanographic Institute (MOI) commissioned bathymetric and other surveys to substantiate our claim which will have to be presented to the Commission on the limits of Continental Shelf by the year 2009. We will have to submit that by the year 2009 and we will have to undertake these bathymetric surveys and other oceanographic surveys urgently.

Mauritius will then be able to exercise, over its Continental Shelf, sovereign rights for purposes of exploring its natural resources, including the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. It shall have exclusive right to regulate drilling on the continental shelf for all purposes, Mr Speaker, Sir.

Mr Speaker, Sir, I have dealt with these three issues, namely baselines, archipelagic waters and Continental Shelf. I shall, in conclusion, say that successive Prime Ministers have claimed that Mauritius is not an island, Mauritius is a continent. We are a continent, Mr Speaker, Sir. We have vast expanse of the ocean over which Mauritius has sovereignty. We are a continent and, Mr Speaker, Sir, we can imagine that vast expanse, spanning the Indian Ocean which begins in Rodrigues to the East, Tromelin to the North West of Madagascar near the African mainland, the Chagos Archipelago to the North near Maldives. It is a vast expanse of land and this, according to the United Nations Convention on the Law of the Sea belongs to Mauritius.

Mauritius, Mr Speaker, Sir, has the potential and the right to explore and exploit these resources lying in our Continental Shelf, that is, the seabed, the subsoil over submarine areas; and the potential is very huge and enormous. We shall recall in the 70s, Indian research ships trawling the oceans around our archipelagic waters, scooping up manganese nodules and that's just one sample of what they have brought up. We don't know of other precious metals which could have been brought up of which we are not aware, because we don't have the resources to trawl the ocean. But, anyway, Mr Speaker, Sir, there will come a time with the advance of technology when we shall be able to tap these resources and reap the full benefits that nature has endowed our Continental Shelf.

Mr Speaker, Sir, future generations will have to be thankful to the Commonwealth Secretariat for its assistance and expertise, to the Mauritius Oceanographic Institute for commissioning the surveys of our maritime zones, the State Law Office for ensuring that the legal and economic interest of Mauritius be well and truly safeguarded, and, finally, to the Government of Mauritius, to this Government, for its painstaking and unwavering effort in exercising legal and economic control and sovereignty over the maritime zone to which Mauritius is rightfully and lawfully entitled under the United Nations Convention on the Law of the Sea.

I have done, Mr Speaker, Sir.

(4.05 p.m.)

Mr S. Michel (Third Member for Vacoas & Floreal): M. le président, le 31 mai 1977, j'étais dans cette Chambre, une année après les éléctions de 1976, j'ai eu l'occasion d'écouter quelqu'un et je voudrais citer son discours sur le premier projet de loi qui avait été présenté par le gouvernement travailliste à cette époque.

> « Il est bon qu'il y ait un texte de loi définissant clairement nos droits, les limites de notre souveraineté sur l'ocean indien, mais il ne faut pas que ce texte de loi, que nous allons tous voter reste lettre morte; c'est-à-dire qu'il soit écrit sur papier, qu'il y ait une zone économique de 200 miles, qu'il y ait une zone de 12 miles et que l'île Maurice n'ait tout simplement pas les moyens de faire respecter quoique ce soit. »

Ce texte que je viens de lire est un extrait du discours prononcé à l'époque par le Premier ministre actuel et je crois qu'il avait posé les vraies questions - et

cela fait déjà maintenant 28 ans qu'il avait posé ces questions -et aujourd'hui ce projet de loi qui est devant cette Chambre permet de poser les mêmes questions.

Mais avant, M. le président, je voudrais dire que ce projet de loi présente bien des avantages, si on s'en tient aux objectifs qui auraient été mis en avant. Premièrement, donner force de loi à la Convention des Nations Unies sur le droit de la mer, redélimiter nos zones maritimes à notre avantage, bien sûr, pour en tirer un maximum de bénéfices. Toutefois, je voudrais faire remarquer qu'il y a quelques sérieux problèmes, d'abord, sur le texte qui nous a été présenté.

M. le président, si vous prenez le texte de loi, paragraphe 2 – *Interpretation*, vous verrez que –

"In the Act, unless otherwise expressly provided –
"archipelagic baselines" means straight archipelagic baselines referred to in section 4(2) (a)."

Lorsque vous allez à la clause (4) (2) (a), voilà ce qui est dit –

"The baselines may be –
(a) straight archipelagic baselines determined in the manner referred to in article 47 of UNCLOS.

(b) Normal baselines, being -
(i) the low-water line as specified in article 5 of UNCLOS;
(ii) the seaward low-water line of reefs as specified in article 6 of UNCLOS; or

(iii) straight baselines determined in the manner referred to in article 7 of UNCLOS; or

(c) a combination of the methods for determining baselines specified in paragraph (a) and (b)"

Le ministre de la justice a référé aux 312 articles de la Convention des Nations Unies sur le droit de la mer. Je ne demande pas au gouvernement de nous faire parvenir ce volumineux document. Mais je pense que les parlementaires auraient dû avoir une copie ou des extraits de cette Convention pour nous permettre d'avoir une idée de ce que nous discutons et votons. Samedi dernier, nous avons reçu un

document qui parle de *existing legal provisions to be amended*. C'est très bien, parce que cela nous permet de savoir ce qu'on va faire.

Mr Speaker: This is the practice that is required by the Standing Orders, and we have done it.

Mr Michel: Ce n'est pas à vous, M. le président, que j'adresse mes critiques, mais au gouvernement! Je ne vais pas surfer sur l'internet; d'ailleurs, c'est maintenant que j'apprends! Il a fallu demander à d'autres personnes de le faire pour moi. J'ai découvert certains articles que je voudrais lire à la Chambre. J'estime que c'est bon de savoir ce qu'on va voter. Dans l'article 47 de UNCLOS, *archipelagic baselines* couvrent neuf paragraphes. Avec votre permission, M. le président, je vais les lire –

"(1) An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.

(2) The length of such baselines shall not exceed 100 nautical miles, except that up to 3 per cent of the total number of baselines enclosing any archipelago may exceed that length, up to a maximum length of 125 nautical miles.

(3) The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

(4) Such baselines shall not be drawn to and from low-tide elevations, unless lighthouses or similar installations which are permanently above sea level have been built on them or where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the nearest island.

(5) The system of such baselines shall not be applied by an archipelagic State in such a manner as to cut off from the high seas or the exclusive economic zone the territorial sea of another State.

(6) If a part of the archipelagic waters of an archipelagic State lies between two parts of an immediately adjacent neighbouring State, existing rights and all other legitimate interests which the latter State has traditionally exercised in such waters and all rights stipulated by agreement between those States shall continue and be respected".

Il existe un contentieux entre Maurice et les Seychelles sur la question de Saya de Malha. Le Premier ministre a effectué une visite aux Seychelles. Quand il résumera le débat, peut-être il pourra parler de ce problème.

"(7) For the purpose of computing the ratio of water to land under paragraph 1, land areas may include waters lying within the fringing reefs of islands and atolls, including that part of a steep-sided oceanic plateau which is enclosed or nearly enclosed by a chain of limestone islands and drying reefs lying on the perimeter of the plateau.

(8) The archipelagic State shall give due publicity to such charts or lists of geographical co-ordinates and shall deposit a copy of each such chart or list with the Secretary-General of the United Nations."

On ne peut pas se rendre aux Chagos; c'est un territoire mauricien qui a été détaché en 1965 par les britanniques et qui l'ont baptisé BIOT. Est-ce qu'on a remis tous les documents nécessaires au secretaire-général des Nations Unies? Je me pose la question. C'est un exemple que je voudrais prendre, mais dans l'*Interpretation*, à chaque fois on nous réfère aux articles de la Convention de UNCLOS. Il faudrait aller sur l'internet pour trouver ce que cela veut dire. Je pense que si à l'avenir on pourrait soumettre toutes les informations aux parlementaires, ce serait d'une grande utilité. Vous verrez dans ce projet de loi, M. le président, que très souvent les articles de la Convention sont repris sans que mention soit faite. J'estime que ceux qui ont préparé le projet de loi auraient dû avoir la décence de le mentionner. Comme je l'ai dit au départ, c'est un texte de loi qui offre beaucoup d'avantages auxquels je souscris. Je ne dis pas que je suis contre, mais je dis qu'on aurait pu nous aider un peu.

Un deuxième point que j'aimerais faire, M. le président, concerne l'applicabilité des différents articles. Ce que nous faisons, aujourd'hui, c'est de prendre les articles de la Convention et les incorporer dans notre loi. Nous pensons ainsi régler nos différents frontaliers. Nous savons qu'il y a un problème avec les Seychelles. J'ai demandé au Premier ministre quelques éclaircissements quand il résumera le débat. Nous avons trois contentieux. La question de Saya de Malha

avec les Seychelles, Tromelin avec la France et les Chagos avec les Britanniques. Apparemment, il n'y a pas de problème avec Madagascar.

The Prime Minister: Il n'y a plus!

Mr Michel: Il faut avoir les pieds sur terre; c'est un problème qui ne va pas se résoudre dans un proche avenir. Le Premier ministre a dit récemment que Maurice pourrait avoir recours aux Nations Unies et à la Cour de la Haye en ce qui concerne les Chagos. Quand j'étais ministre de la pêche, nous avions donné des permis aux Japonais pour qu'ils pêchent dans les eaux de Tromelin et nous savons ce qui s'est passé. Ils ont été arrêtés et condamnés à payer une forte amende, beaucoup plus de ce que nous prévoyons comme *penalties* à Maurice.

Nous sommes devant un vrai dilemme. Le Premier ministre l'a dit il y a 28 ans de cela. La question que nous nous posons aujourd'hui est celle ci: que prévoit le gouvernement, après que ce texte de loi aura été voté par l'Assemblée nationale, pour faire respecter le droit de l'île Maurice? C'est la question fondamentale. Tout à l'heure, le ministre de la justice disait qu'il croyait que l'île Maurice pourra récupérer ses territoires. Ce n'est pas une question de croyance.

Il y a un article effrayant, qui parle de *innocent passage*. Il faudrait lire le *innocent passage* dans l'article en question. Je voudrais vous le lire, M. le président, car ainsi vous verrez dans quel pétrin on s'est fourré. Je cite –

1. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal State. Such passage shall take place in conformity with the Convention and with other rules of international law.

2. Passage of a foreign ship shall be considered to be prejudicial to the peace, good order or security of the coastal State if, in the territorial sea, it engages in any of the following activities –

(a) any threat or use of force against the sovereignty, territorial integrity or political independence of the coastal State, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;
(b) any exercise or practice with weapons of any kind;
(c) any act aimed at collecting information to the prejudice of the defence or security of the coastal State;

(d) any act of propaganda aimed at affecting the defence or security of the coastal State;
(e) the launching, landing or taking on board of any aircraft;
(f) the launching, landing or taking on board of any military device;
(g) the loading or unloading of any commodity, currency or person, contrary to the customs, fiscal, immigration or sanitary laws and regulations of the coastal State;
(h) any act of wilful and serious pollution contrary to this Convention;
(i) any fishing activities;
(j) the carrying out of research or survey activities;
(k) any act aimed at interfering with any systems of communication or any other facilities or installations of the coastal State, and
(l) any other activity not having a direct bearing on passage.

Lorsque vous lisez tout cela, M. le président, et que vous savez ce qui se passe actuellement aux Chagos, avec la base militaire, il ne faut pas rêver. C'est pour cela que je dis que rien ne va être facile. Je souhaite tout simplement bonne chance au gouvernement, qui a commencé par voter cette loi. Je me souviens qu'en 1982, le gouvernement MMM/PSM avait amendé la Constitution pour redéfinir l'Etat mauricien, en y ajoutant l'archipel des Chagos. Cela s'est passé en 1982; aujourd'hui, cela fait 23 ans et on piétine toujours. C'est pour cela que je pense qu'on peut voter des lois, mais j'ai des réserves, tout en souhaitant bonne chance au gouvernement.

Merci, M. le président.

At 4.25 p.m. the sitting was suspended.

On resuming at 5.05 p.m with the Deputy Speaker in the Chair.

The Minister of Housing & Lands and Minister of Fisheries (Mr G. Lesjongard): Mr Deputy Speaker, Sir, allow me to congratulate the hon. Prime Minister for bringing this important piece of legislation to the House.

The Maritime Zones Bill concerns directly the ocean surrounding our island. The objects of the Bill are clear. Firstly, for UNCLOS to have force of law in

Mauritius and secondly, the delimitation and management of the maritime zones of Mauritius.

Mr Deputy Speaker, Sir, we all know that the seas and oceans cover ¾ of the earth surface. They are in constant motion. Their waves, tides and currents influence living things not only in the sea itself but also around its shores and in the air above it. In the waters and beneath them, lie stores of minerals including coal and oil, some of which are supplementing the fast disappearing resources of the land.

Since time immemorial, Mr Deputy Speaker, Sir, fishing has been an important activity at sea. It has been a major source of food, employment and economic benefits for man. The fisheries resources were once assumed to be an unlimited gift of nature. However, with increasing knowledge and development of fisheries, it has been realised that aquatic resources are finite though renewable. They have to be properly managed if their contribution to nutrition and economic benefits are to be sustained.

As a matter of fact, Mr Deputy Speaker, Sir, the declaration of exclusive economic zones by many countries in the mid 70s set the basis for having a new legal regime for the sea.
Mauritius was no exception to this new approach to jurisdiction over the sea and it proclaimed through the Maritime Zones Act of 1977 its sovereignty over an Exclusive Economic Zone of 200 miles.

As we are all aware, it was after very long deliberations that the United Nations Convention on the Law of the Sea was adopted in 1982 and it laid down a new legal framework for the better management of marine resources.

This new legal regime not only gave rights to coastal States over their exclusive economic zones, but also gave responsibilities to the States for the proper management of their resources found therein which cover some 90% of the world's fisheries.

Article 56 of the law of the sea defines the rights, jurisdiction and duties of coastal States in the EEZ with regard to, amongst others, exploration, exploitation, management of the natural resources, marine scientific research and protection of the marine environment. States with adjacent or opposite coasts should also agree on the delimitation of the EEZ between them.

Mr Deputy Speaker, Sir, this new Maritime Zones Bill on becoming an Act, will bring our legislation in conformity with the United Nations Convention on the Law of the Sea of 1982 for it reflects its provisions. It takes into account recent trends and best practices in relation to national legislation on maritime zones. Under this legislation, the maritime zones will cover the territorial seas and internal waters. Mauritius will thus have sovereignty over these waters, their seabed resources and traditional fishing rights among others.

Mauritius has sovereign rights for the purposes of exploring, exploiting, conserving and managing the natural resources of the EEZ. The protection and preservation of the natural resources have to be exercised in relation to a number of factors relating to the conservation and utilisation of those resources, the fish stocks in the EEZ and adjacent waters, the highly migratory species and marine mammals.

The new Maritime Zones Bill makes, amongst others, provisions for regulating activities in the EEZ, the Continental Shelf, marine scientific research and marine environment protection. These are all in conformity, Mr Deputy Speaker, Sir, with international law and the sustainable use of marine living resources. In order to effectively manage the marine living resources, Mr Deputy Speaker, Sir, it is crucial that fisheries legislation reflects the changing regime of the oceans. Coastal States should, at all times, be aware of the fishing operations taking place in their EEZ in order to have reliable information on their fish stocks.

Furthermore, harmonisation of policies on the one hand and co-operation on the bilateral sub-regional and regional basis on the other hand, are of paramount importance to managing fishery resources. Coastal and other States should also co-operate directly or through appropriate international organisations to manage highly migratory and straddling fish stocks.

Mr Deputy Speaker, Sir, the Fisheries and Marine Resources Act 1998 takes on board the above principles that I have just mentioned. It provides for licensing of all fishing boats and vessels wishing to fish in Mauritian waters on such terms and conditions to be determined by the Ministry of Fisheries, but subject to the approval of the Prime Minister. Besides, Mr Deputy Speaker, Sir, no person shall use a Mauritian vessel or boat for fishing in any fishery in the high seas or within the fishing zone of a foreign State without a licence. The licence conditions specify, amongst others, the method of fishing to be used, areas where such fishing is authorised and the species of fish to be caught. The Fisheries and Marine Resources Act also makes provision for foreign vessels to fish in Mauritian waters

under access agreement with a foreign State and inter-governmental organisation or a fishing association.

Insofar as our international obligations under the Law of the Sea are concerned, Mr Deputy Speaker, Sir, I wish to point out that Mauritius has signed the agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea relating to the conservation and management of straddling fish stocks and highly migratory fish stocks and the agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas.

Mr Deputy Speaker, Sir, Mauritius is now a member of the Indian Ocean Tuna Commission, that is, IOTC and the Convention for the Conservation of Antarctic Marine Living Resources, that is, CAMLR. We are also actively participating, at present, in the setting up of the South West Indian Ocean Fisheries Commission on the one hand which covers waters under national jurisdiction of countries in the region and on the other hand the Southern Indian Ocean Fisheries Agreement which will cover the high seas between South Africa and Australia. Furthermore, Mauritius is participating in the elaboration of a South West Indian Ocean Fisheries Programme for the sustainable management of offshore fisheries resources, that is, the Agulhas and Somali large marine ecosystem project. We are also envisaging to sign a project to be implemented by the FAO under Swedish International Development Agency for supporting the work of the South West Indian Ocean Fisheries Commission and build capacity in fisheries management in the South West Indian Ocean.

Mauritius also collaborates with like-minded countries to combat illegal unreported and unregulated fishing and subscribes to the code of conduct for responsible fishing of the airfield. Mr Deputy Speaker, Sir, I wish to point out here that my Ministry will soon initiate the tracking of licence fishing vessels in our EEZ with the coming into operation of the vessel monitoring system as from March this year. This will further reinforce our efforts to closely monitor the activities of fishing vessels in the Mauritian waters.

My Ministry participated fully in the review exercise of the Maritine Zones Act of 1977. I must say that the provisions of the Fisheries and Marine Resources Act 1998 are very much complementary to those of the new Maritime Zones Bill. It goes without saying, Mr Deputy Speaker, Sir, that I fully support the new Maritime Zones Bill.

Thank you, Mr Deputy Speaker, Sir.

(5.19 p.m.)

The Minister of Shipping, Rodrigues and & Islands (Mr P. Auroomooga Putten): Mr Deputy Speaker, Sir, it gives me great pleasure to intervene on the new Maritime Zones Bill because this Bill breaks new grounds on the archipelagic waters, the internal waters, the contiguous zones, the historic waters and the cultural zone.

The Republic of Mauritius consists of Mauritius, Rodrigues island, Agalega, St Brandon, Tromelin and Chagos Archipelago. This Bill makes Mauritius one of the largest countries of Africa, both in terms of land and ocean territory. The objects of the Bill, as spelt out by the Prime Minister, are –

(1) to provide for the United Nations Convention on the Law of the Sea to have force of law in Mauritius;

(2) to provide the delimitation and management of the maritime zones of Mauritius.

This Convention was set for signature in December 1982 after 14 years of hard work involving the participation of more than 150 countries and got into force in 1994. This Convention governs all aspects of ocean space such as delimitation, environmental control, marine and scientific research, commercial activities, transfer of technology and settlement of disputes relating to ocean matters.

It is clear that this Convention is a notion that the problems of the oceans are interrelated and should be settled as a whole. The Convention itself consists of 320 articles and nine annexes. I am going to give some of the features of this Convention to the House.

(1) Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;

(2) Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;

(3) Coastal States have sovereign rights in a 200-nautical mile Exclusive Economic Zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;

(4) All other States have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines;

(5) Coastal States have sovereign rights over the continental shelf for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances;

(6) All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are obliged to adopt, or co-operate with other States in adopting measures to manage and conserve living resources;

(7) The limits of the territorial sea, the Exclusive Economic Zone and the continental shelf of the islands are determined in accordance with rules applicable to land territory, but rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf;

(8) States are bound to prevent and control marine pollution and are liable to damages caused by violation of their international obligations to combat such pollution;

The innovative features of this Bill concern internal waters, maritime cultural zone and maritime scientific research.

Sir, the United Nations Convention on the Law of the Sea was not written specifically to apply to underwater heritage, cultural heritage. In fact, this Convention has two articles only to underwater cultural heritage. Article 303 (1): "States have the duty to protect objects of an archaeological and historical nature found at sea and shall cooperate for this purpose" and Article 149 of the Convention: "All objects of archaeological and historical nature found in the area shall be preserved and disposed for the benefit of mankind".

As you see, Sir, these two provisions are not sufficient for the protection of underwater heritage. In fact, UNESCO has always been made aware of this

weakness since 1956 and at the request of its Executive Board, experts met several times between 1993 to 20-01 and came up with a legal instrument. This legal instrument is termed as "The Convention of the Protection of Underwater Cultural Heritage" which was adopted by UNESCO on 02 November 2001. This Government, in its wisdom, is incorporating Article 8 of this Convention in Part IX of this present Bill. As you see, we are the cutting edge of legal affairs even in the world. It is taking all necessary measures to prohibit and prevent illicit excavation and commercial exploitation and establish standards for the protection and management of our underwater cultural heritage which lies in our internal waters, archipelagic waters, territorial seas, Exclusive Economic Zone and our continental shelf.

Mauritius is becoming a big country not only with a big heart; now we are as large as an African country both in terms of land and ocean.

Sir, one particular section of direct relevance to my Ministry is Clause 10. My Ministry is working on the "Western Indian Ocean Marine Highway Development" which is funded by the Global Environment Facility and the World Bank, is to help protect the region's biodiversity and the coastal lines.

The project has two objectives –

(i) to prevent contamination of the seas two ways: oil spills and the illegal discharge of ballast waters.

(ii) we have to prevent exploitation of marine resources through illegal fishing or other fishing practices

This will be achieved through the introduction of a marine electronic highway, to guide ships in this part of the world of the Indian Ocean for sensitive areas and to monitor the movements and activities of fishing and other vessels within countries' territorial waters.

Right now, six countries are working on this project. We have Mauritius, Seychelles, Madagascar, South Africa, Mozambique, Kenya and Tanzania; and in December the Deputy Director of Shipping went to South Africa to work on the model for achievements.

It involves and it will involve an integrated system of electronic nautical charts, real-time positioning information, aids to navigation and shore-based

automatic ship identification system like in Malaysia and Singapore. Provision of a real-time meteorological, oceanographic and navigational information. This marine electronic highway will become a valuable tool for preventing and controlling marine pollution and ensuring the safety of navigation in this part of the world.

Mr Deputy Speaker, Sir, as you see, this Government is pushing ahead, we want to break new grounds. We have got a legacy to leave to the future generations.

Part V of the Bill deals with contiguous zones. The contiguous zone, as described in Article 33 of UNCLOS and Clauses 12 and 13 of the present Bill, is focused on the prevention of the infringement of customs, fiscal and immigration or sanitary laws. Fortunately, we do not have the problems that the Mediterranean countries, such as Italy, France and Greece have. The Exclusive Economic Zone of Mauritius, I am advised, extends over an area of 1.9 m square kilometres, making again Mauritius one of the larger African countries in terms of total area. We know that before the opening of the Suez Canal, Mauritius was *un arrêt incontournable* in the future again.

Other benefits of the Bill are to the fishing and the tourism sectors which are important pillars of the economy. We need to protect them and this Bill gives the Prime Minister the right to make regulations, to designate sea/traffic lanes for tankers/ships transiting in our maritime zone, in our waters to provide safety of navigation and to avoid collision of ships and prevent pollution in our waters. The enforcement of the Maritime zone will ensure that ship transporting illegal arms or radioactive materials will be controlled or forbidden to ply in our waters. We can have regulations for that. The Bill finally offers a golden opportunity for Mauritius to transform itself, to go into the sea development and to immerge. We have started the work to become a seafood hub. We are going to use and exploit our resources in our maritime zone including the Exclusive Economic Zone to promote Mauritius as a seafood hub, as a tourism destination and fishing and with bilateral and international agreements work with countries like India, Japan and other countries of the world, America, Canada and New Zealand.

To conclude, Sir, let me thank the Prime Minister for bringing this piece of legislation. It shows *clairvoyance* and wisdom that we take our responsibilities, that the future generation will be able to maximise and we are going to have sovereign rights over the vast extension of seas in the Indian Ocean.

Thank you, Sir.

(5.30 p.m.)

Mr M. Dowarkasing (Third Member for Curepipe & Midlands): Mr Deputy Speaker, Sir, the Maritime Zones Bill presented in this House today is a significant piece of legislation brought forward by this Government. It is providing the necessary legal framework to enforce the United Nations Convention on the Law of the Sea, commonly known as UNCLOS. This Convention is historic for the maintenance of peace, justice and progress for the people of this world.

Mr Deputy Speaker, Sir, this Convention is helping a lot in reconciling the widely divergent interests of different countries. It is also helping to establish an equal opportunity for all the countries in the use of the ocean and its immense resources. The Convention has also helped to create a consciousness on the potential of the resources of the ocean and the important contribution this can be in the economic and social development of a country. Unlike the land, the sea has resisted exploitation so far with the exception of few countries that have already taken the lead to exploit this new Eldorado.

History has shown to us how massive exploitation has been detrimental to countries during colonial days. Some countries are even now still struggling to overcome these effects. As regards the exploitation of the oceans we are more or less protected by this Convention, Mr Deputy Speaker, Sir. This Convention, by clearly enunciating national and international jurisdiction, eliminates the boundary problems and provides an opportunity to strengthen the bond of regional co-operation.

View the different and important aspects of this Convention and how it will safeguard the interests of our country on its oceanic resources, it is imperial that this Convention has the force of law in Mauritius. And for this endeavour, I wish to congratulate the hon. Prime Minister for bringing this piece of legislation to the House.

Mr Deputy Speaker, Sir, we are referring here to 71% of the earth surface which comprises of oceans and seas and more specifically 35% of this 71% now falls within the national jurisdiction of coastal States.

With the coming into force of this Maritime Zones Bill, Mauritius can claim for an exclusive economic zone that exceeds 1.8 million square kms, an area that is nearly 1000 times the size of Mauritius. We are referring here to 1.8 million square kms that can be exploited from marine resources. This enormous ocean State that we have acquired may remain unexploited and this may be the case for so many other small islands which may have neither the capital nor the human resources to fully exploit the full potential of their marine resources. These small island States may as well lack the necessary tools to enforce their economic rights against other foreign States, as may be our case also. We are all aware of the problems of certain countries, mainly small islands that are facing a lot of difficulties because of extensive illegal exploitation of the highly migratory tuna fish.

Mr Deputy Speaker, Sir, the development of the sea can be, and must be, a new challenge for regional co-operation and it comes at a time when Mauritius is looking forward to become a seafood hub. It is a known fact that the Indian Ocean is very rich in resources. It is high time that Mauritius invests in the exploration and exploitation of this huge maritime zone so that the resources which are presently unexploited or which are being poached by foreign vessels can contribute to our economic well-being.

The major part of our maritime zone is yet to be explored. The resources in terms of fishes, minerals and hydrocarbons are yet to be assessed, but apart from these obvious resources, our ocean has other hidden resources, for example, our ocean can be used for the culture of pearl oysters or we can cultivate algae for the production of Agar.

Another hidden resource that can generate billions of rupees is the extract from marine animals and plants which is unique to Mauritius and which can be used for the manufacture of medicines. I will come a bit later to this issue, Mr Deputy Speaker, Sir.

The second object of this Bill provides for the management of the maritime zone of Mauritius. Mr Deputy Speaker, Sir, this can be viewed on two levels, on the national level and on the regional level. Small island countries, including Mauritius, need to work out a co-operative framework in such areas as living and non-living resources and ocean monitoring and surveillance. Other fields of co-operation may be sea transportation, marine sciences, technological research, manpower training and development. We have no other way than to enhance bilateral and multilateral arrangements.

Mr Deputy Speaker, Sir, I believe that this piece of legislation is the beginning of a long process to develop our marine resources. Maybe the role of the Ministry of Fisheries will have to be reviewed and extended to assume new responsibilities. But, more importantly, I believe that a national policy should be formulated on the marine sector. The national policy must also, among others, take care of the marine environment, management of the ocean, make use of the appropriate marine technology. The amount of work to be done if we want to manage our maritime zone properly is as immense as the ocean, Mr Deputy Speaker, Sir.

There is a lot to do, but, first of all, I believe that we should start by paying a lot of attention to the surveillance of our Exclusive Economic Zone. We are aware of foreign vessels which are trying to poach our fishes. There is information that a lot of our corals and other marine animals and plants are being collected and exported.

In the Audit's report of 2003, it was reported that only 18% of the flying hours of the Dornier - and this is very important - have been used for the surveillance of our Exclusive Economic Zone. Are we carrying, therefore, the surveillance of these zones properly?

Mr Deputy Speaker, Sir, in answer to a PQ in June 2004 related to surveillance of our economic zone by the hon. Prime Minister, he pointed out that Mauritius is looking forward for the purchase of state-of-the-art radars and equipment. I do hope that this is becoming a priority for us in this country. So, we have to win this battle of surveillance first of all before we go any further.

I am afraid, Mr Deputy Speaker, Sir, that with the enforcement of this Bill, the work of the hon. Prime Minister on this Bill is not over yet. Because when you go through this piece of legislation, out of the 32 clauses, you will see that 12 clauses are being bound by regulations. So, this is a piece of legislation which is over burdened by regulations maybe because of its complexity, but I am afraid that the work has just started. There is a lot more to do on this piece of legislation.

Mr Deputy Speaker, Sir, before concluding, I would like to draw the attention of the House on certain facts that have been brought to my attention. There are actually many scientists who come to Mauritius as tourists. They proceed to the extraction of our marine resources and exploit them in view of finding elements in the medical field. Magazine "*Science et Vie"* has pointed out clearly,

one year ago, thatsome of these scientists came to Mauritius and exploited what we call *Lièvre de Mer,* seahare, commonly known as "*bebête divin*".

According to that magazine, that shell-less molecule was extracted from our waters and has reached an advanced stage, phase 3, in clinical research for the treatment of cancer. Scientists in Hawai are extracting a substance from this particular living creature known as '*Dolastatine*', named after this '*Nudibranch*' scientific name, which is '*Dolabela Ariculavia*'. As I said earlier on, our marine resources can bring us a lot of money in terms of molecules that can be very, very vital for the medical field, Mr Deputy Speaker, Sir.

I would like to pledge to the hon. Prime Minister to see to it that the activities of certain NGOs operating in Rodrigues especially - I won't mention the name - must be monitored closely. Many scientists come and go under the cover of certain NGOs. They are publishing a lot of documents and making a lot of researches on our marine resources. The law should be enforced in that sector. There is a lot of potential in our marine resources, but as I have said, if corrective measures are not taken right now, we might be left with nothing. Our ocean, our Exclusive Economic Zone is the next pillar that we should consider on the economic front, not only in terms of fishes, but also in terms of providing molecules of great medical value.

I would wish to conclude on this optimistic note and wish to congratulate once again the hon. Prime Minister for his endeavour that will have a great impact on the future of our country.

Thank you, Mr Deputy Speaker, Sir.

(5.42 p.m.)

The Prime Minister: Mr Deputy Speaker, Sir, I am very happy to thank my colleague Ministers, PPPs, backbenchers who have participated in this debate, but also the two Members from the Opposition who have participated positively. Therefore, there is unanimity on this very important piece of legislation. I thank everybody for that and for their contribution.

Indeed, as hon. Boolell said, it is a major Bill. To a large extent the future of our nation will depend on the solidity and implementation of this Bill. Therefore, yes, it is a major Bill, and I have to put on record the fact that again, last Tuesday, we debated the Basdeo Bissoondoyal Trust Fund Bill which was one occasion

where once more we accomplished our *devoir de mémoire*. It was a very important Bill and the Leader of the Opposition chose to be absent. Today, one week later, when we are debating what hon. Dr. Boolell, himself, described as a major Bill, again, *il brille par son absence,* Mr Deputy Speaker, Sir.

Before I go to the heart of the matter, let me deal with three issues that are not directly related to the Bill before us. Hon. Dr. Boolell said that before making regulations I should consult the President. *Un vétéran* like him should know that before the regulations are made, they come to Cabinet and all papers coming to Cabinet go through the President of the Republic. This is one of the main functions of the President of the Republic, that is, to examine all Cabinet papers that come next Friday and to discuss of course; the Prime Minister meets him on Thursday and what has to be discussed is discussed. So, this is taken care of. I take the liberty of reminding the hon. Member of that.

The second point which is not directly linked to this piece of legislation - though it is an important point - is the issue of Port Louis harbour having become a '*port pirate*' in the past, which it is no longer now. We have taken the required measures. It is true that to make some money, some people had allowed vessels dealing in illegal fishing of *legine* to call in the harbour. And, it is true that we had acquired the reputation of a '*port pirate*'. We have taken measures for this to be a thing of the past, which it is now. We have been congratulated by France, Australia and South Africa, the three main countries involved in illegal fishing of '*legine*' *dans l'antarctique*. They recognised our efforts, they thanked us for that and, in fact, we are already an observer nation at CAMLR, which is the organisation regrouping them and dealing in the prevention of illegal fishing of '*legine*' in the Antarctic. But, this has nothing to do with the definition of piracy and so on in this Bill. We had a duty to take action; we took action and I am proud of that also. Our reputation has been reestablished completely as a clean harbour.

There is also the issue of regional surveillance - very important - but it is not linked to this Bill. We have a duty to equip ourselves and to cooperate with countries in our part of the world, in this sub-region of the Indian Ocean, including *Commission de l'Ocean Indien*. We have done that in the past; we must do it better and better. We are equipping ourselves, we bought a new 'Dornier' and we will - as soon as budgetary considerations allow - equip ourselves in radars and other state-of-the-art equipment.

Mr Deputy Speaker, Sir, I have taken note of the two points made by hon. Dowarkasing, as usual valid and interesting points. I will follow up on '*bebête*

divin'. I don't know if we will have to buy some equipment. We are just installing equipment, X-ray, scanning equipment to look for weapons, dangerous drugs and so on. I don't know if we'll have to find something to check whether '*bebête divin*' are leaving our country illegally for scientific purposes, but it is an interesting point. Concerning the point made on Rodrigues also. I think I know which NGO the hon. Member has in mind. We have checked in the recent past. We heard things, we had checked, but we'll double-check and make doubly sure that there are no scientific activities or spying activities disguised as NGO activities.

Having made those three points, let me go to the heart of the matter. This is a major piece of legislation, because, Mr Deputy Speaker, Sir, yes, it gives us the means to control, exploit, protect this vast area which is Mauritius and its Exclusive Economic Zone. Indeed, my colleague, the Attorney-General and Minister of Justice said that we are un *continent*. It is one way of rightly putting it. For my part, I have always described Mauritius as *un immense Etat Archipel, immense, couvrant la majeur partie de l'ocean indien*. When you draw our Economic Zone around Mauritius, Rodrigues, Agalega, St. Brandon, Chagos Archipelago, Tromelin Island, *c'est un immense Etat Archipel*. And on that I am happy *de constater* that there is full agreement between Government and the Opposition, *que dans une large mesure l'avenir économique de l'ile Maurice se trouve dans cette immense zone économique exclusive que nos différents territoires, nos différentes îles génèrent*. Nous sommes un immense Etat Archipel, un continent marin et, sous-marin et dans une très large mesure, notre avenir économique est là.

This is a very important, major Bill for the future of this country. And, I am very proud to have worked with the Attorney-General and Minister of Justice, but also with hon. Gayan, who as Minister of Tourism - he is not here - participated as a brilliant expert in fine-tuning the final version of this Bill. A great work! Of course, we have tapped foreign expertise, but the expertise that we have here, I would not be surprised if other countries tapped our expertise and we should be prepared to share that fantastic work. I am very satisfied to have worked with such a team and to have produced the state-of-the-art, this most modern piece of legislation.

Having said that, let me clarify the situation. In fact, we have four disputes in the Indian Ocean. We have one with the UK over the Chagos Archipelago, one with France over Tromelin; one with Seychelles over the Saya de Malha Bank and one with the Maldives over the delimitation of the two exclusive zones generated by the Maldives Archipelago; maybe, it has moved since recently…

(Interruptions)

I am not joking, possibly it has moved since the tsunami tragedy. In fact there was - and I am sure there still is - a dispute between the Exclusive Economic Zone generated by the Maldives and the Exclusive Economic Zone generated by the Chagos Archipelago, which is ours. In fact, Mr Deputy Speaker, Sir, two of them are directly linked to this piece of legislation whilst two are not really. If you would allow me - because this was raised by different orators before me - I would like to clarify the situation on each of these four disputes. Our dispute with the UK - Sir Seewoosagur Ramgoolam rightly described it as a friendly dispute, it is a dispute nevertheless with the UK, less friendly those days than at the time that SSR described it as a friendly dispute. Dispute there is. We say we have sovereignty over the Chagos Archipelago. In 1965, three years before Independence, London detached the Chagos Archipelago plus a few islands attached to the Seychelles to create a so-called brand new colony, the so-called British-Indian Ocean territory. This was illegal, in violation of the UN Charter, in violation of international laws, therefore, null and void. Later on, before the Seychelles became independent, the islands that had been detached from the Seychelles were returned to them. The so-called Order in Council of the Majesty was amended to return those islands to the Seychelles. We have all along said, 'we have sovereignty'. The issue is the exercise of our sovereignty over the Chagos Archipelago. There was a deadlock, Mr Deputy Speaker, Sir, until 2000, when the Ilois won their case in the London Court, the Judge found that after the Order in Council of 1965 was made, the Ordinance, made by the Commissioner for so-called BIOT, struck it down because the Ordinance prevented any Ilois or descendant from coming and going in any island of the Chagos Archipelago. So, the Court said, this is an abuse of power. The Order in Council did not give the Commissioner this power to ban the Ilois or their descendants from any of the islands of the Chagos Archipelago. London had a choice, they could appeal or they could come with a new Ordinance. They took time, they did not appeal, they came with a new Ordinance. In the new Ordinance they provided that Ilois and their descendants could come and go in all the islands other than Diégo Garcia freely, but in Diégo Garcia, for security reasons, they would have to seek authority. A few weeks later, we were informed that the crew of Mauritian fishing vessels would also be allowed to come and go freely in what is known now as the outer islands, that is, the islands of Chagos Archipelago other than Diégo Garcia. This went on for quite a while. Now, we brainstormed here and I came with a proposal which was accepted and which I took to the Secretary of States, Foreign Minister Jack Straw in London. We said we would keep on saying that we have sovereignty over the Chagos Archipelago, but this judgement of the

Supreme Court, the new Ordinance and this decision of London to allow the Ilois, their descendants and the crew of fishing vessels to come and go freely in all the other islands except Diégo Garcia and seek authority; this, we say, opens a window of opportunity. We went to London, we kept on saying we have sovereignty over the whole of the Chagos Archipelago, but we came with an initiative, we said, as a first step: give us back the exercise of our sovereignty over all the island except Diego Garcia and we will agree to disagree on Diego Garcia. We will keep on saying, we have sovereignty; you'll keep on saying you have sovereignty. We will agree to disagree on Diego Garcia, but, in the light of the judgement and the new Ordinance and the decision concerning ship crew, give us back the exercise of our sovereignty over the whole of the Chagos Archipelago. What I find very sad is the zigzagging that has taken place in the case of Foreign Minister Jack Straw. His first reaction after I explained to him at length in London and so on; he wrote and said that he had explained to our American friends the advantages of our proposal, which meant that not only was he in full agreement, but he was our *avocat*, if we can say, explaining the advantages of our proposals to the Americans. He even came in with additional proposals of his to allow things to move in that direction. That was superb; that was positive; that was movement forward until some time back where there has been a complete zigzagging. A few days before I called the Secretary General of the Commonwealth, London did the unacceptable thing of coming in with a new Order in Council by her Majesty going back to square one, going back to where we were before the judgements of the London Court and before the decision to allow the crew of Mauritian vessels to come and go freely, coming back exactly to where we were before those judgements. The Orders in Council are the most medieval, archaic way of dealing with legislation. Voices have been raised in the House of Commons over the last few days since those two Orders in Council have been passed, challenging because, according to British Parliamentary practice and so on, Orders by Her Majesty, the Queen in Council cannot be raised, cannot be challenged in the House of Commons. So, Members of Parliament of the House of Commons are raising their voice against that. This is a complete zigzagging. This is in total contradiction with what Foreign Minister Jack Straw had said. This is where matters rest, Mr Speaker, Sir. We have sought legal advice. At first, we thought that to go to the International Court of Justice we would have to leave the Commonwealth. We would have done that broken-heartedly, but we would have done it. Fortunately we received further advice that we can go to the International Court of Justice without leaving the Commonwealth, going through the United Nations General Assembly, getting a Resolution voted there.

The Attorney General, Minister of Justice paid tribute to our main Adviser in London. We have other advisers. We are preparing our case, both legally and diplomatically, because going through the United Nations General Assembly on a Resolution is not *une petite affaire*. It is a major diplomatic move that must be well calculated, well prepared; and this we are doing. At the same time, the legal case is being fine-tuned, is being finalised. But, of course, Mr Speaker, Sir, we remain hopeful that there will be positive developments coming from London or from Washington because what is clear is that the final say lies in Washington. We have a new administration; we have a new Secretary of States in Washington. She will have a new Deputy Secretary of States. I am very impressed by the positive tone of what the new Secretary of States has been saying these last days. I remain hopeful that there will be positive developments as there had been when I discussed with Foreign Minister Jack Straw. In the meantime, coolly, we keep on our work both legally and diplomatically, keeping the hope alive, that finally we won't have to go to the UN General Assembly, we won't have to go to the International Court of Justice because there would have been movement forward. This is as far as the dispute on the Chagos is concerned.

Dispute with France over Tromelin - there also we say we have sovereignty over Tromelin. It is a question of the exercise of our sovereignty. But as we all know the legal case is totally different from the Chagos. The Chagos is a clear case of violation of international law, the UN Charter whereas in the case of Tromelin, our case is very strong, but it is linguistic more than anything else. In 1810, Mauritius was conquered by the British; in 1814, there was the treaty of Paris; in the French version, there is a word '*nommément*', in the English version there are the words 'in particular' in relation to the territories which are returned to France and those which are kept by the UK. We win all out in the British version and it is less clear in the French version and in spite of the defeat of Napoléon, the diplomatic language in 1814 was French, but there are other arguments. There are other very strong arguments that defeat even the French version, because it says "*nommément etc*.." but it does not include certain territories where it was not spelt out, but where France never exercised its sovereignty. So, our case is very strong and when I was on official visit to Paris, I discussed with President Jacques Chicrac and it has been agreed that there will be a third meeting of experts in the near future. There have been two meetings of experts until now and I had requested that there be a third meeting of experts and he agreed. Now, we must finalise the date for that third meeting, and I remain hopeful there that there would be movement forward. But I repeat these two disputes are not really linked to this piece of legislation. The two others are.

With the Seychelles, it is over the Saya de Malha bank. It is the fishing bank of Saya de Malha, half way between here and the Seychelles. Part of the Saya de Malha bank falls in our Exclusive Economic Zone, part falls from Coëtivy, if my memory serves me right, the Economic Zone generated by the nearest islands of the Seychelles, and most of the Saya de Malha bank falls in international waters. So, the end result is that when international vessels are fishing in our waters or in the Seychelles waters and when you try to catch them, they say: "No, no, we were fishing in the international waters." They just move into the international waters and neither the Seychelles nor us can do anything about it. Of course, we cannot tag to the tail of the fish, international waters or Seychelles claimed waters or Mauritius claimed waters. And we are in trouble and there is a lot of illegal fishing. In the past days, there used to be terrible methods of fishing with …

(Interruptions)

No, worse than that! Trawlers scraping in the bottom of the sea, destroying corals, destroying the places where the fish was reproducing, destroying everything. That, at least, has stopped.

I am glad I heard hon. Boolell say we should be careful, we should avoid confrontation and so on. We say the whole of Saya de Malha bank is ours because our continental shelf extends to that, we have to prove it scientifically and so on, but the Seychelles say the same thing. I amvery glad that when I was in the Seychelles I gave my word to our *dallon*, President James Michel of the Seychelles. They wanted us to discuss this, because it is urgent. In the meantime, the Saya de Malha bank are being overexploited. They wanted us to discuss and we said: "look, we have to vote this new legislation and then we will discuss." And I promised him that the first thing we would do here would be to vote that; and I am glad that once more I have kept my word. *Dans la vie, garder sa parole, tenir sa parole, est une des choses les plus importantes*. I am glad that we have restarted our work last Tuesday with the first reading of the Maritime Zones Bill and today we are going to adopt it and then we will meet with the S*eychellois* without confrontation. We will see how to proceed forward. Of course, we can say that it is all ours; and we go to the United Nations, they can say the same, then it will take the time that it will take, whoever wins and so on or we can have a joint move - it is a very complicated matter - towards the United Nations together. This is what will take place with friendly negotiations between the Seychelles and us once this law has been approved by Parliament and promulgated. As I said, I am very proud, as Prime Minister, that I have kept my word, - at the first sitting of Parliament, we had the First Reading and at the second sitting we are having the Second Reading, as I gave my word to President James Michel. I will be difficult, delicate discussions with our *dallon*s, with our friends from the Seychelles and in the final

analysis, we, Mauritians and Seychellois, will have to decide what is best for each of our countries and move forward. So, this piece of legislation is vital in helping us move forward and leave behind us this issue of the Saya de Malha bank.

On the Maldives, I congratulate the Attorney-General and Minister of Justice, because he has put his finger on the issue without knowing what I am going to let him know now. That is, some thirteen years ago, I met the Foreign Minister of Maldives in an international conference of the Non-Aligned Movement. I have asked to have an *aparté* meeting with him, which took place and I raised that issue, that there is a conflict between the Economic Zone that they have worked out and the Economic Zone that is generated from the Chagos Archipelago. Of course, it rang a bell, he was aware that there was a dispute between London and us on the Chagos Archipelago. He asked to take time to consider and he would come back. He never came back. I can understand. If Maldives starts discussions with Mauritius, it is a clear admission of sovereignty of Mauritius over the Chagos Archipelago. We can check, but I can be sure that in the past - when there were the 1965 Resolutions voted massively by the United Nations voted by the Non-Aligned Movement and others - that Maldives went along with the vote. But that is one thing, but head-on in London by discussing with Mauritius the precise delimitation of the Exclusive Economic Zones generated by the Chagos Archipelago and the Maldives is another size of fish. So, certainly, I say it again, the Attorney-General and Minister of Justice has put his finger on that, most people are not even aware that we have a forth dispute with the Maldives, we have a problem, we will have to engage the Maldives, but keeping in mind, especially after the recent tsunami tragedy and so on, that Maldives is a small country, it won't be easy for them to pick a legal fight with London on this issue.

We have a beautiful piece of legislation before us today, a road map to our economic future in our huge Exclusive Economic Zone, we have four disputes to deal with, we will have to deal with those disputes, one by one, Mr Speaker, Sir.

These are the main points, which I wanted to deal with. Yes, this is a major piece of legislation; yes we are a huge *état archipel*; yes we have done super avant-gardist work in preparing this legislation and *ce n'est que le commencement*. It is a good moment for Mauritius that we vote in unanimity, Government, the Oppositions - I have to speak in the plural - everybody will vote this piece of legislation and then we will start working. *On se retrousse les manches dans notre zone de l'océan indien,*

and we start dealing with both disputes those that fall within this piece of legislation or those that fall outside this piece of legislation, but that are of vital importance for our Exclusive Economic Zone.

Mr Deputy Speaker, Sir, I will inform hon. Members that a copy of the United Nations Convention on the Law of the Sea is available in the Library of the National Assembly. Otherwise, of course, the Convention may be downloaded from the web site of the United Nations, but I have a special copy for hon. Sylvio Michel.

And, also let me say that it has been brought to my attention that two editorial mistakes have unintentionally, of course, crept into this highly technical text. I am, therefore, proposing amendments to clauses 4 and 30 as per the text circulated. It does not change anything fundamental and, in due course, I shall move for these amendments at Committee Stage.

Thank you, Mr Speaker, Sir.

Question put and agreed to.

Bill read a second time and committed.

Annex 112

Gautier, P., "The International Tribunal for the Law of the Sea: Activities in 2006" (2007) 6 Chinese Journal of International Law 389

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The International Tribunal for the Law of the Sea: Activities in 2006

Philippe Gautier*

Abstract

This paper gives an overview of the activities of the International Tribunal for the Law of the Sea in 2006, regarding organizational developments, administrative matters and judicial activities of the Tribunal.

I. Introduction

1. This paper gives an overview of the activities of the Tribunal in 2006 on the following matters:

- The 16th Meeting of States Parties (June 2006);
- Organizational developments in 2006;
- Activities of the Tribunal in 2006;
- The jurisdiction of the Tribunal.

II. The 16th Meeting of States Parties to the convention (New York, 19–23 June 2006)[1]

2. In 2006, several matters regarding the Tribunal were on the agenda of the 16th Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea ("the Convention"): budget proposals for the financial period 2007–2008, report of the external auditors

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1 For the report of the Meeting, see SPLOS/148 of 28 July 2006.

for the financial year 2004, annual report of the Tribunal for 2005 and the establishment of a staff pension committee within the Tribunal.

3. For the financial period 2007–2008, the budget proposals presented by the Tribunal amounted to €17 214 700. Compared to the previous biennium (2005–2006), this amount represented an annual increase of €413 900. The increase was the result of different circumstances on which the Tribunal had little control. First of all, a substantial part of the increase was due to previous decisions taken by the Meeting of States Parties regarding (a) the adjustment of the level of the judges' remuneration,[2] (b) the application of a floor/ceiling mechanism to the remuneration of judges (fixed in dollar) in order to alleviate the effects of exchange rates' fluctuations between the euro and the dollar[3] and (c) an increased amount to be appropriated for financing judges' pension (seven judges whose term of office will come to an end on 30 September 2008 will be entitled to a pension for three months in 2008 pursuant to the pension scheme of the Judges of the Tribunal, as adopted by the Meeting of States Parties in 1999[4]). Other increases resulted mainly from inflation (the inflation rate of 2.3 per cent—corresponding to the official inflation rate in Germany for 2005—was applied to several budget lines) and changes in standard staff costs (remuneration of staff) and common staff costs (entitlements of staff under the Staff Regulations and Staff Rules of the Tribunal, such as home leave, education grant or rental subsidy), as determined by the United Nations. With the exception of a minimal adjustment resulting from the re-classification of a post within the Registry (from P-2 to P-3 level), the only increase in real terms (€112 000) concerned the proposed extension of the Library of the Tribunal. After its consideration in an open-ended working group, the budget was adopted by the Meeting of States Parties, as proposed by the Tribunal.[5]

4. Pursuant to Regulation 12.1 of the Financial Regulations of the Tribunal, the financial statements of the Tribunal are audited by an external auditor "which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed". In 2005, the Meeting of States Parties appointed the firm DBO Deutsche Warentreuhand as auditor for the financial periods 2005–2006 and 2007–2008. Pursuant to Regulation 12.8, the audit reports are examined by the Tribunal which "shall forward them to the Meeting of States Parties, with such comments as it deems appropriate". According to the practice followed so far by the Tribunal, the audit of the financial statements is taking place in April of the year following the financial period concerned. The audit report is then examined by the Tribunal at its autumn session and is transmitted to the next Meeting of States Parties. According to this schedule, the report of the external auditors for the financial year 2004 (SPLOS/137) was placed before the

2 See SPLOS/132 of 21 June 2005.

3 See SPLOS/133 of 21 June 2005.

4 See SPLOS/47 of 7 June 1999.

5 SPLOS/145 of 23 June 2006.

Meeting of States Parties in June 2006. On the occasion of the consideration of the report, some delegations expressed their wish to receive audit reports at an earlier stage, i.e. in the year where the audit takes place, and requested the Tribunal to take steps to that effect. The Registrar underlined the procedural requirements (as noted above) that, under the financial regulations of the Tribunal, explain the submission of the report one year after the audit report is issued. Nevertheless, he stated that the "Registry of the Tribunal would endeavour to provide States with an advance copy of the next report of external auditors, as appropriate".[6]

5. The annual report of the Tribunal is a standing item on the agenda of the Meeting of States Parties. It gives an account of the activities of the Tribunal during the preceding year (2005) and is presented by the President of the Tribunal. During the consideration of the report by the Meeting, a number of delegations emphasized the importance of the role of the Tribunal and its contribution to the development of international law. Several delegations also underlined the importance for the Tribunal to "judiciously apply equitable geographic distribution when hiring staff"[7] at professional and higher category. At present, out of a total of 37 staff within the Registry, 17 staff members are in the professional and higher category. Among them, the Registrar and Deputy Registrar are elected by the judges of the Tribunal from a list of candidates nominated by them, in accordance with Article 32 of the Rules. The other 15 staff members are appointed by the Tribunal upon recommendations of the Registrar in accordance with Article 35, paragraph 1, of the Rules and Article 4.1(a) of the Staff Regulations of the Tribunal.[8] In his intervention, before the meeting of States Parties, the President of the Tribunal underlined the adherence of the Tribunal to the principle of equitable geographical representation, as reflected in Article 35, paragraph 2, of the Rules and Article 4.2 of Staff Regulations of the Tribunal.[9] He pointed out, however, that the Tribunal was constrained by the availability of candidates meeting the qualifications specified in the above-mentioned provisions and possessing the required proficiency in English and French. He also noted that the appointing authority with respect to the recruitment of staff is composed of 21 independent judges who are elected on the basis of a geographical distribution as adopted by the Meeting of States Parties.

6. Finally, the meeting considered a proposal by the Tribunal regarding the establishment of a staff pension committee (SPLOS/139 of 23 March 2006) for the staff of the Tribunal. The existence of such committee is required under the rules of the United Nations Joint Staff Pension Fund. An important function of the Committee is to determine whether a staff member is entitled to benefits under the Fund's regulations (e.g. with respect to the

6 SPLOS/145, para. 32.

7 SPLOS 148, 28 July 2006, para. 29.

8 Regulation 4.1(a): "Staff members of the Registry shall be appointed by the Tribunal on proposals submitted by the Registrar".

9 Regulation 4.2: "The paramount consideration in the appointment, transfer or promotion of the staff shall be the necessity for securing the highest standards of efficiency, competence and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible".

determination of incapacity resulting form a work-related accident). Pursuant to Article 6(c) of the Regulations of the Fund, the committee is to be composed of an equal number of members representing the body of the organization corresponding to the General Assembly (a function which, in the case of a judicial independent body, is deemed to be exercised by the Meeting of States Parties), the chief administrative officer (Registrar) and the participants in the service of the organization (Staff members). The Meeting of States Parties decided that one member and one alternate of the Committee would be appointed by the Meeting of States Parties and requested the President of the Meeting to conduct "intersessional consultations with States Parties with a view to selecting the member and alternate member of the staff pension committee of the Tribunal, who were to be chosen, according to the decision, by the Meeting".[10]

III. Organizational developments in 2006

III.A. Composition of the Tribunal and its chambers

7. In 2006, the composition of the Tribunal was as follows:

Order of precedence	Country	Date of expiry of term of office
President		
Rüdiger Wolfrum	Germany	30 September 2008
Vice-President		
Joseph Akl	Lebanon	30 September 2008
Judges		
Hugo Caminos	Argentina	30 September 2011
Vicente Marotta Rangel	Brazil	30 September 2008
Alexander Yankov	Bulgaria	30 September 2011
Anatoly Lazarevich Kolodkin	Russian Federation	30 September 2008
Choon-Ho Park	Republic of Korea	30 September 2014
Paul Bamela Engo	Cameroon	30 September 2008
L. Dolliver M. Nelson	Grenada	30 September 2014
P. Chandrasekhara Rao	India	30 September 2008
Tullio Treves	Italy	30 September 2011
Tafsir Malick Ndiaye	Senegal	30 September 2011
José Luis Jesus	Cape Verde	30 September 2008
Guangjian Xu	China	30 September 2011
Jean-Pierre Cot	France	30 September 2011
Anthony Amos Lucky	Trinidad and Tobago	30 September 2011
Stanislaw Pawlak	Poland	30 September 2014
Shunji Yanai	Japan	30 September 2014
Helmut Türk	Austria	30 September 2014
James Kateka	United Republic of Tanzania	30 September 2014
Albert Hoffmann	South Africa	30 September 2014

10 Ibid., para. 53.

III.A.i. Chamber of summary procedure

8. In accordance with Article 15, paragraph 3, of the Statute, the Chamber of Summary Procedure is constituted annually "for the speedy dispatch of business". A case may be submitted to the chamber at the request of the Parties to the dispute or, in the case of a request for provisional measures, at the request of any party "[i]f the Tribunal is not in session or a sufficient number of members is not available to constitute a quorum"[11] (Statute, Article 25, paragraph 2).[12]

III.A.ii. Seabed disputes chamber

9. Pursuant to Articles 186–191 of the Convention, the Seabed Disputes Chamber (and not the Tribunal) has exclusive and compulsory jurisdiction[13] to deal with all disputes and questions regarding the interpretation and application of Part XI of the Convention ("the Area"). The chamber is not only open to States Parties but also to non-State Parties [private persons (natural and juridical) and the International Seabed Authority].[14]

III.A.iii. Standing special chambers

11. The Tribunal has constituted two standing special chambers in accordance with Article 15, paragraph 1, of the Statute to deal, if the parties so request, with particular categories of disputes: the Chamber for Fisheries Disputes and the Chamber for Marine Environment Disputes.[15]

III.A.iv. Ad hoc *special chamber*

12. Pursuant to Article 15, paragraph 2, of the Statute, parties to a dispute may request the Tribunal to form a chamber for dealing with a particular dispute. The composition of such a chamber is determined by the Tribunal with the approval of the Parties. Chile and the European Community made use of this possibility in their dispute concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean.[16]

III.B. Registry

13. On 19 September 2006, during its 21st Session, the Tribunal re-elected Philippe Gautier (Belgium) as Registrar for a term of five years.

11 Eleven elected members of the Tribunal constitute the quorum (Statute, Article 13, paragraph 1).

12 For the period from 1 October 2006 to 30 September 2007, the chamber is composed of: President Wolfrum; Vice-President Akl; Judges Yankov, Nelson and Ndiaye, members; Judges Treves and Yanai, alternates.

13 See, however, Article 188 of the Convention which provides for the possibility of submitting certain disputes to a special chamber of the Tribunal or an ad hoc chamber of the Seabed Disputes Chamber or to binding commercial arbitration.

14 For the period ending on 30 September 2008, the Seabed Disputes Chamber is composed as follows: Judge Caminos, President; Judges Kolodkin, Park, Treves, Jesus, Lucky, Pawlak, Yanai, Türk, Kateka and Hoffman, members.

15 For the period 1 October 2005–31 September 2008, the Chamber for Fisheries Disputes is composed of: Judge Treves, President; Judges Marotta Rangel, Chandrasekhara Rao, Jesus, Pawlak, Yanai and Kateka, members. For the same period, the Chamber for Marine Environment Disputes is composed of: Judge Lucky, President; Judges Yankov, Park, Xu, Türk, Kateka and Hoffmann, members.

16 See Order of the Tribunal dated 20 December 2000.

III.C. Sessions of the Tribunal

14. As in previous years, the Tribunal held two organizational sessions in 2006: from 6 to 17 March 2006 (21st Session) and from 18 September to 29 September (22nd Session). During these sessions, the Tribunal had to consider legal matters related to the discharge of its judicial functions as well as administrative matters such as the preparation of budget proposals for 2007–2008, recruitment of staff, audit report and amendments to staff Regulations and Rules.

IV. Activities of the Tribunal in 2006

IV.A. Cases

15. No new case was submitted to the Tribunal in 2006. The number of cases that have been entered on the List of cases remains 13. One case is still on the docket, the Case concerning *the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile* v. *European Community).* This case was submitted in 2000 to a Special Chamber of the Tribunal, constituted under Article 15, paragraph 2, of the Statute, by virtue of a special agreement between Chile and the European Community. In 2001, further to a request submitted by both parties, the President of the Chamber decided, by an Order dated 15 March 2001, to extend the time limit fixed for the making of preliminary objections in the case. At the request of the parties, a further extension was granted by the President of the Chamber by an order dated 16 December 2003. Faced with a similar request submitted by the parties in December 2005, the President of the Chamber considered it necessary to convene a meeting of the Chamber. After consideration of the matter and consultation with the agents of the parties, the Special Chamber decided a further extension of the time limit for making preliminary objections. In accordance with this order, the time limit is due to commence on 1 January 2008. Each party maintains, however, its right to revive the proceedings at any time.[17] There is no new development to report on this case in 2006.

IV.B. Legal matters

16. During its sessions, the Tribunal examined several legal issues that are connected to its judicial activities. As an illustration, reference is made to three items: competence of the Tribunal in maritime delimitation cases, matters relating to Article 292 of the Convention and the Guide to proceedings before the Tribunal.

17. The delimitation of sea boundaries cannot be easily separated from land boundaries since a limit at sea necessarily originates on land. Whenever a maritime dispute involves the concurrent consideration of any unsettled disputes concerning sovereignty or other rights over continental or insular land territory, the question is then to determine to what extent the competence of the Tribunal extends to such disputes. This matter was considered by the Tribunal in 2006. While it is not possible to give an account of the discussions of the

17 See P. Gautier, The International Tribunal for the Law of the Sea: Activities in 2005, Chinese YBIL, 2006, pp. 393–396.

Tribunal on this issue, some general comments may be made. First, several provisions in the Convention concern the delimitation of maritime areas (see e.g. Articles 15, 74 and 83) and therefore disputes relating thereto are disputes concerning the interpretation or application of the Convention. The Tribunal has then jurisdiction over such disputes pursuant to Article 288 of the Convention. Second, delimitation disputes are subject to compulsory binding settlement under the Convention, unless a State has made a declaration in accordance with Article 298, paragraph 1(a), of the Convention. If a State has made such a declaration, the sea boundary dispute will be subject to compulsory conciliation in accordance with Article 298, paragraph 1(a), of the Convention. In this respect, the exclusion from the scope of compulsory conciliation, pursuant of Article 298, paragraph 1(a), of "any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory" logically applies to conciliation procedure and not to judicial proceedings before the Tribunal. Third, any limits that may affect the scope of competence of the Tribunal as regards delimitation disputes equally affect the International Court of Justice (ICJ) and arbitration under Part XV of the Convention. Finally, any limits that might affect the compulsory competence of the Tribunal under Part XV of the Convention may be put aside by the parties to a dispute through the conclusion of a special agreement with a view to submitting the dispute to the Tribunal.

18. Up to now, out of the 13 cases submitted to the Tribunal, 7 cases[18] were instituted on the basis of Article 292 of the Convention (prompt release proceedings). In 2006, the Tribunal began consideration of three questions relating to these proceedings. The first issue relates to the implementation of the decisions of the Tribunal ordering the release of the vessel upon the posting of a bond. It was noted that in some cases, the parties to the dispute had experienced difficulties in reaching an agreement on certain terms and conditions to be included in the bond (e.g. regarding the language of the bank guarantee or the interpretation of the expression "final judgment"[19] of a court of the detaining State, which will determine the amount to be paid by the bank to the detaining State). While international courts are not usually entrusted with the task of supervising the follow-up of their decisions, the Tribunal might here play a useful role and facilitate the implementation of its decisions. According to Article 113, paragraph 3, of the Rules of the Tribunal, the bond is posted "with the detaining State unless the parties agree otherwise". The parties may agree that the bond be posted with the Tribunal and this option is expressly considered under

18 The M/V "SAIGA" Case (Saint Vincent and the Grenadines v. Guinea); The "Camouco" Case (Panama v. France); The "Monte Confurco" Case (Seychelles v. France); The "Grand Prince" Case (Belize v. France); The "Chaisiri Reefer 2" Case (Panama v. Yemen); The "Volga" Case (Russian Federation v. Australia) and The "Juno Trader" Case (Saint Vincent and the Grenadines v. Guinea-Bissau).

19 See e.g. the clause inserted in paragraph 102 of the Judgment of 18 December 2004 of the Tribunal in the Juno Trader Case: "The bank guarantee should, among other things, state that it is issued in consideration of Guinea-Bissau releasing the *Juno Trader* and its cargo. . .and that the issuer undertakes and guarantees to pay to Guinea-Bissau such sum, up to 300,000 euros as may be determined by a final judgment or decision of the appropriate domestic forum in Guinea-Bissau or by agreement of the parties. . . .".

Article 114 of the Rules.[20] At its future sessions, the Tribunal will consider the possibility of drafting guidelines to assist parties that decide to post a bond with the Tribunal. A second question relates to the scope of the competence of the Tribunal under Article 292 of the Convention. Up to now, all prompt release proceedings have been based on alleged violations of Articles 73, Article 2, of the Convention—a provision that expressly provides for the release of vessels and crews upon the posting of a reasonable bond. In its judgments in the SAIGA and the "Volga" Cases,[21], the Tribunal identified other provisions of the Convention which could attract prompt release proceedings. These provisions—Articles 220 and 226—relate to the arrest of vessels for pollution offences and will be examined by the Tribunal at its future sessions. Finally, a further question, related indirectly to prompt release proceedings, concerns the possibility, whenever Article 292 does not apply, to use Article 290, paragraph 5, of the Convention and to request the Tribunal to order the release of an arrested vessel and its crew as a provisional measure pending the constitution of an arbitral tribunal to which the dispute on the merits is submitted. This raises a question regarding the test that would be applied by the Tribunal in order to determine whether it is appropriate to prescribe such a measure to preserve the respective rights of the parties. According to the jurisprudence of the ICJ, the Court would consider that measures are justified to prevent "irreparable" harm to the rights in dispute. This requirement represents a very high standard, in particular when the damage consists in economic losses. It is not certain, however, that the same standard would be required by the Tribunal. In this respect, it may be noted that Article 290 of the Convention contemplates the prescription of provisional measures in order to prevent serious—and not irreparable—harm to the marine environment.[22]

19. Representatives of States and government officials are not always familiar with the procedural complexities of international litigation. To contribute to a better understanding of the competence of the Tribunal and the procedural rules applicable to proceedings before it, the Registry prepared a guide regarding proceedings before the Tribunal in 2006. After its consideration by the Tribunal, the guide was published in June 2006 in the official languages of the Tribunal (English and French). It will be issued in the four other official languages of the United Nations in 2007 (Arabic, Chinese, Russian and Spanish).

IV.B.i. Other activities

20. In 2006, the Tribunal celebrated its 10th anniversary. On 18 September 2006, a reception took place in Berlin at the Representation of the Free and Hanseatic City of Hamburg.

20 See also Article 113, paragraph 3, of the Rules which provides that "[t]he Tribunal shall give effect to any agreement between the parties as to where and how the bond or other financial security for the release of the vessel or crew should be posted".

21 See the M/V "SAIGA" Case, Judgment of 4 December 1997, para. 52; the "Volga" Case, Judgment of 23 December 2002, para. 77.

22 See the comments that Judge Laing devoted to this issue in paragraph 3 of his opinion appended to the order of the Tribunal in the Southern Bluefin Tuna Cases, 27 August 1999: Paragraph 3 "It is thereby clear to me that the Tribunal has not chosen to base its decision on the criterion of "irreparability", which is an established aspect of the jurisprudence of some other institutions. I believe that that "grave standard" is inapt for application in the wide and varied range of cases that, pursuant to UNCLOS, are likely to come before this Tribunal. In my view, this confirms what I regard as the Tribunal's position that irreparability is not the sole required criterion."

On 29 September 2006, a ceremony was held at the premises of the Tribunal in Hamburg. On this occasion, statements were delivered by the first and current Presidents of the Tribunal, Judges Thomas Mensah and Rüdiger Wolfrum, the First Mayor of the Free and Hanseatic City of Hamburg, Mr Ole von Beust, the State Secretary of the Federal Ministry of Transport, Building and Housing, Mr Jörg Hennerkes, the Legal Counsel of the United Nations, Mr Nicholas Michel, the President of the ICJ, Judge Rosalyn Higgins, and the Secretary-General of the International Seabed Authority, Mr Satya Nandan.[23]

21. With a view to increasing its visibility and promoting its role, the Tribunal has organized a series of workshops in co-operation with the International Foundation for the Law of the Sea (a Hamburg-based Foundation set up to develop a better knowledge of settlement of disputes mechanisms under the Convention) and with the support of the Korea International Cooperation Agency of the Republic of Korea. These workshops are intended to provide representatives of States, in particular developing States, with practical information on the scope of disputes and questions that may be submitted to the Tribunal as well as on the main rules applicable to proceedings before the Tribunal. A first workshop took place in Dakar (Senegal) from 31 October to 2 November 2006, and was attended by representatives of different ministries of 13 African States. Future regional workshops will be held in Gabon, Jamaica and Singapore in 2007.

V. The jurisdiction of the Tribunal

V.A. Disputes relating to the Convention

22. According to Article 288 of the Convention, the Tribunal is competent to deal with any dispute arising out of the interpretation or application of the Convention, subject to the limitations contained in Articles 297 and 298. By the end of 2006, there were 152 parties to the Convention (151 States and the European Community). Three States became States Parties in 2005: Belarus, Niue and Montenegro. Belarus ratified the Convention on 30 August 2006. Niue ratified the Convention on 11 October 2006. Niue, a small island State, is a self-governing State, in association with New Zealand. While Niue is not member of the United Nations, the Convention is open to it by virtue of Article 305, paragraph 1(d), of the Convention. Montenegro declared itself independent from Serbia on 3 June 2006 and was admitted as a member of the United Nations on 28 June 2006. It became bound by the Convention as successor of Serbia and Montenegro on 23 October 2006.

23. Any disputes concerning the interpretation or application of the Convention may be submitted to the Tribunal by special agreement. In the absence of a special agreement, a unilateral request may be submitted to the Tribunal in the following circumstances:

- whenever parties to the disputes have both accepted the jurisdiction of the Tribunal on the basis of declarations made under Article 287 of the Convention;
- whenever the submission of a case by unilateral request is provided for in a clause contained in an international agreement conferring jurisdiction on the Tribunal;

23 The statements are available on the website of the Tribunal www.itlos.org.

- whenever the request is based on the provisions in the Convention that confer compulsory jurisdiction on the Tribunal [requests for the prescription of provisional measures pending the constitution of an arbitral tribunal (Article 290, paragraph 5, of the Convention); requests for the prompt release of vessels and crews (Article 292 of the Convention) and requests regarding disputes concerning activities in the Area submitted to the Seabed Disputes Chamber pursuant to Article 187 of the Convention).

24. Pursuant to Article 287 of the Convention, States Parties are free to select the forum to which their disputes should be submitted (the Tribunal, the ICJ, arbitration under Annex VII and special arbitration under Annex VIII). Declarations are deposited with the Secretary-General of the United Nations and may be made upon signature, ratification (or accession) or at any time thereafter. According to Article 287 of the Convention, if the parties to a dispute have chosen the same forum, the dispute will only be submitted to it, unless the parties otherwise agree. In the absence of declarations made by the parties to a dispute or if the declarations do not select the same forum, the dispute will be submitted to arbitration under Annex VII, unless the parties agree otherwise.

25. In 2006, only one declaration was made under Article 287 of the Convention. Belarus made a declaration upon ratification on 30 August 2006 by which it confirmed the declaration made upon signature in 1982. Belarus expressed its choice in favour of arbitral proceedings (arbitration under Annex VII and special arbitration for the categories of disputes referred to in Annex VIII).[24] This brings the number of declarations to 39 at the end of the year 2005.[25] So far, the Tribunal has been chosen by 23 States, the ICJ by 23 and arbitration (either arbitration under Annex VII or special arbitration under Annex VIII) by 15. Thus, in a majority of cases, arbitration will be the compulsory mechanism for the settlement of disputes, since under paragraph 3 of Article 287, a State that has not made any declaration "shall be deemed to have accepted arbitration in accordance with Annex VII". It may be added, however, that even when arbitration is the compulsory mechanism, parties are free to agree to submit their dispute to the Tribunal.[26] It may further be noted that, given the

24 In accordance with Article 287 of the Convention, the Republic of Belarus accepts as the basic means for the settlement of disputes concerning the interpretation or application of the Convention an arbitral tribunal constituted in accordance with Annex VII. For the settlement of disputes concerning fisheries, protection and preservation of the marine environment, marine scientific research or navigation, including pollution from vessels and by dumping, the Republic of Belarus will use a special arbitral tribunal constituted in accordance with Annex VIII. The Republic of Belarus recognizes the jurisdiction of the International Tribunal for the Law of the Sea over questions concerning the prompt release of detained vessels or their crews, as envisaged in Article 292 of the Convention; 2. In accordance with Article 298 of the Convention, the Republic of Belarus does not accept compulsory procedures entailing binding decisions for the consideration of disputes concerning military activities, including by government vessels and aircraft engaged in non-commercial service, or disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction, or disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations.

25 This figure is reduced to 35 if we leave aside three declarations (Algeria, Cuba and Guinea-Bissau) that were made for the sole purpose of rejecting the jurisdiction of the ICJ.

26 Such an agreement was reached by the parties in the "SAIGA" No. 2 Case and the Swordfish Case between Chile and the European Community.

broad wording of article 287, a State Party could consider making such a declaration for the purpose of submitting a dispute to the Tribunal against another State Party that has chosen the Tribunal by a declaration under Article 287.

26. According to Article 298 of the Convention, States Parties may exclude some categories of disputes [disputes relating to delimitation of maritime areas, paragraph 1(a), military activities, paragraph 1(b), or disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter, paragraph 1(c), from the compulsory dispute settlement mechanism under section 2 of Part XV of the Convention]. States which wish to have recourse to these exceptions have to make a declaration to this effect. Contrary to 2004 and 2005, during which no declaration was made under Article 298 of the Convention, in 2006, four States Parties made such a declaration: Republic of Korea (18 April 2006) with respect to disputes referred to in Article 298, paragraph 1(a), (b) and (c); Palau (27 April 2006) with respect to disputes referred to in Article 298, paragraph 1(a); Belarus (30 August 2006, upon ratification) with respect to disputes referred to in Article 298, paragraph 1(b) and (c) and China (25 August 2006) with respect to disputes referred to in Article 298, paragraph 1(a), (b) and (c). Accordingly, by the end of 2006, the total number of declarations amounted to 27. It may be observed that the effect of three of the new declarations is to exclude delimitation disputes from the scope of section 2 of Part XV of the Convention. On the basis of the 27 declarations made so far, 16 States[27] have excluded delimitation disputes from the compulsory mechanism for the settlement of disputes under the Convention.

27. Declarations under Article 298 do not exempt States Parties from all obligations. They are made "without prejudice to the obligations arising under section 1 of Part XV (Article 298, paragraph 1). In addition, States which have excluded disputes relating to sea boundary delimitations or those involving historic bays or titles [Article 298, paragraph 1(a)(i)] have the obligation, if negotiations are not successful within a reasonable period of time, to submit the matter to conciliation at the request of any party to the dispute. If a solution cannot be found after the conciliation commission has presented its report, the Parties have the obligation "by mutual consent, [to] submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree" [Article 298, paragraph 1(a)(ii)]. There is so far no example of dispute that went through the procedural steps of Article 298, paragraph 1(a). It may be observed, however, that the provision in subparagraph (a)(ii) could lead to difficulties since it obliges States to submit the dispute to a compulsory procedure entailing binding decisions while at the same time providing that this should take place "by mutual consent". If there is no consent between the parties, e.g. because one of the parties is reluctant to submit the dispute to a judicial body, we might consider that this would constitute a new dispute which would then be subject to the compulsory mechanism contained in section 2 of Part XV.

27 Argentina, Australia, Canada, Chile, China, Equatorial Guinea, France, Italy, Mexico, Palau, Portugal, Republic of Korea, Russian Federation, Slovenia, Spain, Tunisia and Ukraine. Iceland should also be mentioned since it stated in its declaration that it reserve its right under Article 298 to submit to conciliation any interpretation of Article 83 of the Convention.

V.B. Disputes relating to "any other agreement"

28. The jurisdiction of the Tribunal and other judicial mechanisms referred to in Article 287 also covers disputes "concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement" (Article 288, paragraph 2, of the Convention). In the case of the Tribunal, Article 21 of the Statute broadens this by stating, without making reference to an "international agreement", that "[t]he jurisdiction of the Tribunal comprises. . .all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal". On that basis, some commentators have taken the view that the Tribunal would be competent to deal with a dispute submitted to it by virtue of an agreement between a State and a non-State entity (such as an insurance company or classification society) or even between two non-State entities.[28]

29. A number of international agreements have been concluded which contain provisions stipulating that disputes arising out of the interpretation or application of these agreements could be submitted to the Tribunal.[29]

V.C. Advisory proceedings

30. Pursuant to Article 191 of the Convention, the Seabed Disputes Chamber is competent to give advisory opinions at the request of the Assembly of the Council of the International Seabed Authority "on legal questions arising within the scope of their activities. Such opinions shall be given as a matter of urgency" (Convention, Article 191).

31. Advisory opinions may also be given by the Tribunal pursuant to Article 21 of the Statute[30]. This provision is further elaborated by Article 138 of the Rules, which provides that the Tribunal may give an advisory opinion on a legal question "if an international

28 See e.g. T. Mensah, "The Jurisdiction of the International Tribunal for the Law of the Sea", RabelsZ Bd. 63, 1999, pp. 330–341; "International Tribunal for the Law of the Sea and the Private Maritime Sector", International Business Lawyer, 27(7), pp. 319 and ff.

29 On the basis of the information communicated to the Registry, a non-exhaustive list of these agreements and the relevant provisions contained therein are published in the Tribunal's Yearbook and made available on the website of the Tribunal. The following agreements are mentioned: (i) agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas; 24 November 1993; (ii) agreement for the implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks; 4 August 1995; (iii) the 1996 protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972; 7 November 1996; (iv) framework agreement for the Conservation of the Living Marine Resources on the High Seas of the South-Eastern Pacific; 14 August 2000; (v) convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean; 5 September 2000; (vi) convention on the Conservation and Management of Fishery Resources in the South-East Atlantic Ocean; 20 April 2001; (vii) convention on the Protection of the Underwater Cultural Heritage; 2 November 2001; (viii) convention on Future Multilateral Cooperation in North-East Atlantic Fisheries; 18 November 1980, as amended.

30 "The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any agreement which confers jurisdiction on the Tribunal". In this respect, we may observe that the Statute of the Permanent Court of International Justice, which did not refer expressly to the advisory functions of the court, contained a provision in its Article 36 similar to Article 21 of the Statute of the Tribunal ("The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force").

agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion". Although the advisory competence of the Tribunal has not yet been activated, it is likely to attract the attention of practitioners. It seems therefore useful to make a few comments on this specific procedure.

32. As this is evidenced by Article 138 of the Rules, the advisory jurisdiction of the Tribunal depends on the existence of an international agreement related to the purposes of the Convention. According to general international law, an international agreement is an agreement concluded between subjects of international law and governed by international law, whatever its form and designation. Parties to such an agreement are States, international organizations or other subjects of international law. *Prima facie*, there is therefore no reason to limit only to international organizations the scope *ratione personae* of this provision. That said, pursuant to Article 138, paragraph 2, of the Rules, the opinion should be requested by the "body" which has been authorized to this effect. It could then be argued[31] that, as in the case of the Permanent Court of International Justice or the ICJ, a request for an advisory opinion could not be transmitted directly by States but should be submitted through a collective body such as an international organization. The expression "body" ("organe"), included in Article 138 does not seem to necessarily refer to an international institution or an organization with a legal personality separate from the States concerned. In this respect, it may be argued that a joint commission instituted by an inter-State agreement relating to e.g. delimitation, fisheries or pollution matters could be entrusted with the task of *inter alia* submitting a request for advisory opinion to the Tribunal. Likewise, the Meeting of States Parties to the United Convention on the Law of the Sea, as a joint body of the parties to the Convention, could decide to address a request for an advisory opinion to the Tribunal. Such a decision could be contained in a resolution adopted by the meting, which would record the agreement between the States Parties to submit to the Tribunal a request for an advisory opinion.

33. According to Article 138 of the Rules, the Tribunal may give an advisory opinion on a legal question. A legal question should be "framed in terms of law",[32] raise "problems of international law"[33] and be "by its very nature susceptible of a reply based on law".[34] It differs from a "dispute" which, pursuant to the jurisprudence of the ICJ, is "'a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons' in which 'the claim of one party is positively opposed by the other'".[35] This does not mean

31 See T. Treves ("Introduction: Advisory Opinions under the Convention and the Rules of the Tribunal", Current Marine Environmental Issues and the International Tribunal for the Law of the Sea, M. Nordquist and J. Norton Moore (eds.), p. 92), who takes the view that the wording of Article 138, paragraph 2, is in line with the basic concept that advisory proceedings are an instrument "at the disposal of international organizations" or institutions in the broad sense and not of States.

32 Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 18, para. 15.

33 Ibid.

34 Legal consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, para. 37.

35 See e.g. Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), ICJ, Judgment of 14 February 2002, para. 27; see also Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, ITLOS, Order of 27 August 1999, para. 44.

that the request for an opinion could not relate to a legal question actually pending between States. On the contrary, the Rules of the Tribunal—as the corresponding rules of the ICJ—contemplate such possibility. Pursuant to Articles 138, paragraph 3, and 130, paragraph 2, of the Rules, when the Tribunal determines that the request for an advisory opinion relates to a legal question pending between two or more parties, Article 17 of the Statute regarding the choice of judges *ad hoc* applies. However, the opinion should not have the result of deciding on the merits of a dispute pending between two States Parties. In other words, the advisory opinion "should not be tantamount to adjudicating on the very subject-matter of [a] underlying concrete bilateral dispute"[36] that exists between two States. This limitation is important in order to avoid "circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent".[37]

34. Article 138, paragraph 3, of the Rules of the Tribunal specifies that the rules applicable to advisory proceedings before the Tribunal are similar to the rules applicable to advisory proceedings before the Seabed Disputes Chamber (see Rules, Articles 130–137). The latter include, pursuant to Article 130, paragraph 2, "provisions of the Statute and of [the] Rules applicable in contentious cases" to the extent they are recognized to be applicable by the Tribunal.

35. After the filing of a request for a legal opinion, it is the duty of the Registrar to give immediate notice of the request to all States Parties (see Rules, Article 133, paragraph 1). States Parties and intergovernmental organizations, which have been identified as likely to be able to furnish information on the question, may submit written statements during the proceedings (see Rules, Article 133, paragraphs 2 and 3). Statements are communicated to States Parties and international organizations that have made written statements (see Rules, Article 133, paragraph 3). Reference may also be made to Article 84, paragraph 2, of the Rules, which authorizes an intergovernmental organization "to furnish, on its own initiative, information relevant to a case before the Tribunal".

36. Advisory proceedings do not require automatically that oral proceedings be held. A decision in this respect is taken by the Tribunal, or by the President if the Tribunal is not sitting (see Rules, Article 133, paragraph 4). States Parties and the concerned international organizations are then invited to make oral statements during the proceedings (see Rules, Article 133, paragraph 4). After completion of the deliberations, a date is fixed for the reading of the advisory opinion at a public sitting of the Tribunal. It may be observed that the time limit for the whole procedure will depend on the urgency of the matter. In this respect, if the request indicates that an urgent answer is necessary, the Tribunal will "take all appropriate steps to accelerate the procedure" (Rules, Article 132).

36 Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, op. cit., separate Opinion of Judge Owada, para. 13.

37 Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 25, para. 33.

Annex 113

Fisheries and Marine Resources Act 2007

FISHERIES AND MARINE RESOURCES ACT

Act 27 of 2007 – 8 May 2008

ARRANGEMENT OF SECTIONS

FISHERIES AND MARINE RESOURCES ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Fisheries and Marine Resources Act.

2. Interpretation

In this Act—

"agent" means a person in Mauritius who—

(a) is appointed by an owner or operator of a vessel operating under a licence issued under this Act; and

(b) is authorised to receive, or is capable of responding to, any legal process issued in Mauritius against his principal;

"bait gear" means a gear used for catching fish to be used as bait, referred to in section 29;

"barachois" means a pond—

(a) within or adjacent to the sea; and

(b) enclosed by a weir or dam through which the sea flows and reflows;

"basket trap" means a basket trap referred to in section 28;

"boat" means any canoe, raft, floating platform or watercraft less than 24 metres overall length;

"canard net" means a net—

(a) which is used in conjunction with a large net for catching mullets;

(b) which does not exceed 100 metres in length and 5 metres in width;

(c) which is made of several layers of nets fitted with poles to maintain the whole net afloat on the surface of the water; and

(d) the meshes of any of the layers of which measure not less than 9 centimetres when stretched diagonally;

"drift net" means any net—

(a) with any one side of which exceeds 250 metres; and

(b) is fitted with floats or weights which make it hang vertically at the surface level of the sea, in mid-water or from the floor of the sea;

"explosive" has the meaning assigned to it by the Explosives Act;

"fish" means any aquatic organism, other than a bird, and includes any shell or coral;

"fish aggregating device" means—

(a) a device placed in water to attract fish; or

(b) a naturally floating object which attracts fish and to which a device has been placed to facilitate its location;

"fish farm" means a pond, tank, barachois, fish hatchery, structure, area or any area in a fish farming zone where fish farming or fish culture is carried out;

"fish farm operator" means the person holding an authorisation under section 8 to operate a fish farm;

"fish farming zone" means a fish farming zone referred to in section 8A;

"fish landing station" means an area so prescribed under section 20 (1);

"fish product" means—

(a) any fish or part of any fish; or

(b) any fresh, prepared, processed or frozen fish products;

"fishery control officer" means a Fisheries Officer and includes—

(a) a police officer;

(b) an officer of the Customs Department of the Mauritius Revenue Authority;

(c) a forest officer;

(d) an authorised officer under the Food Act;

(e) a veterinary officer; or

(f) an authorised officer of the Ministry responsible for commerce;

"fishing"—

(a) means—

(i) catching;

(ii) collecting;

(iii) killing; or

(iv) destroying,

any fish by any method; and

(b) includes—

(i) searching for fish for the purpose of catching, collecting, killing or destroying the fish;

(ii) placing, searching for or retrieving, a fish aggregating device;

"fishing boat" means a boat used for fishing and fishing related activities but excludes a boat used for fishing as sport, water sport or for any other recreational purpose;

"fishing vessel" means a vessel used for, or equipped to be used for, fishing or related activity, other than a fishing boat;

"foreign fishing boat" means a fishing boat, other than a Mauritian fishing boat;

"foreign fishing vessel" means a fishing vessel, other than a Mauritian fishing vessel;

"gear" means a net, a line, a hook, a lure, or a device, used or intended to be used for fishing;

"gear licence" means a licence referred to in section 28;

"gear licensee" means the holder of a licence in respect of a gear;

"gill net" means a net which—

(a) is set for catching fish;

(b) does not exceed 250 metres in length and 2.5 metres in width; and

(c) is made up of square meshes measuring not less than 11 centimetres when stretched diagonally;

"identification mark" means a mark assigned to a gear, or fishing boat by the Permanent Secretary under section 29 (5) or 40 (1);

"landing net" means a net in the form of a bag having—

(a) meshes of any size; and

(b) a hoop measuring not more than 50 centimetres in diameter and fitted with a handle;

"large net" means a net which—

(a) does not exceed 500 metres in length and 2.5 metres in width; and

(b) is made up of square meshes measuring not less than 9 centimetres when stretched diagonally;

"light stick" means a device, which is attached to a submerged fishing gear, which contains chemical substances capable of producing light through a chemical reaction inducing chemoluminescence, not requiring electrical power source;

"maritime zones" has the meaning assigned to them by section 2 of the Maritime Zones Act;

"master" means the person in charge of a boat or vessel;

"Mauritian fishing boat" means a boat which is registered under section 44;

"Mauritian fishing vessel" means a vessel which is—

(a) registered in Mauritius under the Merchant Shipping Act; and

(b) is wholly owned by—

(i) the State of Mauritius;

(ii) a statutory corporation in Mauritius;

(iii) one or more persons who are citizens of Mauritius; or

(iv) a body corporate, a company or other association incorporated or established under the laws of Mauritius and having a place of business in Mauritius;

"Minister" means the Minister to whom responsibility for the subject of fisheries and marine resources is assigned;

"net" means a net, mounted or unmounted, which is used, or intended to be used for fishing;

"offshore terminal" means any place or structure prescribed for the purposes of landing or transhipping fish or fish products;

"ornamental fish" means live fish kept in an aquarium, tank, pond or container for decorative or display purposes and not intended for release;

"owner" in relation to a vessel—

(a) means a person who owns the vessel; and

(b) includes—

(i) a charterer, whether bareboat, time or voyage;

(ii) a person who acts in the capacity of a charterer;

(iii) a party upon whom control over the destination, function or operation of the vessel is conferred under a management agreement or a similar agreement;

"pass" means a passage through the reefs and includes the entrance to any harbour, bay or creek;

"Permanent Secretary" means the Permanent Secretary of the Ministry responsible for the subject of fisheries and marine resources;

"place of business" means the place where meetings of the directors of the body corporate owning a fishing boat or a fishing vessel are regularly held;

"pocket net" means a net—

(a) not exceeding 15 metres in length and 12 metres in width;

(b) with 2 arms, each of which shall not exceed 10 metres in length and 2.5 metres in width;

(c) which is made up of square meshes measuring not less than 9 centimetres when stretched diagonally; and

(d) which is used in conjunction with a large net;

"poisonous substance" means any substance likely to kill, stun or injure any fish or damage or pollute aquatic ecosystems;

"position fixing instrument" means any device, instrument or equipment placed on board a fishing boat or fishing vessel, which transmits automatically, either independently or in conjunction with other instruments, information relating to the position of the boat or vessel;

"related activity" in relation to fishing, means the operation of a boat, vessel or mother vessel in conjunction with fishing operations and includes—

(a) storing, transhipping, processing or transporting of fish or any fish product taken in the maritime zones, or in the course of high seas fishing up to the time it is first landed;

(b) refuelling or supplying fishing boats or fishing vessels; or

(c) performing any other activity in support of fishing operations;

"sell" includes—

(a) hawk;

(b) expose for sale;

(c) keep for sale;

(d) offer for sale; and

(e) convey or consign for the purpose of sale;

"shrimp net" means a net in the form of a bag not exceeding 2 square metres which—

(a) is used for catching shrimps; and

(b) is fitted with a hoop measuring not more than 50 centimetres diametrically or diagonally; or

(c) is mounted on 2 handles and fitted with weights;

"speargun" means a device fitted with a trigger and a spear;

"structure" includes any jetty, slipway, ramp, dam, pier, building, gate, cairn, marina, pontoon or platform;

"territorial sea" has the same meaning as in the Maritime Zones Act;

"toxic fish" means any fish prescribed as being toxic fish;

"undersized fish" in relation to fishing, means a fish the size of which is less than the size prescribed for that species of fish;

"underwater fishing" means fishing by diving or with the use of a snorkel, flippers, goggles or similar equipment;

"vessel" means any vessel, ship, carrier vessel or any other craft, other than a boat;

"wetland"—

(a) means an area of marsh whether—

(i) natural or artificial; or

(ii) permanently or temporarily with water which is static or flowing, brackish, or salty; and

(b) includes areas of marine water.

[S. 2 amended by s. 11 (a) of Act 18 of 2008 w.e.f. 19 July 2008.]

PART II – MANAGEMENT OF FISHERIES AND ADMINISTRATION

3. Consultative Committees

(1) The Minister may set up such Consultative Committees as he thinks fit—

(a) for discussions and advice on matters of general policy relating to fisheries, marine resources, aquaculture and marine conservation;

(b) for inquiring into matters relating to fisheries and marine resources.

(2) A Consultative Committee shall consist of—

(a) the Minister, who shall be the Chairperson;

(b) such other persons as the Minister may appoint.

(3) Where the Minister is unable to attend a meeting of the Consultative Committee, he shall designate a member to chair the meeting.

(4) The Chairperson of a Consultative Committee may co-opt at a meeting any person who, in his opinion, may assist the Committee on the subject under deliberation at that meeting.

(5) No member of the Consultative Committee, other than the representative of a Ministry, shall be deemed to hold a public office by virtue only of his appointment as member.

(6) A member of the Consultative Committee shall be appointed by the Minister on such terms and conditions as he may determine.

4. Marine Protected Areas

(1) The Minister may, by regulations, declare—

(a) any area of the maritime zones including the seabed underlying such zones;

(b) any land associated with the maritime zones; or

(c) any wetland,

to be a Marine Protected Area.

(2) The Minister may, by regulations, made under subsection (1), designate a Marine Protected Area to be—

(a) a Fishing Reserve;

(b) a Marine Park; or

(c) a Marine Reserve.

5. Marine Protected Area Fund

(1) There is established for the purposes of this Act a Marine Protected Area Fund.

(2) The Permanent Secretary shall be responsible for the management and administration of the Fund.

(3) The Fund shall consist of—

(a) such sums of money as may be appropriated by the National Assembly for any of the purposes of this Act;

(b) any grant or donation made to the Fund;

(c) any sum that may lawfully accrue to it;

(d) any money that is payable under this Act including all fees, rent and other charges arising from the authorised use of a Fishing Reserve, a Marine Park or a Marine Reserve.

(4) The assets of the Fund shall be applied towards the payment of expenses which may be incurred in the management of a Marine Protected Area.

(5) Article 910 of the Code Civil Mauricien shall not apply to the Fund.

6. Record of fishing boats and fishing vessels

(1) The Permanent Secretary shall keep a record of fishing boats less than 12 metres in which shall be entered—

(a) the identification mark assigned to the boat;

(b) the name and address of the owner; and

(c) such other particulars as he thinks fit.

(2) The Permanent Secretary shall keep a record of fishing boats of 12 metres or more in length overall and fishing vessels licensed under sections 34 and 36.

(3) The record shall contain so far as is applicable—

(a) the name of the fishing boat or fishing vessel;

(b) the port and country of registration;

(c) any identification mark assigned to the boat or vessel;

(d) previous registration details;

(e) communication details;

(f) the Lloyds/IMO registration number;

(g) the international radio call sign;

(h) the length overall, draft and beam;

(i) the engine power;

(j) the net and gross registered tonnage;

(k) the type of refrigeration system;

(l) the material of build;

(m) the boat or vessel type and fishing method and gears;

(n) the hold capacities in cubic metres;

(o) the date of build;

(p) the number of crew, including fishermen and persons commonly known as "frigoboys";

(q) the name and address of the agent in Mauritius;

(r) the name, address and nationality of any natural or legal person with beneficial ownership of the fishing boat or fishing vessel;

(s) particulars of any previous offences committed by the use of the fishing boat or fishing vessel; and

(t) any other information as the Permanent Secretary may determine.

7. Confidentiality

A fishery control officer or any officer having access by virtue of his functions to any information under this Act shall not use or disclose such information except for the purposes of—

(a) this Act;

(b) fulfilling the obligations of Mauritius under any international agreement or convention.

PART III – FISH FARMING

8. Fish farming

(1) Subject to section 8A, no person shall carry out fish farming in a pond, tank, barachois or fish hatchery unless he has a written authorisation from the Permanent Secretary.

(2) A person who wishes to carry out fish farming in a pond, tank, barachois or fish hatchery shall make an application to the Permanent Secretary in a form approved by the Permanent Secretary.

(3) —

(4) The Permanent Secretary may require the applicant to furnish such other documents and clearances from the Department of Environment and other authorities as he shall specify.

(5) The Permanent Secretary may, after consideration of the application, any documents, clearances or representations made by the authorities specified in subsection (4)—

(a) refuse the application; or

(b) grant the application subject to such terms and conditions as he may impose, and issue a written authorisation to the applicant, upon payment of such fee as may be prescribed.

(6) Where the Permanent Secretary refuses to grant the application, he shall specify the reason for doing so and inform the applicant of his decision and the reasons thereof within 14 days of the date of his decision.

(7) —

(8) The Permanent Secretary shall keep a register of all written authorisations granted by him under this section with such particulars as he may deem appropriate.

(9) Any person, holding a written authorisation to carry out fish farming in a pond, tank, barachois or fish hatchery, who sells or transfers his fish farm in the name of another person shall, within 7 days, of the sale or transfer, notify the Permanent Secretary and surrender to him his written authorisation.

[S. 8 amended by s. 11 (b) of Act 18 of 2008 w.e.f. 19 July 2008.]

8A. Fish farming zones and fish farming industry

Notwithstanding any other enactment, the areas of the sea specified in the First Schedule shall, for the purposes of this Part, be used to develop a fish farming industry in respect of such fish farming activities as may be prescribed.

[S. 8A inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008; repealed and replaced by s. 12 (a) of Act 20 of 2011 w.e.f. 16 July 2011.]

8B. Authorisation to carry out fish farming in the sea

(1) No person shall carry out any fish farming activity in any fish farming zone, unless the person—

(a) is a company incorporated or registered under the Companies Act;

(b) obtains an authorisation in principle and in writing from the Permanent Secretary;

(c) obtains an EIA licence under the Environment Protection Act; and

(d) is the holder of a *concession* granted by the Prime Minister.

(2) Every application for authorisation under subsection (1) (b) shall—

(a) be made to the Managing Director of the Board of Investment established under the Investment Promotion Act, in such manner and in such form as may be determined by the Managing Director; and

(b) be accompanied by—

(i) a full and detailed account of the fish farming project;

(ii) a social impact assessment to identify the impact of the proposed fish farming project on the local community and a written undertaking by the applicant indicating the benefits that shall accrue to the local community and to small entrepreneurs generally, in terms of employment and business opportunities;

(iii) an implementation plan relating to the fish farming project with full details including a timeframe for its completion; and

(iv) such other particulars or information as may be required in the form of application;

(c) be dealt with in accordance with section 18B of the Investment Promotion Act.

(3) The Managing Director of the Board of Investment shall make his recommendations on the application to the Permanent Secretary.

(4) Upon the recommendation of the Managing Director of the Board of Investment, the Permanent Secretary may—

(a) approve the application and issue the authorisation, in principle, on such terms and conditions as he may determine; or

(b) reject the application and inform the applicant accordingly.

[S. 8B inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008.]

8C. *Concession* of area in fish farming zones

(1) Any company which has obtained an authorisation under section 8B (4) (a) shall apply to the Prime Minister for *a concession* in a fish farming zone in respect of its fish farming project.

(2) On receipt of an application under subsection (1), the Prime Minister may, on the recommendations of the Minister and the Board of Investment, grant to the applicant a *concession* by way of a deed of *concession*.

(3) Any *concession* granted under subsection (2) shall—

(a) not exceed 20 years duration and may be renewable for successive periods of 10 years;

(b) not be transferable except with the written authorisation of the Prime Minister;

(c) be subject to the *concessionaire* complying with the Maritime Zones Act;

(d) be subject to such annual fees and charges as may be determined by the Prime Minister; and

(e) be subject to such other terms and conditions as may be prescribed by the Prime Minister.

[S. 8C inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008.]

8D. Marked-off areas in fish farming zones

(1) The *concessionaire* of any area in a fish farming zone shall clearly and visibly mark off the area subject to the *concession*, in such manner as may be approved by the Prime Minister and shall properly maintain the marked-off area.

(2) Every marked-off area shall be under the overall control and administration of the *concessionaire*.

[S. 8D inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008.]

8E. Cancellation or suspension of *concessions*

Where a company obtains a *concession* under section 8C and the company—

(a) uses the area subject of the *concession* for any purpose other than that for which it has been granted, without the prior written approval of the Prime Minister;

(b) utilises the area subject of the *concession* so as to constitute a nuisance, or to cause any detriment to, or be a source of pollution of, the natural resources and the environment;

(c) fails to carry out, or insufficiently carries out, fish farming in the area subject of the *concession*; or

(d) fails to comply with this Act, or any regulations made under this Act, or any of its obligations under the deed of *concession*,

the Prime Minister may cancel or suspend the *concession*.

[S. 8E inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008.]

8F. Removal of *concession* right

The Prime Minister may, on the ground of public interest, or of the implementation of a project of national interest that modifies the status of the fish farming zone, remove a *concession* from a *concessionaire*, subject to payment of a reasonable compensation to the *concessionaire*.

[S. 8F inserted by s. 11 (c) of Act 18 of 2008 w.e.f. 19 July 2008.]

9. Fishing in fish farms

(1) No person shall fish in any fish farm unless authorised to do so in writing by the fish farm operator.

(2) No person shall use any gear for fishing in a fish farm, unless he is authorised to do so in writing by the Permanent Secretary.

(3) Notwithstanding section 28 (1), the Permanent Secretary may authorise the use of such gear as is appropriate for fishing in the fish farm in respect of which application is made, subject to such terms and conditions as he may think fit to impose.

10. Disease outbreak

(1) Any fish farm operator shall, within 24 hours of the outbreak of any disease in his fish farm, inform the Permanent Secretary of such outbreak.

(2) Where the Permanent Secretary is given information under subsection (1) and is satisfied that a fish farm has been affected by a disease, he may direct the fish farm operator to—

(a) take such measures he considers appropriate to control the disease and prevent its spreading further;

(b) remove and destroy any fish affected by the disease;

(c) disinfect the fish farm; and

(d) take such other measures as may be required.

PART IV – CONTROL OF FISHING ACTIVITIES

11. Registration of fishermen

(1) Any person who wishes to be registered as a fisherman shall make an application to the Permanent Secretary for such registration.

(2) Any person referred to in subsection (1) shall make his application to the Permanent Secretary in such form as he may approve and pay such processing fee as may be prescribed.

(3) Where an application is made under subsection (2), the Permanent Secretary may register the fisherman subject to such terms and conditions as he may determine.

(4) Where the Permanent Secretary registers a fisherman, he shall issue to—

(a) an artisanal fisherman, a Fisherman Registration Card;

(b) a bank fisherman, a Fisherman Continuous Record Book;

(c) a trainee bank fisherman, a Trainee Fisherman Continuous Record Book; or

(d) any other fisherman, such other document as he thinks fit.

12. Prohibited fishing methods and gears

(1) No person shall—

(a) fish with a gunny bag, canvas or cloth, creeper, leaf or herb;

(b) fish with lime or any poisonous substance;

(c) fish with any explosive;

(d) fish with any drift net;

(e) use or keep on board a boat or vessel any device that may be used to transform a gear;

(f) have in his possession or control any article mentioned in paragraph (a), (b), (c), (d) or (e) for the purposes of fishing;

(g) land, sell or have in his possession any fish which he knows or has reason to believe has been caught by—

(i) one of the gears or methods set out in paragraph (a), (b), (c), (d) or (e); or

(ii) any other illegal gear or methods.

(h) fish with, or have in his possession, a speargun, except with the written approval of the Permanent Secretary.

(2) Where an article specified in paragraph (1) (a), (b), (c), (d), (e) or (h) is found on board a boat or vessel, it shall be presumed to be intended for use for fishing.

13. Prohibition of underwater fishing

(1) Subject to subsection (2), no person shall carry out underwater fishing without the written authorisation of the Permanent Secretary.

(2) The Permanent Secretary may, under such terms and conditions he may determine, authorise underwater fishing for—

(a) scientific purposes;

(b) the purpose of catching ornamental fish; or

(c) such other purpose as he may approve.

14. Closed periods

(1) No person shall fish with, or have in his possession at sea, any river, lake or dam—

(a) a large net, a pocket net or a gill net from 1 October in a year to the last day of February of the following year;

(b) a canard net from—

(i) 1 May to 31 July in a year;

(ii) 1 October in a year to the last day of February of the following year.

(2) Subject to subsection (1), no person shall fish with, or have in his possession at sea, any river, lake or dam—

(a) a large net or canard net between 1800 hours and 0600 hours;

(b) a gill net between 0600 hours and 1800 hours.

(3) Subject to subsection (4), no person shall—

(a) fish oysters; or

(b) have in his possession fresh oysters,

from the 1 October in a year to the last day of March of the following year.

(4) Subsection (3) does not apply to oysters which are—

(a) caught in a fish farm; or

(b) imported for sale.

(5) Notwithstanding subsection (1), the Minister may, in any year, authorise by regulations, fishing at sea, any river, lake or dam with a large net, a pocket net, a gill net or a canard net for a period of not more than 10 days starting from the 1 October in that year where weather conditions prevented respectively, for 5 days consecutively, the operation of—

(a) a large net, a pocket net or a gill net during the period 1 March to 30 September in that year;

(b) a canard net during the periods 1 March to 30 April and 1 August to 30 September in that year.

15. Fish aggregating device

(1) No person shall place a fish aggregating device in the maritime zones unless he is authorised in writing by the Permanent Secretary.

(2) Any person holding a licence under section 34 or 36 which allows him to place a fish aggregating device is exempted from having to apply for an authority under subsection (1).

16. Protection of fish

(1) Subject to subsection (2), no person shall fish or cause any person to fish—

(a) any undersized fish;

(b) any crab or lobster in the berried state; or

(c) any marine turtle, marine turtle egg or any marine mammal.

(2) The Permanent Secretary may authorise, in writing, and subject to such terms and conditions as he may impose, the catching of—

(a) any fish specified in subsection (1) or marine turtle eggs for scientific, reproductive, or any other purpose beneficial to the community;

(b) undersized fish by the operator of a fish farm for stocking the fish farm;

(c) undersized fish specified in the Second Schedule for use as bait.

[S. 16 amended by s. 11 (d) of Act 18 of 2008 w.e.f. 19 July 2008.]

17. Landing, possession and sale of fish

(1) Subject to subsection (3), no person shall land or cause any person to land, sell or have in his possession in Mauritius or in the maritime zones—

(a) any toxic fish;

(b) any fish or fish product, which is unfit for human consumption;

(c) any marine turtle whether dead or alive, marine turtle eggs, stuffed marine turtle;

(d) any marine mammal;

(e) any undersized fish; or

(f) any crab or lobster in the berried state.

(2) No person shall land, sell or have in his possession any fish which he knows or has reasonable cause to believe has been taken in contravention of any international fishery conservation and management measure to which Mauritius is a party.

(3) The Permanent Secretary may issue an authorisation, in writing, and subject to such terms and conditions as he may impose, for the capture, landing or possession of any fish specified in subsection (1) (a) to (f) for scientific or conservation purposes.

(4) Where a fishery control officer is satisfied that subsection (1) (c), (d), (e) or (f) or (2) has been contravened, he shall order any fish the subject matter of the contravention to be seized.

(5) Where a fishery control officer is satisfied that any fish referred to in subsection (1) (a) or (b) is being landed or sold, or offered for sale or supplied by any person, or is in possession of any person, he shall order the fish to be seized and destroyed.

(6) The owner of any fish seized under subsection (4) or destroyed under subsection (5) shall not be entitled to any compensation.

18. Fishing with the aid of artificial light

(1) Subject to subsection (3), no person shall fish with the aid of any artificial light, except with the written authorisation of the Permanent Secretary.

(2) (a) The Permanent Secretary shall not issue an authorisation except—

(i) to the operator of a fish farm for the purpose of fishing in the fish farm;

(ii) for the purpose of catching undersized crabs to stock a fish farm;

(iii) for the purpose of catching shrimps with a shrimp net;

(iv) for the purpose of catching fish to be used as bait; or

(v) for light sticks to be used when attached to a submerged fishing gear.

(b) Any authorisation issued by the Permanent Secretary under this section shall be subject to such terms and conditions as he may impose.

(3) A person may fish with artificial light in a fish farm with the permission of the operator of the fish farm who holds an authorisation under subsection (2) (a).

19. Fishing in pass

No person shall—

(a) make use of a net in a pass; or

(b) place in a pass any object likely to cause obstruction to navigation.

20. Fish landing stations

(1) The Minister may prescribe an area near the shore as a fish landing station.

(2) No fisherman shall land fish at a place other than a fish landing station.

(3) Any person who lands fish at a fish landing station shall—

(a) where requested by a fishery control officer, cause the fish to be weighed, and provide such particulars on the catch as may be required;

(b) keep and store the fish in such manner and at such place as a fishery control officer may direct; and

(c) not expose the fish to rain, sun, flies or other unhygienic conditions.

21. Sale and origin of fish

(1) (a) Subject to subsection (2), no person shall sell or have in his possession for sale any fish unless he holds a fishmonger's licence.

(b) A fishmonger's licence shall be issued by the Permanent Secretary subject to such terms and conditions as he may impose.

(2) Subsection (1) shall not apply to a fisherman who sells fish at a fish landing station.

(3) No person shall purchase fish from a fisherman at any place for the purpose of sale other than at a fish landing station.

(4) No fishmonger who purchases fish from a fisherman shall refuse to sell fish at a fish landing station.

(5) A person found in possession of fish shall, on being required to do so by a fishery control officer, furnish the fishery control officer with particulars of the origin or source of the fish.

PART V – IMPORT, EXPORT AND MANUFACTURING

22. Import of fish and fish products

(1) (a) Every person who imports into Mauritius any fish or fish product shall, at the time of importation, pay to the Director-General such fee as may he prescribed.

(b) In this subsection—

"Director-General" has the same meaning as in the Mauritius Revenue Authority Act;

"import" means to bring or cause to be brought into the airport or any harbour of Mauritius.

(2) (a) No person shall import into Mauritius any marine turtle egg or marine mammal, whether dead or alive or stuffed, except with the written approval of the Permanent Secretary.

(b) An approval under paragraph (a) shall be subject to such terms and conditions as the Permanent Secretary may think fit to impose.

(3) Where a fishery control officer is satisfied that any fish or fish product which has been imported is unsuitable for human consumption, he may, after the Permanent Secretary of the Ministry responsible for the subject of health would have obtained an order under section 5 (2) (b) (ii) of the Food Act, cause the fish or the fish product to be forfeited and destroyed.

(4) The importer of any fish or fish product destroyed under subsection (3) shall not be entitled to any compensation.

[S. 22 amended by s. 13 (a) of Act 38 of 2011 w.e.f. 1 March 2012.]

23. Import of live fish

(1) (a) No person shall import into Mauritius any live fish intended for release, aquaculture or for ornamental purposes, except under a permit issued by the Permanent Secretary.

(b) A permit issued under paragraph (a) shall be subject to such terms and conditions as the Permanent Secretary may think fit to impose.

(2) No live fish imported under subsection (1) shall be released except with the written approval of the Permanent Secretary.

(3) The Permanent Secretary shall not give his approval under subsection (2) unless—

(a) the fish has been kept under observation and control for such period and on such terms and conditions as he thinks fit; and

(b) an assessment has been carried out on the environmental impact of such release by the importer, and the Permanent Secretary is satisfied, upon a report submitted to him by the importer, that the release of the live fish shall not be detrimental to the environment.

(4) Where the Permanent Secretary is satisfied that any live fish which has been introduced into Mauritius is unsuitable for release or for ornamental purposes, he shall order the fish to be forfeited and destroyed.

(5) The importer of any live fish destroyed under subsection (4) shall not be entitled to any compensation.

24. Illegal import of fish

No person shall, within Mauritius or the maritime zones—

(a) on his own account, or as partner, agent or employee of another person, land, import, export, transport, sell, receive, acquire or purchase; or

(b) cause or permit a person acting on his behalf to land, import, export, transport, sell, receive, acquire or purchase, any fish taken, possessed, transported or sold contrary to the law of one or more States with which Mauritius has entered into an agreement on a reciprocal or multilateral basis for the management of fisheries.

25. Export of fish and fish products

(1) No person shall export from Mauritius any fish or fish product except with a permit issued by the Permanent Secretary.

(2) A permit issued under subsection (1) may be granted subject to such terms and conditions as may be determined by the Permanent Secretary.

26. Import, sale and manufacture of gear

(1) No person shall manufacture, import, sell or supply any gear, other than a basket trap, a fish spear, a hook, a line, a rod, a reel or a lure, except under a licence issued by the Permanent Secretary.

(2) A licensee under subsection (1) shall—

(a) keep a register in which he shall forthwith enter particulars of every sale or purchase of a gear made by him including—

(i) the name and address of every seller or purchaser of a gear;

(ii) the description, measurement and number of gears sold or purchased by him;

(iii) the number and date of issue of the licence held by the seller or purchaser of gears;

(b) not later than 14 days after any sale or purchase of a gear, submit to the Permanent Secretary, in writing, the particulars specified in paragraph (a).

27. Import and construction of fishing boat and fishing vessel

(1) No person shall import into Mauritius, or construct, any fishing boat or fishing vessel, except with the written approval of the Permanent Secretary.

(2) An approval under subsection (1) shall be subject to such terms and conditions as the Permanent Secretary may determine.

PART VI – LICENSING

Sub-Part A – Gears

28. Gear licences

(1) Subject to section 9 (3) and subsections (2) and (3), no person shall, without a gear licence issued by the Permanent Secretary, use or have in his possession, a gear specified in section 29 (1).

(2) No application for a licence to use a gill net, a large net and a shrimp net concurrently shall be made, nor shall such a licence be granted.

(3) Notwithstanding subsection (1), no gear licence shall be required in respect of a basket trap which has meshes of a size which allows a cylinder measuring not less than 4 centimetres in diameter to pass through and which is operated by a registered fisherman.

(4) Notwithstanding subsection (1), no gear licence shall be required for a gear to be used by a licence holder under Sub-Part B of this Part.

29. Application for and issue of licences

(1) A person who wishes to operate—

(a) a bait gear;

(b) a canard net;

(c) a gill net;

(d) a large net;

(e) a basket trap;

(f) a shrimp net; or

(g) a pocket net,

shall make a written application for a gear licence to the Permanent Secretary.

(2) Upon receipt of an application under subsection (1), the Permanent Secretary may request the applicant to furnish such particulars as he may think fit.

(3) Where the Permanent Secretary is satisfied that a gear licence may be issued, he may issue the licence on payment of the prescribed fee.

(4) A licence issued under subsection (3) shall be—

(a) in the prescribed form; and

(b) subject to such terms and conditions as the Permanent Secretary thinks fit.

(5) The Permanent Secretary may cause to be affixed a seal or other identification mark on such gear as may be specified by him.

30. Limitation on number of licences

(1) Subject to subsection (2), the Permanent Secretary shall not at any time issue licences for more than—

(a) 10 large nets, 10 pocket nets, 10 canard nets, 5 gill nets and 100 shrimp nets for fishing in the lagoon of the island of Mauritius;

(b) 8 large nets, 8 pocket nets, 8 canard nets and 15 shrimp nets for fishing in the lagoon of the island of Rodrigues;

(c) 2 large nets for fishing in the lagoon of the island of Agalega.

(2) Where a gear licensee at the commencement of this Act applies, on the expiry of

his licence, for renewal, the Permanent Secretary shall grant the renewal notwithstanding that the limits specified in subsection (1) may be exceeded.

31. Gear licence not transferable

(1) A gear licence issued under this Sub-Part shall not be transferable.

(2) Where a gear licensee—

(a) dies; or

(b) in the case of a body corporate, the body corporate is wound up,

the gear licence shall lapse, and any fishing gear in respect of which the licence was issued shall forthwith be surrendered to the Permanent Secretary for safe keeping until disposal.

32. Duties of gear licensees

A gear licensee shall—

(a) keep or store any gear referred in section 29 (1) (b), (c), (d) and (g) in such place as may be approved by the Permanent Secretary;

(b) on demand, produce to a fishery control officer any licence issued to him under this Act;

(c) on demand, produce any gear referred to in paragraph (a) or indicate its location to any fishery control officer;

(d) report to the Permanent Secretary any damage to the seal or identification mark affixed under section 29 (5) to any gear referred to in paragraph (a);

(e) surrender any gear referred to in paragraph (a) to the Permanent Secretary upon the expiry or revocation of his licence, or cessation of business.

33. Disposal of licensed gears

(1) No licensee shall dispose of any licensed gear referred to in section 29 (1) (b), (c), (d) and (g) without the written approval of the Permanent Secretary.

(2) No gear licensee shall replace any gear referred to in subsection (1) unless—

(a) the gear has become unserviceable;

(b) the gear is surrendered to the Permanent Secretary; and

(c) the Permanent Secretary approves its replacement in writing.

(3) The Permanent Secretary may cause to be destroyed any gear which is surrendered to him under subsection (2) (b).

Sub-Part B – Fishing Boats and Fishing Vessels

34. Foreign fishing boat or foreign fishing vessel licence

(1) No person shall use a foreign fishing boat or foreign fishing vessel for fishing or any related activity within the maritime zones, unless he is the holder of a foreign fishing boat or foreign fishing vessel licence.

(2) (a) An application for a licence under this section shall be made to the Minister in such form as may be approved by the Permanent Secretary.

(b) The form shall include the particulars referred to in section 6 (2) as the Permanent Secretary deems appropriate.

(3) (a) The Minister may, on such terms and conditions as he thinks fit and subject to the approval of the Prime Minister, issue a licence in a prescribed form, for the use of a foreign fishing boat or foreign fishing vessel for the purpose of fishing or any related activity within the maritime zones.

(b) A licence under paragraph (a) shall be issued on payment of such fee as may have been provided for in an international agreement referred to in section 35.

(c) In the absence of an agreement under section 35, a licence shall be issued on payment of the prescribed fee.

(4) The Minister shall refuse to issue a licence under this section where—

(a) the foreign fishing boat or foreign fishing vessel in respect of which the licence is sought has a history of non-compliance with international fishery conservation and management measures, except where the ownership of the fishing boat or fishing vessel has subsequently changed and the new owner provides sufficient evidence that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing boat or fishing vessel;

(b) the foreign fishing boat or the foreign fishing vessel does not comply with the requirements of a regional fisheries management organisation to which Mauritius is a party, or has not complied with the measures adopted by that organisation.

35. Licence and international agreement

(1) Subject to subsection (2), a foreign fishing boat licence or foreign fishing vessel licence shall not be issued under section 34, unless there is an agreement—

(a) between the Government of Mauritius and the State in which the fishing boat or fishing vessel is registered;

(b) between the Government of Mauritius and an economic integrated organisation to which a member State of the organisation in which the fishing boat or fishing vessel is registered has delegated the power to negotiate fishing agreements; or

(c) between the Government of Mauritius and a fishing association of which the owner or charterer of the fishing boat or fishing vessel is a member.

(2) In the absence of an agreement referred to in subsection (1), the Minister may issue a licence under this section if the applicant provides such financial or other guarantees as he may determine.

36. Licence issued to a Mauritian fishing boat or fishing vessel

(1) Subject to subsection (2), no person shall use a Mauritian fishing boat or Mauritian fishing vessel for fishing or any related activity—

(a) within the maritime zones;

(b) in any fishery on the high seas,

except under a licence issued under this section.

(2) The owner of any Mauritian fishing boat or Mauritian fishing vessel shall, prior to starting to fish in the fishing zone of a foreign State, notify in writing the Permanent Secretary of that fact.

(3) The Minister may exempt any fishing boat less than 12 metres in length from the requirements of subsection (1) (a), subject to such terms and conditions as he may determine.

(4) (a) An application for a licence under this section shall be made to the Minister in such form as may be approved by the Permanent Secretary.

(b) The form shall include such particulars referred to in section 6 (2) as the Permanent Secretary deems appropriate.

(5) (a) The Minister may, on such terms and conditions as he thinks fit, issue a licence in the prescribed form, for the use of a Mauritian fishing boat or a Mauritian fishing vessel for the purpose of fishing or any related activity within the maritime zones or on the high seas.

(b) A licence issued under paragraph (a) shall be issued on payment of the prescribed fee.

(6) The Minister shall not issue a licence under this section unless he is satisfied that—

(a) the vessel is a Mauritian fishing vessel registered under the Merchant Shipping Act;

(b) the fishing boat is a fishing boat registered under section 44;

(c) the applicant has satisfied such requirements as the Minister may determine;

(d) the fishing boat or fishing vessel in respect of which the licence is sought has no history of non-compliance with international fishery conservation and management measures except where the ownership of the fishing boat or vessel has subsequently changed and the new owner provides sufficient evidence that the previous owner or master has no legal, beneficial or financial interest in, or control of, the fishing boat or the fishing vessel.

37. Conditions of licences

The terms and conditions imposed under sections 34 (3) and 36 (5) may include—

(a) the type and method of fishing or any related activity authorised;

(b) the areas within which such fishing or any related activity is authorised;

(c) the species and amount of fish authorised to be taken, including any restriction on by-catch;

(d) closed periods;

(e) reporting obligations;

(f) the carrying on board of communications, position fixing or other equipment.

38. Validity

(1) Subject to section 68, a licence issued under this Sub-Part shall be valid for such period as may be specified in the licence, but shall not exceed one year.

(2) The Minister may, on renewal of a licence or during its currency—

(a) attach fresh conditions to the licence; or

(b) vary its conditions.

(3) Where a Mauritian fishing boat ceases to be registered under section 45, or a Mauritian fishing vessel ceases to be registered under the Merchant Shipping Act, any licence issued under this Part shall lapse.

(4) A licence issued under this Sub-part shall not be transferable.

PART VII – OBLIGATIONS RELATING TO FISHING BOATS AND FISHING VESSELS

Sub-Part A – General Provisions

39. Transhipment

(1) Subject to subsection (2), the owner or master of any fishing boat or fishing vessel shall not tranship any fish, or fish products, in the maritime zones, except in a port or other place approved by the Permanent Secretary, subject to such terms and conditions as he may deem fit to impose.

(2) The Permanent Secretary may, where he is satisfied that such transhipment is necessary or is conducted in accordance with appropriate management measures agreed upon by Mauritius, authorise in writing the owner or master of a fishing boat or fishing vessel to tranship fish, or fish products, in the maritime zones, subject to such terms and conditions as he may deem fit to impose.

40. Marking

(1) The Permanent Secretary shall assign an identification mark to every Mauritian fishing boat or Mauritian fishing vessel registered under section 42 to which no international radio call sign has been allocated.

(2) No owner or master of any fishing boat or fishing vessel shall allow his boat or vessel to be in the maritime zones or in a port, unless the boat or vessel is marked in accordance with the Food and Agriculture Organisation of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels for the time being in force, or such marking as is specified or imposed by the flag state of the fishing boat or vessel.

(3) No person shall falsify, delete or conceal the marking of any fishing boat or fishing vessel made in accordance with subsection (1), or appearing on a fishing boat or fishing vessel marked as specified in subsection (2).

41. Reporting

(1) The master or owner of any licensed fishing boat or fishing vessel shall keep a fishing logbook in such form as may be approved in writing by the Permanent Secretary.

(2) The master or owner of any fishing boat or fishing vessel referred to in subsection (1) shall submit to the Permanent Secretary the fishing logbook, and any other catch data, that may be required within the time period specified in any fishing agreement under section 35 or in the conditions of the licence issued in respect of the fishing boat or fishing vessel, as the case may be.

Sub-Part B – Mauritian Fishing Boats and Mauritian Fishing Vessels

42. Registration of Mauritian fishing boats

(1) The owner of any Mauritian fishing boat shall register such boat with the Permanent Secretary.

(2) Subsection (1) shall not apply to any boat belonging to the Government.

43. Mauritian fishing boats

A fishing boat shall qualify for registration as a Mauritian fishing boat where it is wholly owned by—

(a) the State of Mauritius;

(b) one or more persons who are citizens of Mauritius;

(c) a statutory corporate corporation in Mauritius; or

(d) a body corporate, a company or other association incorporated in Mauritius or established under the laws of Mauritius and having a place of business in

Mauritius.

44. Application for registration

(1) Any person referred to in section 42 (1) may apply to the Permanent Secretary in an approved form for the registration of a fishing boat referred to in section 43.

(2) Notwithstanding subsection (1), where an application is in relation to a fishing boat of 12 metres or more in length overall, the application shall be accompanied by the following documents—

(a) a document showing that the fishing boat is owned or bareboat chartered by the applicant;

(b) a certificate from an approved surveyor that the fishing boat is in a seaworthy condition;

(c) the name of the skipper and full particulars of his certificate of competency;

(d) where the fishing boat was previously registered in another country, a document showing that the fishing boat has been deleted from the register of that country, free and clear of any encumbrances; and

(e) such other documents or records as the Permanent Secretary may require.

(3) Upon consideration of an application made under subsection (1) and being satisfied that the fishing boat may be registered, the Permanent Secretary may grant the application and issue a registration certificate, subject to such terms and conditions as he may think fit to impose and upon payment of the prescribed fee.

(4) The Permanent Secretary shall refuse to register a fishing boat where—

(a) the fishing boat poses a risk to safety of navigation or of pollution;

(b) the safety, health and welfare of persons employed or engaged in any capacity on board the boat are at stake;

(c) there is a possibility that the boat would be used for criminal purposes;

(d) the boat was not operated in compliance with international fishery conservation and management measures;

(e) the registration would be detrimental to the interests of Mauritius, or against the obligations of Mauritius under any international agreement or convention relating to fishing.

45. Cancellation of registration

(1) The Permanent Secretary may cancel or suspend the registration of a fishing boat referred to under section 42 (1)—

(a) on any of the grounds on which he would have been entitled to refuse registration under section 44 (4);

(b) if he has reason to believe that the fishing boat has been used in contravention of international fishery conservation and management measures on the high seas, or of fishery conservation measures in the EEZ of any State;

(c) on application by the registered owner stating that he wishes to terminate the registration of the fishing boat; or

(d) where the Mauritian fishing boat is lost or destroyed.

(2) Before the Permanent Secretary cancels the registration of a fishing boat under subsection (1) (a) or (b), he shall give 14 days notice to the owner of the boat calling upon him to show cause why the registration should not be cancelled.

(3) The Permanent Secretary shall, when cancelling the registration of a fishing boat under this section, give notice thereof, together with his reasons, to the owner within 7 days of his decision.

46. Transfer and modification of fishing boat

(1) No person shall modify the size of a registered Mauritian fishing boat without the written approval of the Permanent Secretary.

(2) Where a transfer in the ownership of a Mauritian fishing boat occurs or where the boat is chartered bareboat, the owner, and the new owner or the hirer, as the case may be, shall, within 14 days, give notice of the sale or transfer or charter to the Permanent Secretary.

(3) Where a Mauritian fishing boat is lost or destroyed, the owner of the Mauritian fishing boat shall, within 7 days, give notice of the loss or destruction to the Permanent Secretary.

(4) Any approval for modification, and any transfer or charter, under this section shall be subject to payment of the prescribed fee.

47. Landing

(1) The owner or master of a Mauritian fishing boat or a Mauritian fishing vessel licensed under section 36 shall land its catch within the limits of Port Louis harbour, or a fish landing station, as may be specified in the licence.

(2) Notwithstanding subsection (1), the Minister may, subject to such terms and conditions as he may determine, authorise the owner or master of a Mauritian fishing boat or a Mauritian fishing vessel licensed under section 36 to land fish at a place other than a place referred to in subsection (1).

48. Mooring

No person shall moor a fishing boat or fishing vessel in an area within which the use of a fishing boat, a fishing vessel or a pleasure craft is prohibited under any enactment.

49. Abandoned fishing boats

(1) Where the Permanent Secretary is of opinion that a fishing boat or any equipment or article used in connection with a fishing boat, has been sunk, stranded, abandoned or run aground in the maritime zones, and is likely to become an obstruction, a danger to navigation or the public, or is found in a dangerous or hazardous state, or is an eye sore, he may—

(a) take possession of the fishing boat, equipment or article;

(b) light or buoy the fishing boat.

(2) Where the owner of the fishing boat, equipment or article, is known, the Permanent Secretary shall give notice to the owner that if he does not, within 14 days of the notice, take back possession of the boat, equipment or article, he will dispose of it as provided for under subsection (5).

(3) Where the owner referred to in subsection (1) is not known, the Permanent Secretary shall publish the notice referred to in subsection (2) in 2 daily newspapers for 2 consecutive days.

(4) Where the owner takes possession of the fishing boat, equipment, or article, he shall pay any prescribed fee and any expenses incurred by the Permanent Secretary for the purposes of subsections (1) and (2).

(5) Where following a notice under subsection (2) or (3), no person establishes a claim on the fishing boat, equipment or article, within 30 days of the notice, or the last publication, as the case may be, the Permanent Secretary may—

(a) sell the fishing boat, equipment, or article; or

(b) dispose of it as he deems fit having regard to the state in which the boat, equipment or article was found.

(6) Where a person establishes to the satisfaction of the Permanent Secretary that he was the owner of the fishing boat, equipment or article, within a delay of 6 months from the date of sale, the Permanent Secretary shall pay to that person the proceeds of sale after deduction of any prescribed fee, and such expenses as may have been incurred, by the Permanent Secretary.

(7) Where no claim is made under subsection (6), the Permanent Secretary shall pay the proceeds of sale into the Consolidated Fund.

(8) The Permanent Secretary shall be discharged of all liabilities where he disposes of a fishing boat, equipment or article under subsection (5) (b).

(9) For the purposes of this section, the Permanent Secretary shall, in determining whether a fishing boat, equipment or article is abandoned, have regard, *inter alia,* to—

(a) whether the fishing boat was registered;

(b) the state of the fishing boat, equipment or article;

(c) the period of time the fishing boat, equipment or article has been left unattended.

50. Departure of licensed Mauritian fishing boats and licensed Mauritian fishing vessels

(1) The master of a licensed Mauritian fishing boat or licensed Mauritian fishing vessel shall not leave a port on a fishing trip unless he has obtained a written clearance from the Permanent Secretary.

(2) For the purposes of obtaining a clearance under subsection (1), the owner or master of a licensed Mauritian fishing boat or a licensed Mauritian fishing vessel or his agent shall, 3 days prior to leaving port for a fishing trip—

(a) inform the Permanent Secretary of the intended date and time of departure of the boat or vessel;

(b) comply with such conditions as may be determined by the Permanent Secretary; and

(c) submit such documents as may be required by the Permanent Secretary.

(3) Upon receipt of any information under subsection (2) (a) and after considering the document submitted under subsection (2) (c), and on being satisfied that the master, owner or agent has complied with the conditions imposed under subsection (2) (b) and that the fishing boat or fishing vessel may be allowed to proceed on a fishing trip, the Permanent Secretary shall issue to the master, owner or agent a written clearance to that effect, subject to such terms and conditions as the Permanent Secretary may think fit to impose.

51. Arrival of licensed Mauritian fishing boats or licensed Mauritian fishing vessels

(1) The master, owner or agent of a licensed Mauritian fishing boat or a licensed Mauritian fishing vessel shall, 2 days prior to the boat or vessel reaching Port-Louis harbour or the fish landing station as may be specified in the licence issued in respect of the fishing boat or fishing vessel, inform the Permanent Secretary of the expected time of arrival of the fishing boat or fishing vessel in Port Louis or the fish landing station by letter, fax or e-mail.

(2) On reaching Port Louis or the fish landing station referred to in subsection (1), the master shall immediately—

(a) submit to the Permanent Secretary—

(i) a report on the species composition of the catch;

(ii) information relating to the origin of the catch, the catch and effort in accordance with the approved fishing logbook;

(iii) the fishing logbook of the fishing boat or fishing vessel for examination;

(iv) such other information as the Permanent Secretary may require; and

(b) make its catch available to the fishery control officer for verification and sampling.

(3) Where the Permanent Secretary is satisfied that subsections (1) and (2) have been complied with, he shall issue a fish landing permit.

Sub-Part C – Foreign Fishing Boats or Foreign Fishing Vessels

52. Stowage

The master of a foreign fishing boat or a foreign fishing vessel shall keep its gear stowed—

(a) while the boat or vessel is within the maritime zones and is not licensed under section 34;

(b) while being in a place where the boat or vessel is not authorised to fish.

53. Entry into and exit from the maritime zones

The master of any foreign fishing boat or foreign fishing vessel or his agent shall provide, by letter, fax or e-mail, to the Permanent Secretary at least 24 hours before the boat or vessel enters into, or exits from, the maritime zones, its position at the time of entry into, or exit from, the zones and the quantity of fish on board by species.

54. Entry into a Mauritian port

The master of any foreign fishing boat or foreign fishing vessel or his agent shall, by letter, fax or e-mail, at least 72 hours before entry into port, notify the Permanent Secretary and inform him of the purpose of its call into port, submit to him a copy of the vessel, or boat's authorisation to fish, and information on the quantity of fish on board.

PART VIII – ENFORCEMENT

55. Warrant to enter and search

(1) A Magistrate shall, where he is satisfied by information upon oath that there is reasonable ground to believe that an offence against this Act has been, is being or is about to be committed, issue a warrant authorising a fishery control officer to enter and search any boat, vessel, premises or dwelling house.

(2) Where the Permanent Secretary is satisfied by information upon oath that—

(a) there is reasonable ground to believe that an offence against this Act has been, is being or is about to be committed; and

(b) communication with a Magistrate for the purpose of securing a search warrant may cause delay,

he may issue a search warrant authorising a fishery control officer to enter and search any boat, vessel, or premises, except a dwelling house.

56. Liability of owners of gears used in commission of offences

(1) Where a vehicle, gear or any other article is used in the commission of an offence under this Act, the owner shall be deemed to have committed the offence unless he proves that—

(a) he was not a party or privy to the commission of the offence; and

(b) he took all reasonable steps to prevent the use of the vehicle, gear or any other article for the commission of the offence.

(2) Where a boat or vessel is used in the commission of an offence under this Act, the owner, in addition to the master, shall be deemed to have committed the offence unless he proves that—

(a) he was not a party or privy to the commission of the offence;

(b) he took all reasonable steps to prevent the use of the boat or vessel for the commission of the offence.

57. Implementation of international fishery conservation and management measures

(1) Subject to sections 17 (2) and 39, the master or owner of a foreign fishing boat or foreign fishing vessel shall not land or tranship fish or fish products, except—

(a) in a port or at an offshore terminal of Mauritius; and

(b) upon obtaining a written clearance from the Permanent Secretary.

(2) For the purposes of subsection (1) (b), the fishery control officer may board and inspect a foreign fishing boat or foreign fishing vessel, and may—

(a) examine and take copies of the certificate of registry, the fishing licence and any other relevant documents, including fishing logbooks;

(b) inspect the fishing gear;

(c) examine any navigational, position fixing, observation or communication equipment, or other device on board;

(d) examine any fish or fish product on board; and

(e) ascertain the origin, species, form and quantity of fish and fish products.

(3) Where pursuant to an inspection under subsection (2), the Permanent Secretary has reason to believe that a foreign fishing boat or foreign fishing vessel was involved in any fishing activity in contravention of any international fishery conservation and management measure, he may—

(a) prohibit the boat or vessel to land or tranship its fish in a Mauritian port or at an offshore terminal;

(b) promptly notify the appropriate authorities of the flag state of the foreign fishing boat or foreign fishing vessel; and

(c) provide to the appropriate authorities of the flag State of the foreign fishing boat or foreign fishing vessel, such information, including evidentiary material, relating to that contravention.

58. Power of search and seizure

(1) Where a fishery control officer has reason to believe that an offence under this Act has been, is being or is about to be committed, and considers that it would be impracticable to apply for a warrant, the fishery control officer may, without a warrant—

(a) stop, board, search and inspect—

(i) in Mauritius or in its maritime zones, any boat or vessel;

(ii) on the high seas, any Mauritian fishing boat or Mauritian fishing vessel or any fishing boat or fishing vessel flying the flag of a State party to an international agreement to which Mauritius is also a party and which provides for such stopping, boarding and searching.

(b) stop and search any vehicle;

(c) in the maritime zones or in Mauritius, seize—

(i) any vehicle, boat, vessel or structure;

(ii) any logbook, record, document or equipment, including any computer or any other electronic device, that may be used as evidence in any proceedings under this Act;

(iii) any gear;

(iv) any article.

(2) In the course of a search and inspection under subsection (1), the fishery control officer may—

(a) examine and take copies of any certificate of registry, licence, logbook or any other document relating to the boat or vessel and its fishing activities;

(b) examine any fishing gear, fish or fish product;

(c) examine any navigational, position fixing, observation or communication equipment or other device on board;

(d) take samples of any fish or fish product found on board;

(e) where the weather or technical conditions do not allow the carrying out of the inspection, require the master of the boat or vessel to take the boat or vessel to any place, port or harbour for the purpose of performing or completing his inspection.

(3) Where a fishery control officer has reason to believe that a violation of a fisheries management measure under an international agreement to which Mauritius is a party has been committed on the high seas, and considers that it would be impracticable to apply for a warrant, the fishery control officer may, without a warrant—

(a) seize and detain any Mauritian boat or vessel;

(b) where authorised by an international agreement to which Mauritius is a party, seize and detain a foreign boat or foreign vessel,

together with its gear, store and cargo, fish, or other article which he has reason to believe has been used in the commission of the violation.

(4) Any boat, vessel or other articles seized under subsection (3) shall be dealt with in accordance with sections 63 and 71.

(5) Any boat or vessel seized under subsection (1) (c) shall be taken to Port Louis, or to other suitable port in Mauritius together with such persons employed on the fishing boat or vessel as he reasonably believes he would require for the purposes of investigating the offence.

59. Power to arrest and detain

Where a fishery control officer finds a person fishing or conducting any related activity, or in possession of any fish or gear, or selling fish caught, in breach of this Act, he may, without a warrant—

(a) stop that person; and

(b) require that person to give—

(i) his name and address;

(ii) the name and address of the owner of any boat or vessel used in the commission of the suspected breach of the Act.

60. Seizure of fish

A fishery control officer may seize any fish or fish product caught, landed, sold or stored, in breach of this Act.

61. Duties of fishery control officers

A fishery control officer shall, while in the exercise of his powers under this Act, produce on request such means of identification as determined by the Permanent Secretary for the purposes of enforcing this Act.

62. Pursuit beyond the maritime zones

(1) A fishery control officer may, without a warrant, following hot pursuit in accordance with international law as reflected in article 111 of the United Nations Convention on the Law of the Sea—

(a) stop, board and search outside the maritime zones, any foreign fishing boat or foreign fishing vessel which he has reason to believe has been used in the commission of an offence under this Act and bring such boat or vessel and all persons and things on board to any place, port or harbour in Mauritius;

(b) exercise beyond the maritime zones all the powers conferred to a fishery control officer under this Act.

(2) The powers conferred upon a fishery control officer under this Act shall cease when the foreign fishing boat or vessel enters the territorial sea of another State.

63. Custody of seized items

(1) Pending judicial proceedings or compounding, an item referred to in—

(a) section 58 (1) (c) (i) shall be entrusted to the custody of its owner, subject to such terms and conditions as may be imposed in writing by the Permanent Secretary;

(b) section 58 (1) (c) (ii), (iii) and (iv) shall be kept in the custody of the Permanent Secretary.

(2) Any person who attempts to destroy, destroys or purloins any item seized under section 58 (1) (c) (i) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees or the US dollar equivalent.

64. Custody and disposal of found items

(1) Subject to section 49, any fish, gear or article found by a fishery control officer shall be placed under the custody of the Permanent Secretary.

(2) Where the owner of any fish, gear or article referred to under subsection (1) cannot be identified, the Permanent Secretary may cause the fish, gear or article to be disposed of as the Permanent Secretary may deem appropriate including a sale at a reasonable price.

65. Security for release of seized items

(1) The owner or the person from whom an item was seized under section 58 (1) (c) may apply to the Judge in Chambers for the release of the seized item.

(2) The Judge in Chambers shall not release an item—

(a) which is prohibited for use;

(b) for which a licence has not been issued where such licence is necessary for its operation;

(c) unless the applicant furnishes a security or other guarantee determined by the Judge in Chambers.

(3) In fixing the security or other guarantee, the Judge in Chambers shall have regard to—

(a) the value of the seized item;

(b) the maximum fine for the alleged offence; and

(c) any costs or expenses incurred or reasonably foreseen to be incurred by the State and recoverable under this Act.

(4) Any security or other guarantee granted under subsection (2) shall be of no effect where the applicant produces the item when called upon to do so by any Court hearing his case.

66. Disposal of fish

(1) Where any fish or fish product is seized under section 60, the Permanent Secretary may return the fish or fish product to the person from whom it was seized on provision of adequate security equivalent to the value of the fish or fish product, or cause the fish or fish product, to be sold at a reasonable price.

(2) The Permanent Secretary shall deposit the proceeds of the sale with the Accountant-General.

(3) The security furnished under subsection (1) or sum deposited under subsection (2) shall—

(a) be applied towards the payment of any fine and costs imposed on the person referred to in subsection (1); or

(b) be refunded to that person—

(i) if he pays the fine and costs; or

(ii) judicial proceedings are not undertaken against him.

67. Application of the Public Officers Protection Act

The Public Officers Protection Act shall apply to any fact, act or omission under this Act notwithstanding the fact that the fact, act or omission took place outside the maritime zones in accordance with section 58 or 62.

68. Suspension and cancellation

(1) Subject to subsection (3), the Minister or the Permanent Secretary may suspend or cancel any licence issued by him under this Act where—

(a) the fishing boat, fishing vessel or gear in respect of which the licence was issued, is used in contravention of, or the licensee is engaged in any activity in contravention of—

(i) this Act;

(ii) any fisheries agreement referred to in this Act;

(iii) any regulations made under this Act;

(iv) any relevant law in force in Mauritius; or

(v) any condition of the licence;

(b) the licence is in respect of fishing for any species of fish, the stock of which is threatened.

(2) Where a licence is suspended or cancelled under subsection (1) (b), the Minister or the Permanent Secretary shall refund to the licensee the portion of the licence fee equivalent to the number of days remaining until the expiry of the licence.

(3) Before a suspension or cancellation of a licence under subsection (1) (a), the Minister or Permanent Secretary shall afford the licensee the opportunity to make representations to him as to why the licence should not be suspended or cancelled.

PART IX – OFFENCES AND PENALTIES

69. Protection of the aquatic ecosystem

(1) No person shall place, throw, discharge or cause to be placed, thrown or discharged into the maritime zones or into a river, lake, pond, canal, stream, tributary or wetland any poisonous substance.

(2) No person shall—

(a) except with the written approval of the Permanent Secretary, cut, take or remove;

(b) damage,

a mangrove plant.

(3) (a) No person shall place, construct or cause to be placed or constructed any structure within the territorial sea or internal waters, as defined in the Maritime Zones Act, except with the written authorisation of the Permanent Secretary.

(b) The Permanent Secretary may, on granting an approval under paragraph (a) impose such terms and conditions as he may deem fit.

70. Offences and penalties

(1) Any person who—

(a) contravenes section 8 (1), 8 (9), 9 (1), 9 (2), 10 (1), 12 (1) (a), (b), (e) to (g), 13 (1), 14 (3), 16 (1), 18 (1), 18 (3), 19, 20 (2), 20 (3), 21 (1), 21 (2) (a), 21 (4), 21 (5), 26 (3), 28 (1), 32, 33 (1), 33 (2), 36 (2), 41 (1), 41 (2), 42 (1), 46 (1), 46 (2), 46 (3), 47 (1), 48 (1), 50 (1), 51 (1), 51 (2) or 69 (2) shall, on conviction, be liable to a fine not exceeding 100,000 rupees;

(b) contravenes section 8D (1) (a), (b) and (c), 14 (1), 14 (2), 15 (1), 17 (1), 22 (2) (a), 23 (1) (a), 23 (2), 25 (2), 26 (1), 27 (1), 69 (1) or 69 (3) (a) shall, on conviction, be liable to a fine not exceeding 500,000 rupees;

(c) contravenes section 8B (1), 17 (2), 24, 25 (1), 36 (1), 39 (1) or 57 (1) shall, on conviction, be liable to a fine not exceeding 3,000,000 rupees;

(d) contravenes section 12 (1) (d), 40 (2), 52, 53 or 54 shall, on conviction, be liable to a fine not exceeding 20,000 US dollars;

(e) fails to comply with any terms or conditions imposed under section 8 (5) (b), 9 (3), 13 (2), 16 (2), 17 (3), 18 (2) (b), 21 (2) (b), 22 (1) (b), 22 (2) (b), 23 (1) (b), 29 (4) (b), 36 (5) (a), 44 (3), 47 (2), 50 (3) or 69 (3) (b) shall, on conviction, be liable to a fine not exceeding 50,000 rupees;

(f) fails to take the action directed under section 10 (2) shall, on conviction, be liable to a fine not exceeding 100,000 rupees;

(g) contravenes section 34 (1), 34 (2) or 40 (3) shall, on conviction, be liable to a fine, payable in the currency of the licence fee, not exceeding 100 times the amount payable as licence fee for a period of 30 days or 1,000,000 US dollars whichever is higher;

(h) contravenes section 12 (1) (c) shall, on conviction, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 5 years.

[S. 70 amended by s. 11 (e) of Act 18 of 2008 w.e.f. 19 July 2008; s. 13 (b) of Act 38 of 2011 w.e.f. 1 March 2012; s. 12 (b) of Act 20 of 2011 w.e.f. 16 July 2011.]

71. Forfeiture

Where a person is convicted of an offence under this Act, the Court may, in addition to any other penalty—

(a) order the forfeiture of any vehicle, boat, vessel, gear, article, or structure, used in the commission of the offence under this Act;

(b) order the forfeiture of any fish caught in breach of this Act.

72. Giving false information and tampering with evidence

A person who—

(a) is required to supply any information under this Act and knowingly fails to supply such information or provides false, incorrect or misleading information;

(b) falsifies, conceals, destroys or tampers with evidence which can be used in the course of inquiries or judicial proceedings,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees.

PART X – MISCELLANEOUS

73. Jurisdiction

(1) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a Magistrate—

(a) shall have jurisdiction to try an offence referred to in section 70 (a), (b), (d), (e), (f) and (h) and regulations made under this Act; and

(b) may impose any penalty provided by those sections and regulations.

(2) The Intermediate Court shall have jurisdiction to try any offence under this Act and impose any penalty provided therefor.

74. Regulations

(1) The Minister may make regulations for the purposes of this Act, and in particular for the purpose of—

(a) prescribing measures and conditions—

(i) under which fish farming and fish ranching are to be carried out; and

(ii) for the control of diseases in fish farms;

(b) delimiting areas within the maritime zones which shall be reserved for fishing by Mauritian fishing boats or Mauritian fishing vessels;

(c) prescribing measures for the registration of fishermen;

(d) prescribing the conditions for licensing of fishing boats and fishing vessels,

format and content of licences and the procedure for their issuance, cancellation and revocation;

(e) requiring a fishing boat or a fishing vessel to be equipped with specified communications, position fixing instrument, and other equipment;

(f) prescribing fisheries management and conservation measures, including mesh size, gear specifications, minimum sizes of species of fish, closed seasons, closed areas, prohibited methods of fishing or gear, schemes for limiting entry into all or any specified fisheries and schemes for setting and allocating quotas;

(g) prescribing measures for the protection of corals and shells;

(h) prescribing measures for the protection, conservation and management of marine protected areas and artificial reefs;

(i) prohibiting the fishing of any toxic fish;

(j) prohibiting the fishing of certain species, size or gender of fish;

(k) providing for the levying of fees and charges;

(l) prescribing measures to ensure the safety and security of fisher-men at sea;

(m) prescribing measures to ensure the safety and security of fishing boats;

(n) prescribing rules governing the use of fish aggregating devices and regulating fishing activities in their vicinity;

(o) prescribing the operation of, and conditions and procedures, to be observed by any foreign fishing boat or foreign fishing vessel entering the maritime zones and while in such zones;

(p) regulating the management of fishery resources and fishing activities in relation to sports and recreational fishing;

(q) regulating the handling, storing, processing, transporting, transhipping and exporting of fish and fish products and the operation of a one-stop-shop for those purposes;

(r) prescribing measures for operating a fishing base for fishing within the maritime zones;

(s) providing for the placing of observers on board any fishing boat or fishing vessel licensed under this Act to fish or carry out any related activity in the maritime zones or beyond as the case may be and prescribing rules relating to observers;

(t) regulating the manufacturing, import and export of gear;

(u) regulating import, trade in, distribution and marketing of fish and fish products and prescribing measures and conditions for the operation of a fish auction market;

(v) manning of fishing boats, provision of training, the conduct of examinations, and the issue of certificates;

(w) prohibiting the use of any boat within such areas as may be prescribed;

(x) surveying and certification of fishing boats;

(y) accommodation on board fishing boats;

(z) prescribing such other measures to combat illegal, unreported and unregulated fishing activities;

(za) prescribing any other matter relating to fisheries for the purposes of this Act;

(zb) prescribing the measures for the operation of laboratories responsible for carrying out analyses of fish and fish products for export, of sea water and tests for toxicity in fish;

(zc) amending the Schedules.

(2) Regulations made under this Act may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees, or the US dollar equivalent.

(3) Notwithstanding subsection (2), regulations made under subsection (1) (b), (e), (o), (w) and (z) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees, or the US dollar equivalent.

[S. 74 amended by s. 12 (c) of Act 20 of 2011 w.e.f. 16 July 2011.]

75. Compounding

(1) The Permanent Secretary may, where an offence has been committed whilst using a boat or vessel—

(a) compound the offence, except an offence under section 12 (1) (b) and (c), if the owner or master of the boat or vessel admits the commission of the offence and agrees in writing to pay such amount of money which shall not exceed the maximum fine specified for the offence in the Act;

(b) order the release of any item seized under section 58 of this Act on payment of a sum of money not exceeding the estimated value of the seized item as may be agreed in writing by the owner or master of the boat or vessel.

(2) A Compounding Commission shall be established to assist the Permanent Secretary in determining the amount of money to be paid by the offender under subsection (1), having due regard, *inter alia,* to the circumstances of the case and the past behaviour of the offender.

(3) The Compounding Commission shall be appointed on a part-time basis and shall consist of—

(a) a Chairperson, who shall be a law officer of at least 10 years standing, appointed by the Minister;

(b) 2 senior officers from the Ministry responsible for the subject of fisheries, designated by the Permanent Secretary.

(4) The Chairperson and the members shall be paid such fees as shall be determined by the Minister.

(5) Every agreement to compound shall be final and conclusive.

(6) Where the amount agreed upon under this section is not paid in accordance with the compounding agreement, the Permanent Secretary shall send a certified copy of the agreement to the competent court which shall thereupon proceed to enforce such agreement in the same manner as if it had imposed such agreed amount by way of a fine.

(7) On payment of the agreed amount in accordance with the compounding agreement, no further proceedings in regard to such particular offence shall be taken against the person who has so agreed to the compounding.

76. Rewards

(1) The Minister may, on the seizure of any fish, boat or vessel, or on the recovery of any penalties under this Act or regulations made under this Act, direct that a reward shall be given or paid to any person through whose information or means the seizure had been made or the penalty recovered, and whom he deems to be entitled to a reward.

(2) No reward shall be given or paid under subsection (1) unless the Minister is satis-

fied that there has been no collusive activity planned to secure the reward.

77. Photographic evidence

(1) Where a photograph is taken of any fishing or related activity and simultaneously the date and time and position from which the photograph is taken are superimposed upon the photograph, it shall be *prima facie* evidence that the photograph was taken on the date, at the time and in the position so appearing.

(2) The provisions of subsection (1) shall apply only when—

(a) the camera taking the photograph is connected directly to the instruments which provided the date, time and position concerned;

(b) the instruments which provide the date, time and position are recognised as being accurate and were checked by the fishery control officer, as soon as possible after the taking of the photograph against such instruments; and

(c) the photograph was taken by a fishery control officer.

(3) Any fishery control officer who takes a photograph of the kind described in subsection (1) may give a certificate appending the photograph stating—

(a) his name, address, official position and place of appointment;

(b) the name and call sign, if known, of any fishing boat or fishing vessel appearing in the photograph;

(c) the type of camera and other devices supplying the date and time and of the position fixing instrument;

(d) that he checked those devices and instruments a reasonable time before and after the taking of the photograph and that they all appeared to be working correctly; and

(e) the accuracy of the position fixing instrument used within specified limits.

78. Position fixing instrument

(1) Any information or data transmitted automatically by a position fixing instrument shall be *prima facie* evidence that such information or data—

(a) came from the fishing boat or fishing vessel so identified;

(b) was accurately relayed or transferred; and

(c) was given by the master or owner of the fishing boat or fishing vessel,

and evidence may be given of information and data so transmitted whether from a printout or visual display unit.

(2) Subsection (1) applies irrespective of whether or not the information or data was stored before or after any transmission or transfer.

(3) Any fishery control officer may issue a certificate stating—

(a) his name, address, official position and place of appointment;

(b) that he is competent to read the printout or visual display unit of any machine capable of obtaining or ascertaining information or data transmitted by a position fixing instrument;

(c) the date and time the information or data was obtained or ascertained from the position fixing instrument as well as the position of the fishing boat or fishing vessel at such date and time;

(d) the name and call sign of the fishing boat or fishing vessel on which the position fixing instrument is or was installed; and

(e) that there appeared to be no malfunction in the position fixing instrument, its transmissions or any other machines used in obtaining or ascertaining the information or data transmitted by the position fixing instrument.

(4) Any person who destroys, damages, renders inoperative or otherwise interferes with a position fixing instrument aboard a fishing boat or fishing vessel shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000,000 rupees or the US dollar equivalent.

79. —

80. Transitional provisions

(1) A permit or licence issued, or registration made, under the Fisheries and Marine Resources Act 1998 and Fisheries Act 1980 shall be deemed to have been issued or made under this Act.

(2) Notwithstanding subsection (1), the Minister may make necessary regulations for the transition from the repealed Act to this Act.

81. – 82. —

First Schedule
[Section 8A]

FISH FARMING ZONES

In a radius of up to 300m around the following GPS points—

Zone	Area of Sea	Reference Coordinates GPS
1.	Baie Fer à Cheval	S 20° 23' 252 E 57° 46' 052
2.	Quest Ilot Marianne	S 20° 22' 595 E 57° 45' 520
3.	Est Pointe Bambou (1)	S 20° 20' 920 E 57° 46' 923
4.	Est Pointe Bambou (2)	S 20° 20' 617 E 57° 46' 927
5.	Ouest Ile Flammand	S 20° 19' 467 E 57° 48' 683
6.	Nord Est Annanas Bank	S 20° 23' 587 E 57° 45' 919
7.	Ferme Marine de Mahebourg (1)	S 20° 20' 058 E 57° 46' 595
8.	Ferme Marine de Mahebourg (2)	S 20° 20' 411 E 57° 46' 369

[First Schedule inserted by s. 11 (f) of Act 18 of 2008 w.e.f. 19 July 2008.]

Second Schedule
[Section 16 (2) (c)]

UNDERSIZED FISH THAT MAY BE USED AS BAIT

Fish	Commonly known as
(a) *Mugil* sp. and *Valamugil* spp.	Mullet
(b) *Parupeneus* spp.*Upeneus* spp. *Mulloides* spp.	Rouget

[Schedule renumbered as Second Schedule by s. 11 (d) of Act 18 of 2008 w.e.f. 19 July 2008.]

Annex 114

Rao, P.C., "Delimitation Disputes under the United Nations Convention on the Law of the Sea: Settlement Procedures", in T. M. Ndiaye and R. Wolfrum (eds.), Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah, (Nijhoff, 2007)

international dispute by arbitration in subsequent years.[9] This explains why Japan has abstained from being involved in international arbitration for almost a century after the *House Tax* arbitration. Thus, any outcome of the *SBT* case is bound to affect the Japanese attitude towards arbitration. In that sense it is lucky that Japan somehow won the case. It is strongly hoped that the case will encourage Japan to take more positive approach to the use of arbitration in resolving its international disputes.[10]

Secondly, in the view of this writer, the *SBT* case highlights the limitations that any ambitious international law-making must face in attempting to restrict the exercise of sovereign rights by States. Australia and New Zealand argue that the LOS Convention, like WTO, is one of the great general regulatory treaties of the modern time and provides for mandatory or compulsory dispute settlement procedures in order to maintain the legal order that they intend to build. The original aim of the LOS Convention may have been to enact a constitutional instrument on the law of the sea with compulsory dispute settlement procedures. However, as the Tribunal's award makes abundantly clear, LOS Convention Part XV has not established a comprehensive regime of compulsory jurisdiction entailing binding decisions on all States Parties. Rather, Part XV preserves a consensual basis for all dispute settlement procedures as exemplified by CCSBT, and very many States Parties to the LOS Convention have chosen to enter into an international agreement of maritime elements with a voluntary dispute settlement procedure.

Thirdly and lastly, it needs to be emphasised that the *SBT* case testifies the vailidity and weight of State practice in defining interpretation of a treaty provision. Article 31 of the Vienna Convention on the Law of Treaties, which sets out general rules on treaty interpretation, explicitly states that, together with the context, account shall be taken of "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation". Thus, in interpreting various provisions of LOS Convention Part XV, it is essential to examine the practice of States Parties to the LOS Convention that concern dispute settlement procedures. As pointed out above, the relevant State practice indicates that, while LOS Convention Part XV section 2 provides for compulsory dispute settlement procedures, Part XV allows at the same time a treaty concerning the law of the sea to provide for voluntary dispute settlement procedure.

[9] See Y. Ishimoto, "International Arbitration in the Meiji Era", *Jap. Ann. Int'l L.*, 7 (1963), 30-37.

[10] In these years, Japan has started to participate actively in WTO proceedings.

Delimitation Disputes under the United Nations Convention on the Law of the Sea: Settlement Procedures

P. Chandrasekhara Rao

I. Introduction

Articles[1] 15, 74 and 83 of the United Nations Convention on the Law of the Sea (the "Convention" or "LOS Convention") deal with delimitation of the territorial sea, the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts, respectively. Accordingly, any dispute concerning the interpretation or application of those provisions would invite the dispute settlement procedures set out comprehensively in Part XV of the Convention. Further, paragraph 2 of article 74 and of article 83 declare that, if no agreement is reached within a reasonable period of time, the "States concerned shall resort to the procedures provided for in Part XV" of the Convention. The absence of a similar provision in article 15 may not, however, be construed as implying that Part XV procedures are not applicable in regard to disagreements concerning the delimitation of the territorial sea between States with opposite or adjacent coasts. Is there any overlap of obligations under Part XV with the obligations under articles 74 and 83?[2] What is the extent to which the delimitation disputes are covered by the procedures provided for in Part XV?[3]

[1] Unless otherwise specified, references to articles are to be taken as references to articles of the United Nations Convention on the Law of the Sea.

[2] See the Award dated 11 April 2006 of the Arbitral Tribunal constituted pursuant to article 287, and in accordance with Annex VII, of UNCLOS in the matter of an arbitration between: Barbados and The Republic of Trinidad and Tobago (the "Arbitral Award of 2006").

[3] See *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V, pp. 107-141 (Shabtai Rosenne and Louis B. Sohn eds, 1989) ("*Virginia Commentary*"); Tullio Treves, "What have the United Nations Convention and the International Tribunal for the Law of the Sea to offer as regards Maritime Delimitation Disputes?", in Rainer Lagoni and Daniel

Ndiaye and Wolfrum (eds), *Law of the Sea, Environmental Law and Settlement of Disputes*, 877–897
 ISBN 978 90 04 16156 6. Printed in the Netherlands.

II. Dispute Settlement Procedures (Part XV)

The dispute settlement procedures are contained in all three sections of Part XV. Section 1 lays down voluntary procedures; section 2, compulsory procedures entailing binding decisions; and, section 3, "limitations and exceptions" to the applicability of section 2 and (non-binding) compulsory conciliation.

1. Voluntary Procedures (Section 1)

The voluntary procedures provided for in section 1 are well-known in general international law. They require States Parties to settle their disputes by peaceful means and underline their freedom to do so by means of their own choosing.[4]

States Parties are free to arrive at an *ad hoc* agreement as to the peaceful means to be adopted to settle the particular dispute which has arisen. Where they have done so, then their obligation to follow the procedures provided for in Part XV will arise only where no settlement has been reached through recourse to the agreed means and their agreement does not exclude any further procedure.[5]

Where the States Parties have agreed upon a binding dispute settlement procedure, under a general regional or bilateral agreement or otherwise, in regard to a dispute concerning the interpretation or application of the Convention, that procedure applies in lieu of the procedures provided for in Part XV, unless the parties to the dispute otherwise agree.[6] Such procedure establishes compulsory jurisdiction invokable at the instance of any party to the dispute. It is thus open to States Parties to submit their disputes, by agreement, to any binding dispute settlement procedure, including any procedure provided for in section 2.

When a dispute arises, the parties are required to proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.[7] A similar exchange is also required (i) where a procedure for the settlement of such a dispute has been terminated without settlement or (ii) where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.[8]

A State Party to a dispute may also invite the other party to submit the dispute to conciliation and, "[i]f the invitation is not accepted or the parties do

Vignes (eds), *Maritime Delimitation*, 2006, pp. 63-78; Alan E. Boyle, "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction", 46 *ICLQ* (1997), pp. 37-54; Natalie Klein, *Dispute Settlement in the UN Convention on the Law of the Sea* (2005), pp. 253-263.

4 See arts 279 and 280.

5 See art. 281. See also para. 200 of the Arbitral Award of 2006.

6 See art. 282.

7 See art. 283, para. 1.

8 See art. 283, para. 2.

not agree upon the procedure", the conciliation proceedings are deemed to be terminated.[9]

Section 1 thus lays down several procedures and the application of any of the procedures depends on the facts of each case. If, for instance, the parties are bound by a previous agreement to settle the dispute by a procedure of their choice (article 281) or to submit their dispute to a procedure entailing a binding decision (article 282), then that procedure applies to the exclusion of other procedures. If the parties start with a clean slate, then the provision requiring the parties to exchange views regarding settlement by negotiation or other peaceful means applies. In certain cases, more than one procedure may apply.

2. Compulsory and Binding Procedures (Section 2)

Before any compulsory procedure entailing a binding decision is invoked, section 2 lays down certain pre-conditions which need to be satisfied. Either party may invoke a compulsory procedure only if its application is not negated by the limitations and exceptions referred to in section 3 and no settlement has been reached by recourse to section 1. If these pre-conditions are satisfied, any dispute concerning the interpretation or application of the Convention may be submitted at the instance of any party to it to the court or tribunal having jurisdiction under section 2. Section 2 thus introduces binding dispute settlement procedures endowed with compulsory jurisdiction.

Article 287 allows a State the freedom to choose, by means of a written declaration, one or more of the following four compulsory procedures for the settlement of their disputes concerning the interpretation or application of the Convention: (a) the International Tribunal for the Law of the Sea (the "Tribunal"); (b) the International Court of Justice (the "ICJ"); (c) an arbitral tribunal constituted in accordance with Annex VII ("Annex VII arbitral tribunal"); and, (d) a special tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein ("Annex VIII arbitral tribunal"). An annex VIII arbitral tribunal is not empowered by the Convention to deal with the category of delimitation disputes.

Where a State Party, that is a party to a dispute, has not made a declaration accepting any of the compulsory procedures or where the parties made declarations but have not accepted the same procedures, the dispute may be submitted only to arbitration in accordance with Annex VII.[10] Thus arbitration is used by the Convention as the default procedure. It may be difficult to infer from the scheme of the Convention that arbitration is recommended as the preferred means for the settlement of disputes. In fact, the Convention expects States to make deliberate

9 See art. 284.

10 See art. 287, paras 3 and 5.

choices in the matter of binding procedures. This may also be inferred from the fact that successive United Nations General Assembly resolutions on the law of the sea have called upon States to make article 287-declarations. Only about one quarter of States Parties have made such declarations. A vast majority of States Parties have yet to make conscious decisions in regard to binding procedures.

A court or tribunal referred to in article 287 exercises jurisdiction over any dispute concerning: (i) the interpretation or application of the Convention which is submitted to it in accordance with Part XV; and, (ii) the interpretation or application of an international agreement related to the purposes of the Convention, which is submitted to it in accordance with the agreement.[11] In the event of a dispute over the jurisdiction of a court or tribunal, under article 287, that court or tribunal, exercising its *compétence de la compétence*, settles the matter by its decision. The jurisdiction of the Tribunal is further dealt with in article 21 of its Statute.

3. *Exceptions to Applicability of Compulsory and Binding Procedures (Section 3)*

As noted earlier, section 3 carves out certain limitations and exceptions to the applicability of section 2. The "limitations" set out in article 297 are automatic in the sense that their applicability is not dependent on any action of the States Parties to the Convention. They do not, however, extend to delimitation disputes. In contrast, the "exceptions" specified in article 298 to the applicability of section 2 come to life only when declarations are made by States. Article 298 makes provision for a State to declare (when signing, ratifying or acceding to the Convention or at any time thereafter) that it does not accept any one or more of the compulsory procedures provided for in section 2 with respect to one or more of the following categories of disputes: (a) disputes concerning articles 15, 74 and 83 relating to sea boundary delimitations or those involving historic bays or titles; (b) disputes concerning military activities or law enforcement activities by a coastal State with respect to fisheries and marine scientific research in areas subject to its jurisdiction; and, (c) disputes in respect of which the United Nations Security Council is exercising its functions under the Charter of the United Nations. Article 298, paragraph 1(a)(i), further provides that when a State makes a declaration that it does not accept any of the compulsory procedures in regard to the disputes specified in (a) above,

> "[It] shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and *provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission*" (emphasis added).

[11] See art. 288, paras 1 and 2.

A State thus enjoys several options under article 298. It may not accept any one or more of the compulsory procedures with respect to disputes specified in article 298, paragraphs 1(a)(i), 1(b) and 1(c). Or, it may accept only any one or more of the compulsory procedures with respect to certain categories of disputes and not the other. Paragraphs 1(a)(i) and 1(b) of article 298 contain more than one category of disputes. For instance, disputes relating to sea boundary delimitations specified in article 15 appertain to a category of disputes which is separate from the category of disputes relating to delimitations specified in article 74 or article 83. Since declarations under article 298 constitute exceptions to the application of compulsory procedures, and since it is reasonable to expect that the Convention would want to keep the exceptions to the minimum and within narrow limits, article 298 may be construed as permitting exceptions even narrower than those stated expressly therein.[12]

It is interesting to note that not many States have made declarations under article 298. Of the 26 States (less than one-sixth of the States Parties) that have made declarations, nine rejected the application of any compulsory procedure with respect to all categories of disputes specified in article 298. Sixteen States excepted the application of compulsory procedures to delimitation disputes specified in article 298. These are: Argentina, Australia, Belarus, Canada, Chile, China, Equatorial Guinea, France, Italy, Mexico, Palau, Portugal, Republic of Korea, Russian Federation, Spain, Tunisia and Ukraine. One State – Iceland – does not accept any binding procedure with respect to delimitation disputes referable to article 83. The United States declared that, when it becomes a party, it intends to declare that it does not accept the compulsory procedures with respect to any of the categories of disputes specified in article 298.[13] While the declarations excluding the delimitation disputes are not very many, they have the effect of excluding to a great extent binding procedures with respect to delimitation disputes in certain areas, such as the Southern cone of South America, North America and most of the Mediterranean; however, such procedures are still applicable in large regions in Asia, Africa and the Caribbean.[14]

[12] See also *Virginia Commentary*, *supra* note 3, p. 115.

[13] John A. Duff, "A note on the United States and the Law of the Sea: Looking Back and Moving Forward", 35 *Ocean Dev. & Int'l L.* (2004), p. 214.

[14] See Treves, *supra* note 3, p. 74.

The declarations made under article 298 do not in any way affect the obligations arising under section 1 of Part XV.[15] There is thus a system to direct the parties toward some channel for the pacific settlement of every dispute, without any exception whatever. A State may at any time withdraw its declaration.[16] However, a new declaration, or the withdrawal of a declaration, has no retroactive effect on the proceedings pending before a court or tribunal.[17] A State may agree to submit a dispute excluded by its declaration to "any procedure specified in this Convention".[18] The "procedure" mentioned here obviously refers to a compulsory procedure provided for in section 2, since article 298-declarations are without prejudice to the obligations arising under section 1. The agreement with the other party in this regard will be an *ad hoc* one, for the declaration as such is not withdrawn.

When a State Party has made a declaration, it cannot submit any dispute falling within the excepted category of disputes to "any procedure in this Convention" as against another State Party.[19] Here too, the "procedure" obviously refers to a compulsory procedure provided for in section 2.

Article 298, paragraph 4, provides that, if any of the States Parties has made a declaration under paragraph 1(a), any other State Party may submit any dispute falling within the excepted category against the declarant party to "the procedure specified in such declaration". It cannot be that the expression "the procedure specified in such declaration" refers to a compulsory procedure specified in section 2; it has been suggested that that expression should be understood as referring to the compulsory conciliation procedure specified in article 298, paragraph 1(a).[20] Even so, where is the need for the declaration in question to specify a procedure, since paragraph 1(a) expressly states that conciliation procedure becomes obligatory "at the request of any party to the dispute"?

Declarations and notices of withdrawal of declarations under article 298 are required to be deposited with the Secretary-General of the United Nations, who is required to transmit copies thereof to the States Parties.[21] It appears that such declarations and notices take effect from the moment they are received by the Secretary-General.[22]

[15] See art. 298, para. 1.

[16] See art. 298, para. 2.

[17] See art. 298, para. 5.

[18] See art. 298, para. 2.

[19] See art. 298, para. 3.

[20] See *Virginia Commentary*, *supra* note 3, p. 116.

[21] See art. 298, para. 6.

[22] See *Virginia Commentary*, *supra* note 3, pp. 140-141.

Unless excluded by a declaration made under article 298, paragraph 1(a)(i), compulsory procedures provided for in section 2 are available in respect of delimitation disputes (or those involving historic bays or titles), whether they have arisen before the entry into force of the Convention ("pre-Convention delimitation disputes") or arise subsequent to "the entry into force of the Convention" ("post-Convention disputes"). Any State making a declaration excluding any or all delimitation disputes is, nevertheless, bound by different settlement procedures with respect to post-Convention disputes. The Convention calls upon the parties to enter into negotiations with a view to reaching agreement in regard to such disputes.[23] If no agreement is reached "within a reasonable period of time", conciliation under Annex V, section 2, at the request of any party to the dispute, becomes compulsory.[24] Article 298 thus uses compulsory conciliation as a subsidiary procedure of dispute settlement.

Even in regard to post-Convention disputes, there are further exclusions from any submission to conciliation. These are as follows: (a) mixed disputes referred to in the second proviso in article 298, paragraph 1(a)(i); (b) disputes finally settled by an arrangement between the parties;[25] and, (c) disputes that are to be settled in accordance with a bilateral or multilateral agreement binding on the parties.[26]

Not all exclusions from conciliation are easy of application. Article 298 does not lay down precise criteria to distinguish between pre-Convention and post-Convention delimitation disputes. The legal problems that may arise in this regard are accentuated by the consideration that every dispute may have some roots in the past.[27] The issue relates to the dating of the dispute, for the Convention refers to a dispute that arises subsequent to the entry into force of the Convention. This depends primarily on the facts and circumstances of each case. Again, the meaning of the expression "the entry into force of the Convention" is not quite clear.[28] Does it refer to the entry into force of the Convention in general as specified in article 308, paragraph 1, or entry into force of the Convention between the parties to the dispute as specified in article 308, paragraph 2? Or, it is also arguable that in respect of the first sixty States Parties to the Convention, the expression "entry into force of this Convention" has the meaning assigned to it in article 308, paragraph 1, and, in respect of all other States Parties, that

[23] See art. 298, para. 1(a)(i).

[24] *Ibid.*

[25] See art. 298, para. 1(a)(iii).

[26] *Ibid.*

[27] See *Virginia Commentary*, *supra* note 3, p. 124.

[28] See Treves, *supra* note 3, p. 76; Paul C. Irwin, "Settlement of Maritime Boundary Disputes: An Analysis of the Law of the Sea Negotiations", 8 *Ocean Dev. & Int'l L.* (1980), p. 126; Klein, *supra* note 3, p. 258.

expression has the meaning assigned to it in article 308, paragraph 2. It may be recalled that the expression "entry into force" as defined in article 308 has different meanings in respect of different States Parties. Problems may also arise in the determination of what constitutes a mixed delimitation dispute (that is, a dispute relating to a sea boundary delimitation that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory), referred to in the second proviso in article 298, paragraph 1(a)(i).

The procedure for conciliation may be started in accordance with Annex V, section 2. The commission is empowered to decide disagreements as to its competence.[29] Articles 2 to 10 of section 1 of Annex V govern different aspects of the constitution and functioning of the conciliation commission. Generally speaking, the conciliation procedure is less adversarial and less legalistic than any compulsory and binding procedure. It involves assisted negotiation.[30] This aspect is particularly underlined in Annex V, which invites the commission to draw the attention of the parties to any measures which might facilitate an amicable settlement of the dispute[31] and to make proposals to the parties with a view to reaching such settlement.[32]

The conciliation commission is given a specific time-limit – 12 months from the time the commission is constituted – to render its report.[33] The report must record any agreements reached and, failing agreement, the commission's conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as the commission may deem appropriate for an amicable settlement.[34] It is required to be deposited with the Secretary-General of the United Nations for transmission to the parties to the dispute.[35]

The report of the commission, including its conclusions and recommendations, is not binding upon the parties.[36] Nevertheless, it cannot be dismissed as being of no value. Any party to the dispute ignoring the report may invite adverse international opinion. Further, the conclusions and recommendations of the commission may exert their own pressure in any eventual settlement of the dispute. The Convention itself calls upon the parties to negotiate an agreement

[29] See art. 13 of Annex V.

[30] See Irwin, *supra* note 28, p. 129.

[31] See art. 5 of Annex V.

[32] See art. 6 of Annex V.

[33] See art. 7 of Annex V.

[34] *Ibid.*

[35] *Ibid.*

[36] *Ibid.*

on the basis of the report.[37] It is a legal requirement that the parties should negotiate in good faith[38] and with a view to arriving at an agreement, and not merely go through a formal process of negotiation.[39]

Article 298, paragraph 1(a)(ii), states that, if the negotiations do not result in an agreement, the parties "shall, by mutual consent, submit the question to one of the procedures provided for in section 2, unless the parties otherwise agree". Though the use of the words "shall, by mutual consent" is somewhat misleading, it appears that those words are intended to indicate that the parties are under an obligation to at least try to reach an agreement to select one of the procedures under section 2 of Part XV for settling the dispute, unless they agree otherwise.[40] If no such agreement can be reached, the obligations under article 283 in section 1 of Part XV come fully into play.[41]

A dispute excepted by a declaration made under article 298 may be submitted to a procedure provided for in section 2 only by agreement of the parties to the dispute.[42] Notwithstanding anything contained in section 3 of Part XV, the parties to the dispute may agree to some other procedure for the settlement of such dispute or to reach an amicable settlement.[43]

It bears emphasis that the Convention does not restrict the freedom of the parties to go their own way for the settlement of the dispute provided the means chosen by them for the settlement are peaceful. Subject to the provisions of article 309, it does not impose any public policy consideration on their freedom to devise their own procedures different from those enshrined in the Convention.

III. Sea Boundary Delimitation Disputes

It is trite to say that disputes relating to the interpretation or application of the provisions of the Convention concerning sea boundary delimitations are subject to the dispute settlement procedures laid down in the Convention. Several issues may arise when compulsory procedures provided for in section 2 are involved for the settlement of delimitation disputes.

[37] See art. 298, para. 1(a)(ii).

[38] See art. 300.

[39] See *North Sea Continental Shelf*, ICJ Reports 1969, p. 3, para. 85.

[40] See the *Virginia Commentary*, *supra* note 3, p. 134.

[41] *Ibid.*

[42] Art. 299, para. 1.

[43] Art. 299, para. 2.

1. Contentious Jurisdiction

The jurisdiction of a court or a tribunal to decide such issues depends on answers to a number of questions, including: (i) whether the parties before it are parties to the Convention; (ii) whether it is the forum in terms of article 287 to hear and determine the dispute; (iii) whether there is a dispute concerning the interpretation or application of the Convention; (iv) what the scope of the matters which constitute the dispute to be dealt with by a court or a tribunal is; (v) whether a mixed delimitation dispute concerns the interpretation or application of the Convention; (vi) whether it is barred from hearing the dispute on account of the declarations made under article 298; and, (vii) whether the parties have failed to settle their dispute by recourse to section 1.

Answers to questions (i) and (ii) above may be ascertained without much effort. Questions (iii), (iv) and (v) above may be considered together. Application of judicial mind is required to find out whether there is a dispute on the facts of the case. A dispute arises at a time when the opposing views of the parties on a point of law or fact take definite shape.[44] The existence of the dispute does not depend on the articulation of its precise scope, so long as the record indicates with reasonable clarity the scope of the legal differences between the parties.[45] The negotiations between the parties towards reconciling the divergent views should reach a deadlock and, on its facts, the dispute warrants solution by other means.

The dispute settlement mechanisms in the Convention are all geared up to a one and only task: resolution of disputes concerning "the interpretation of the Convention" or an "international agreement related to the purposes" of the Convention.[46] This applies both to a court or tribunal referred to in article 287.[47] When there are clear provisions in the Convention or the international agreement referred to above on any matter, disputes relating to them obviously fall within the jurisdiction of dispute settlement mechanisms.

Where the parties differ as to the scope of the matters which constitute the dispute referred to a court or tribunal, it is arguable that that body may hold that the dispute also includes matters which are "sufficiently closely related" to the dispute submitted to it. In other words, the ambit of the dispute mentioned in the submission may become wider because of the close connection between what is expressly submitted to a court or tribunal and what has to be decided as

[44] See the *Mavrommatis Palestine Concessions* case (Jurisdiction), 1924, PCIJ, Series A, No. 2, p. 35.

[45] See the Arbitral Award of 2006, *supra* note 2, para. 198.

[46] See Part XV of the Convention and, in particular, art. 288, paras 1 and 2.

[47] In the case of the Tribunal, see also art. 21 of its Statute.

part of that submission.[48] This may be so especially where all the matters said to fall within the scope of the dispute are dealt with expressly in the Convention.

a. Mixed Disputes

There is yet another, perhaps more complex, issue concerning a dispute, part of which is governed by the express provisions of the Convention and part by no such provisions. Does it qualify itself as a dispute concerning the interpretation or application of the Convention? The Convention does not purport to deal with this question in direct terms. It may be fruitful to discuss this question with respect to a sea boundary delimitation dispute. In itself a dispute involving land sovereignty or other rights over land territory may not be a dispute governed by the provisions of the Convention. Does it become part of a dispute concerning the interpretation or application of the Convention when its consideration is necessary for the disposal of a sea boundary delimitation dispute?

What does the exclusionary clause in the second proviso of article 298, paragraph 1(a)(i), signify? Does it mean that, but for that clause, a submission to conciliation would enable the conciliation commission to deal with a mixed dispute? Or, was this clause included *ex abundanti cautela*? There is no clear statement in the preparatory work of the Convention on the meaning to be given to this clause. It may be relevant to recall the legislative history of this exclusionary clause. Under the relevant provision in the Revised Single Negotiating Text (RSNT), a State had discretion to designate a regional or other third party dispute settlement procedure entailing a binding decision for delimitation disputes in place of the compulsory procedures specified in section 2 of Part XV. That provision allowed declarations to be made excluding, from the compulsory procedures specified in section 2, any one or more of the following categories of disputes:

> "(a) Disputes concerning sea boundary delimitations between adjacent or opposite States ..., provided that the State making such a declaration shall indicate therein a regional or other third party procedure,

[48] In the matter of an arbitration between Barbados and the Republic of Trinidad and Tobago, the parties differed on the question as to whether the dispute submitted to the Annex VIII Tribunal included the delimitation of the maritime boundary in relation to that part of the continental shelf extending beyond 200 nautical miles. The Tribunal, while answering the question in the affirmative, relied upon more than one ground in this regard. The Tribunal observed: "The Tribunal considers that the dispute to be dealt with by the Tribunal includes the outer continental shelf, since (i) it either forms part of, or is *sufficiently closely related to, the dispute submitted by Barbados*, (ii) the record of the negotiations shows that it was part of the subject-matter on the table during those negotiations, and (iii) in any event there is in law only a single 'continental shelf' rather than an inner continental shelf and a separate extended or outer continental shelf" (emphasis added). See the Arbitral Award of 2006, *supra* note 2, para. 213.

entailing a binding decision, which it accepts for the settlement of such disputes; ...."[49]

The Informal Composite Negotiating Text (ICNT) permitted similar declarations to be made excluding, from the compulsory procedures specified in section 2, any one or more of the following categories of disputes:

> "(a) Disputes concerning sea boundary delimitations between adjacent or opposite States ..., provided that the State making such a declaration shall, when such dispute arises, indicate, and shall for the settlement of such disputes accept a regional or third-party procedure entailing a binding decision, to which all parties to the dispute have access; and provided further that such procedure or decision shall exclude the determination of any claim to sovereignty or other rights with respect to continental or insular land territory."[50]

The above provision appears to suggest that a regional or other third-party procedure referred to therein would be competent to delimit a maritime boundary where that could be done without determining any claim to sovereignty or other rights with respect to continental or insular land territory. It seems to have been inserted to allay the fears of some States that under the guise of a dispute relating to a sea boundary delimitation, a party to a dispute might bring up a dispute involving claims to land territory or an island, notwithstanding their declarations excluding delimitation disputes from the compulsory procedures specified in section 2.[51]

Accounts of the negotiations at the Third United Nations Conference on the Law of the Sea *do not* disclose that similar fears were expressed with regard to mixed disputes involving both land and sea delimitations being heard by the compulsory procedures specified in section 2. In other words, the second proviso was inserted at the instance of States making the permissible declarations excluding delimitation disputes from the purview of compulsory procedures specified in section 2. This is understandable with regard to States not wanting adjudication of delimitation disputes either by the compulsory procedures specified in section 2 or any other substituted procedure. It appears that the question of making the exclusionary clause in the second proviso applicable to the compulsory procedures specified in section 2 with regard to States not making article-298 declarations never arose at the Third Conference.

[49] See art. 18, para. 1, of Part IV of the RSNT. For text, see *Virginia Commentary*, *supra* note 3, p. 111.

[50] See art. 297, para. 1(a), of the ICNT. For text, see *Virginia Commentary*, *supra* note 3, p. 113. See also Irwin, *supra* note 28, p. 114.

[51] *Virginia Commentary*, *supra* note 3, p. 113.

ICNT/Rev.2 reformulated (a) above as follows:

> "(a)(i) Disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations ..., provided that the State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, and notwithstanding article 284, paragraph 3, accept submission of the matter to conciliation provided for in Annex V, and provided further that there shall be excluded from such submission any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory."[52]

What the second proviso in the above provision appears to do is to exclude the very submission of a delimitation dispute to a conciliation commission when that "necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory". This does not necessarily mean that a conciliation commission would not be competent to deal with delimitation disputes when they do not necessarily involve the concurrent consideration of land territory disputes. The present text of article 298, paragraph 1(a)(i), is based on the afore-said provision in the ICNT/Rev.2.

The preparatory work of the Convention does not appear to give any reason for giving the exclusionary clause in the second proviso in article 298, paragraph 1(a)(i), a special meaning different from that which it generally bears. Accordingly, that clause must be interpreted in its "most natural meaning".[53] Taken in its ordinary sense, the exclusionary clause suggests that but for its inclusion in the second proviso in article 298, paragraph 1(a)(i), the question of a mixed dispute would have remained within the competence of a conciliation commission. As

[52] See art. 298, para. 1(a)(i), of the ICNT/Rev.1. For text, see *Virginia Commentary*, *supra* note 3, p. 114.

[53] See *Case Concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (*Qatar v. Bahrain*), Jurisdiction and Admissibility, Judgment, ICJ Reports 1995, para. 35. In para. 33 the ICJ held: "in accordance with customary international law, reflected in Article 31 of the 1969 Vienna Convention on the Law of Treaties, a treaty must be interpreted in good faith in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose. Interpretation must be based above all upon the text of the treaty. As a supplementary measure recourse may be had to means of interpretation such as the preparatory work of the treaty and the circumstances of its conclusion." See also *Territorial Dispute* (*Libyan Arab Jamahiriya/Chad*), Judgment, ICJ Reports 1994, pp. 21-22, para. 41.

a logical corollary to this, it follows that, since the exclusionary clause does not apply to a compulsory procedure provided for in section 2 of Part XV, a mixed dispute, whether it arose before or after the entry into force of the Convention, falls within the jurisdiction of a compulsory procedure. If the intention of the Convention is to provide that the exclusionary clause in the second proviso made applicable to conciliation should apply with equal vigour to the compulsory procedures in section 2, then it ought to have made this clear in a provision applicable to such compulsory procedures.

It has been argued that since the Convention does not deal with questions of sovereignty or other rights over continental or insular land territory, the compulsory procedures specified in section 2 are not competent to deal with mixed disputes.[54]

The argument runs as follows:

> "... the declarant exercising its option [under article 298] to except maritime delimitation questions has no option as to whether land territory questions will also be included. They 'shall' be excluded from any determination through a substituted procedure. Query, whether one may infer from this that land territory questions are excepted from jurisdiction under Part XV in any case – regardless of the exercise of an exclusion option under article 298. The effect of the explicit territorial exclusion in article 298(1)(a) then becomes simple clarification of the fact that the optional exclusion and substituted procedure does not somehow operate to wipe out the otherwise automatically applicable territorial exclusion."[55]

In support of such a reasoning, attention is drawn to article 121 on islands which deals only with the effect of the islands on the ocean regime and is not determinative of the legal status of the islands *per se*. It is further added that the regime of islands as set out in the Convention clearly suggests that the substantive articles of the Convention do not deal with matters of land territory and, accordingly, it would be inappropriate for the dispute settlement provisions to cover land territory disputes.[56] This chain of reasoning has its attractions and cannot be dismissed lightly.

There is, however, another side to this contention which deserves to be noted. There is no doubt that the interpretative mechanism of the Convention may not be competent to deal with land territory issues *per se*. That is not the whole issue.

[54] See Bernard H. Oxman, "The Third United Nations Conference on the Law of the Sea: The Ninth Session (1980)", 75 *AJIL* (1981), p. 211 at p. 233; Irwin, *supra* note 28, pp. 114-115, 138-139.

[55] Irwin, *supra* note 28, p. 138-139.

[56] Irwin, *supra* note 28, p. 114.

The question here is whether, when there is no declaration under article 298 to except maritime delimitation disputes, a mixed dispute falls within the jurisdiction of the compulsory procedures specified in section 2. If the exclusionary clause in the second proviso is merely clarificatory in nature, as contended, where was the need for incorporating the exclusionary clause with respect to conciliation and not with respect to the compulsory procedures specified in section 2?

There is also a functional reason as to why a compulsory and binding procedure is applicable to a mixed dispute. If a court or tribunal were to refuse to deal with a mixed dispute on the ground that there are no substantive provisions in the Convention on land sovereignty issues, the result would be to denude the provisions of the Convention relating to sea boundary delimitations of their full effect and of every purpose and reduce them to an empty form.

Although the Convention does not contain specific provisions with regard to land sovereignty issues, let it not be forgotten that article 293 lays down the applicable law which is not only the Convention but also "other rules of international law not incompatible with the Convention". The Preamble to the Convention also affirms that matters not regulated by the Convention continue to be governed by the rules and principles of general international law. It is not uncommon to see the adjudicative forums referred to in article 287 deciding matters of general international law that are not strictly part of the law of the sea. A court or tribunal referred to in article 288 being thus empowered to apply general international law suffers from no inherent limitation even in resolving disputes involving the land element.

Throwing out mixed disputes from out-of-binding procedures is like throwing the baby out with the bath water. If such disputes lose the protection of binding procedures under the Convention, where else would the parties to the dispute get the benefit of such procedures except through special agreement which is a matter of choice for the parties?

The competence of binding procedure to deal with mixed disputes also arises by, what the ICJ referred to in a different context as, "necessary intendment" of the Convention.[57] There is nothing in the Convention which excludes such competence. It is also well established in municipal legal systems that where any power is expressly granted by a statute, there is included in the grant, and without special mention, every power the denial of which would render the grant itself ineffective; this is a statement of a necessary rule of construction of all grants of power.

It is not that the land and the sea are unrelated. It is well-established that the land dominates the sea and is the legal source of the power which a State may

[57] See *Reparation for Injuries Suffered in the Service of the United Nations*, ICJ Reports 1949, p. 174.

exercise over territorial extensions to seaward.[58] Maritime rights derive from the coastal State's sovereignty over the land.[59] The terrestrial territorial situation thus constitutes the starting point for the determination of the maritime rights of a coastal State.[60] Islands too enjoy the same status and therefore generate the same maritime rights as other land territory.[61] There may be a number of situations in which the determination of entitlements over land is a must before disputes concerning sea boundary delimitations are resolved. For example, in the *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, the ICJ found: "In order to determine what constitutes Bahrain's relevant coasts and what are the relevant baselines on the Bahraini side, the Court must *first* establish which islands come under Bahraini sovereignty" (emphasis added).[62]

In sum, where no exclusionary declaration is applicable with respect to delimitation disputes under article 298, a court or tribunal would be competent to deal with a mixed dispute. It may not deal with disputed land territory issues if there is no necessary connection between them and the dispute concerning sea boundary delimitation, unless the parties otherwise agree.

b. Applicability of Section 1

If the competent court or tribunal is not barred by an article 298-declaration from proceeding with the dispute, then it will have to inquire as to whether the parties to the delimitation dispute made efforts to reach settlement by recourse to section 1 of Part XV. More particularly, under articles 74 and 83, where there is an agreement in force between the States concerned, questions relating to the delimitation of the EEZ and of the continental shelf are to be determined in accordance with the provisions of that agreement.[63] Where there is no agreement, the States concerned are given a "reasonable period of time" to reach agreement on the basis of international law, as referred to in Article 38 of the Statute of the ICJ, in order to achieve an equitable solution.[64]

[58] *North Sea Continental Shelf*, *supra* note 39, p. 51, para. 96; *Aegean Sea Continental Shelf*, ICJ Reports 1978, p. 36, para. 86.

[59] *North Sea Continental Shelf*, *supra* note 39, p. 51.

[60] *Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, Merits, Judgment, ICJ Reports 2001, p. 40, para. 185.

[61] *Ibid.*

[62] *Ibid.* para. 186.

[63] See art. 74, para. 4, and art. 83, para. 4.

[64] See art. 74, para. 2, and art. 83, para. 2.

If no such agreement can be reached, "the States concerned shall resort to the procedures provided for in Part XV".[65] Ordinarily, the expression "procedures" mentioned above should include the procedures provided for in sections 1, 2 and 3 of Part XV. Are there any reasons as to why it should be taken as referring only to the compulsory procedures under sections 2 and 3?

The Annex VII Arbitral Tribunal, in its Arbitral Award of 2006, considered this matter in some depth. It observed that the obligation under articles 74 and 83 to agree upon delimitation "necessarily involves negotiations" between the parties. While noting that recourse to Part XV should as a general rule bring into play the obligations under article 283, the Arbitral Tribunal held that article 283 does not readily fit the circumstance to which articles 74 and 83 give rise or sit easily alongside the realities of what is involved in "negotiations" which habitually cover not only the specific matter under negotiation but also consequential associated matters, that the required exchange of views under article 283, paragraph 1, is also inherent in the (failed) negotiations, that to require a further exchange of views after the termination of delimitation negotiations is "unrealistic", and that article 283 applies more appropriately to procedures which require a joint discussion of the mechanics for instituting (such as setting up a process of mediation or conciliation) than to a situation in which Part XV itself gives a party to a dispute a unilateral right to invoke a compulsory procedure under section 2 of Part XV.[66] The Arbitral Tribunal concluded:

> "In practice the only relevant obligation upon the Parties under Section 1 of Part XV is to seek to settle their dispute by recourse to negotiations, an obligation which in the case of delimitation disputes overlaps with the obligation to reach agreement upon delimitation imposed by Articles 74 and 83. Upon the failure of the Parties to settle their dispute by recourse to Section 1, *i.e.* to settle by negotiations, Article 287 entitles one of the Parties unilaterally to refer the dispute to arbitration."[67]

The Arbitral Tribunal further observed that the unilateral right to refer the dispute to a compulsory procedure would be negated if the States concerned had to first discuss the possibility of having recourse to that procedure, especially since in the case of a delimitation dispute the other State involved could make a declaration of the kind envisaged in article 298, paragraph 1(a)(i), so as to opt out of the arbitration process.[68] In short, the Arbitral Tribunal holds that the expression "procedures provided for in Part XV" in articles 74 and 83 should be

[65] *Ibid.*

[66] See the Arbitral Award of 2006, *supra* note 2, paras 201-207.

[67] *Ibid.* para. 206.

[68] *Ibid.* para. 204.

interpreted as referring to the procedures in section 2, rather than the procedures in section 1 of Part XV.

There is also another, perhaps more logical, way of looking at the issue which allows the expression "procedures provided for in Part XV" in articles 74 and 83 to have its most natural meaning. When articles 74 and 83 require the parties to reach agreement on delimitations on the basis of international law, they do not presume that there is already a dispute between them. It is only when the parties fail to reach agreement that the opposing views of the parties take "definite shape"[69] and, consequently, a dispute may be said to arise. The negotiations between the parties until the stage when they fail to reach agreement concern the identification of the basis on which an agreement can be reached rather than the resolution of a dispute that has already arisen. And the failure of the parties to reach agreement on such basis implies that the parties "reached a deadlock"[70] and that a dispute has arisen between the parties, making the application of the procedures for the settlement of disputes under Part XV obligatory.

It is not without significance that articles 74 and 83 make it obligatory for the "States concerned" to resort to the procedures under Part XV. If this be so, the procedures under section 1 of Part XV apply and there is no direct entry to a compulsory procedure under section 2 at that stage. Even going by this interpretation, unless the parties agreed or agree on a different procedure, recourse to Part XV could bring into play the obligations under article 283. Any negotiations after the parties failed to reach agreement on the principles of international law applicable to delimitation should be taken as negotiations within the framework of article 283, paragraph 1, for the settlement of the dispute. Articles 74 and 83, read with section 1 of Part XV, generate a two-stage negotiation process: first, negotiations for effecting delimitation by agreement as envisaged in articles 74 and 83 and, second, negotiations after the parties failed to reach agreement, as provided for in article 283, paragraph 1. It may be recalled that article 283, paragraph 1, applies "when a dispute arises" and requires an expeditious exchange of views regarding the settlement of the dispute by "negotiation or other peaceful means".

Article 283, paragraph 2, also requires an expeditious exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement. This further exchange is obviously intended to enable the parties to agree on other peaceful means for settlement such as good offices or conciliation or identification of appropriate compulsory procedure among the several procedures provided for in article 287.[71]

[69] See the *Mavrommatis Palestine Concessions* case (Jurisdiction), *supra* note 44, p. 35.

[70] See the *Interhandel* case, Judgment, ICJ Reports 1959, p. 21.

[71] See also A.O. Adede, "Settlement of Disputes arising under the Law of the Sea Convention", 69 *AJIL* (1975), p. 798 at p. 803.

As held by the Tribunal, it should be kept in view that a State Party is not, however, obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted.[72] The requirement of article 283 regarding an exchange of views is not, however, an empty formality to be dispensed with at the whims of a disputant. The obligation in this regard, like any other international obligation, must be discharged in good faith and, when called upon, it is the duty of a competent court to examine whether this is being done.[73]

The observation in the Arbitral Award of 2006 that the provision for an exchange of views provided for in article 283, paragraph 2, allows a disputant to opt out of a compulsory procedure by making a declaration of the kind envisaged in article 298, paragraph (1)(a)(i), is not persuasive, for a disputant need not, wait for negotiations to reach the stage envisaged in article 283, paragraph 2; it is open to a disputant seeking to avoid a compulsory procedure to make a declaration at any stage anterior to it.

The alternate approach suggested above, in preference to the one followed by Annex VII Arbitral Tribunal, avoids the need to give an expansive interpretation to articles 74 and 83 and to declare that the obligation under section 1 overlaps with the obligation under articles 73 and 84. Above all, it makes the obligations under section 1 uniformly applicable to disputes concerning the interpretation or application of articles 15, 74 and 83.

2. *Advisory Jurisdiction*

While the above account holds good in relation to contentious proceedings, the Tribunal is also empowered to give an advisory opinion on a "legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion".[74] It is open to the States concerned or an international organisation, if an international agreement so provides, to seek opinions of the Tribunal on, for example, what principles and rules of international law are applicable to the sea boundary delimitations in question on the basis of which the parties would be able to negotiate an agreed delimitation. It may be recalled that the ICJ discharged a similar task though in a contentious proceeding.[75]

[72] *Mox Plant* (*Ireland* v. *United Kingdom*), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, para. 60.

[73] *Land Reclamation In and Around the Straits of Johor* (*Malaysia* v. *Singapore*), Provisional Measures, Order of 8 October 2003, Separate Opinion of Judge Chandrasekhara Rao, ITLOS Reports 2003, p. 36, para. 11.

[74] Art. 138 of the Rules of the Tribunal.

[75] *North Sea Continental Shelf*, *supra* note 39, at pp. 46-52.

IV. Conclusion

The Convention provides specific provisions with respect to the delimitation of the territorial sea, the EEZ and the continental shelf between States with opposite or adjacent coasts. It requires that the delimitation of overlapping maritime zones must be effected by agreement on the basis of international law in order to achieve an equitable solution. It has not been easy for States to reach agreement on this "apparently simple and imprecise formula".

A majority of the overlapping maritime zones still remain to be fixed. Ambiguities in this regard affect various interests in the disputed areas concerning such matters as fishing, scientific research, oil spills and collisions and thereby reduce the efficacy of the Convention. There is, therefore, an element of urgency in regard to settlement of delimitation disputes.

It is obvious that disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations fall within the ambit of the dispute settlement procedures provided for in Part XV of the Convention. The obligations under section 1 of Part XV are omnipresent and are not cut down in any manner by articles 74 and 83 which do not lay down procedures for dispute settlement.

Where disputes are not settled by recourse to voluntary procedures in section 1 of Part XV, compulsory procedures entailing binding decisions are invokable at the instance of any party to the dispute. Even a mixed dispute, referred to in article 298, paragraph 1(a)(i), involves, both by way of implication of what is provided for in the said article and also by way of necessary intendment of the Convention, the interpretation or application of the Convention and attracts, consequently, the procedures under Part XV. Any other view would render articles 15, 74 and 83 ineffective and should be eschewed. There is also the opposite view that a mixed dispute falls outside the scope of the interpretative mechanism of the Convention. The issue in this regard has yet to receive judicial attention.

The application of the compulsory procedures in section 2 may, however, be blunted by a State making a declaration under article 298. It is significant that not many States have filed such declarations. It may be that a large majority of States Parties to the Convention still believe in the efficacy of the compulsory procedures for the settlement of delimitation disputes. As a general rule, compulsory procedures are available for the settlement of delimitation disputes.

So far, sea boundary disputes have been the subject matter of decisions of the ICJ and awards of arbitration tribunals. In fact, the ICJ came into this field only in recent years. The Convention has established the Tribunal as a standing court for the settlement of all law of the sea disputes. The bodies referred to above enjoy the same kind of jurisdiction under article 288. They are likely to follow about the same or substantially the same legal approaches to delimitation disputes. There are, however, advantages in preferring settlement through standing courts rather than *ad hoc* bodies in terms of consistency of jurisprudence and costs.

The fact that delimitation disputes have earlier been decided by one adjudicative body and not the other should not be taken either as having established the superiority of that body over the others or as supporting the reservation of such disputes in favour of bodies having accumulated experience in deciding such disputes. A different view would support keeping delimitation disputes within the exclusive domain of arbitration, since it is the most ancient of all dispute settlement procedures with regard to the settlement of disputes relating to sea boundary delimitations.

States would, of course, select a court or tribunal depending upon their perception of that body and, in particular, its capacity to conduct the proceedings expeditiously and to provide balanced solutions to disputes. The competence of the Tribunal's judges in the field of the law of the sea is worthy of note. Equally important is the Tribunal's access to entities other than States, including international organisations. There is the additional advantage that the Tribunal is also competent to give advisory opinions in regard to delimitation disputes.

Independently of the compulsory jurisdiction of a court or tribunal referred to in article 287, States may also consider entering into special agreements for conferring jurisdiction on such bodies in regard to delimitation disputes, thereby giving greater precision to the scope of the dispute and focussing attention on the core issues of the dispute. Article 21 of the Tribunal's Statute also provides a broad basis for the consensual jurisdiction of the Tribunal.

Annex 115

Extract of Information Paper CAB (2007) 814 – Commonwealth Heads of Government Meeting, 29 November 2007

Extract of Information Paper CAB (2007)814 - Commonwealth Heads of Government Meeting of 29 November 2007

Meeting with the Prime Minister of United Kingdom, the Rt Hon Gordon Brown

15. A tête à tête meeting took place between the British Prime Minister and myself on Saturday 24 November during the CHOGM Retreat. Two main subjects were covered:

(a) Mauritian Sovereignty over the Chagos Archipelago; and

(b) Mauritian fishing rights over the Chagos Archipelago islands excluding Diego Garcia.

16. I pointed out to the British Prime Minister that the Lease Agreement between Great Britain and the USA authorizing the use of Diego Garcia by the USA will expire in 2016. I stressed that discussions should start between Mauritius and Great Britain about the exercise of Mauritian sovereignty over the Chagos Archipelago prior to the expiration of the Lease Agreement.

17. The Britain Prime Minister was very attentive to my request and promised that he would study the dossier.

18. I also brought up the question of the exercise of our fishing rights over the Chagos waters (i.e. the Chagos Archipelago), excluding Diego Garcia where there is an American presence. This will enable Mauritius to contribute meaningfully in the conservation of fish stocks and the exchange of commercial fisheries data.

19. In the course of our discussions, I stressed that the former British Secretary for Foreign and Commonwealth Affairs, Mr Robin Cook, had allowed members of the Chagossian community to visit their natal islands after nearly 40 years and that we should continue to build on such positive attitudes.

20. A letter is being addressed to the British Prime Minister on the subjects we discussed in Uganda so that he can pursue the matter raised.

Annex 117

Email exchange between Africa Directorate and Joanne Yeadon, Head of "BIOT"& Pitcairn Section, UK Foreign and Commonwealth Office, 4 January 2008

ADCED.

Joanne Yeadon

From: [redacted]
Sent: Friday, January 04, 2008 10:53 AM
To: Joanne Yeadon
Subject: RE: LETTER TO PRIME MINISTER FROM DR NAVINCHANDRA RAMGOOLAM, PM OF REPUBLIC OF MAURITIUS

Joanne

Only one small comment. On the letter to R. the line that says - "During the talks we will need to bear in mind the UK's treaty obligations and its ongoing need for the islands of BIOT for defence purposes." Can we maybe try to make it a little more positive by mentioning fishing as Ramg mentions in his letter? Perhaps a second line here with something about "*certain areas we can discuss such as fishing*"?

Regards

[redacted]

[redacted] Desk Officer for South Africa, Angola, Botswana, Lesotho, Swaziland, Malawi and Mauritius
Africa Directorate - Southern Section | W033 | Foreign & Commonwealth Office | King Charles Street
London SW1A 2AH | email: [redacted]@fco.gov.uk | phone: [redacted] | fax: [redacted]
ftn: [redacted]

-----Original Message-----
From: Joanne Yeadon
Sent: 04 January 2008 09:35
To: [redacted]
Subject: RE: LETTER TO PRIME MINISTER FROM DR NAVINCHANDRA RAMGOOLAM, PM OF REPUBLIC OF MAURITIUS

ok.

J

-----Original Message-----
From: [redacted]
Sent: Friday, January 04, 2008 9:25 AM
To: Joanne Yeadon
Subject: RE: LETTER TO PRIME MINISTER FROM DR NAVINCHANDRA RAMGOOLAM, PM OF REPUBLIC OF MAURITIUS

Joanne

Have received another Note Verbale from the Mauritian HC on BIOT. Will bring it over to you now if that's okay?

Regards

[redacted]

[redacted] Desk Officer for South Africa, Angola, Botswana, Lesotho, Swaziland, Malawi and Mauritius | Africa Directorate - Southern Section | W033 | Foreign & Commonwealth Office | King Charles Street | London SW1A 2AH | email: [redacted]o.gov.uk | phone: [redacted]
fax: [redacted] ftn: [redacted]

Annex 118

Letter dated 7 February 2008 from the UK Prime Minister to the Prime Minister of Mauritius

(4)

(PA)

10 DOWNING STREET
LONDON SW1A 2AA
www.pm.gov.uk

THE PRIME MINISTER

OTE 020/001/2008
RECEIVED IN REGISTRY
- 8 APR 2008

DESK OFFICER		REGISTRY
INDEX	P.A.	ACTION TAKEN
	√	√ N C

7 February 2008

Dear Prime Minister

Thank you for your letter of 13 December 2007.

It was a pleasure to have the opportunity to talk with you in the margins of the Commonwealth Heads of Government meeting in Kampala in November last year.

While the United Kingdom has no doubt about its sovereignty over the British Indian Ocean Territory, as I said during our conversation in Kampala I am happy to establish a dialogue between the Mauritian High Commission in London and officials at the Foreign and Commonwealth Office. During the talks we will need to bear in mind the United Kingdom's treaty obligations and our ongoing need of the British Indian Ocean Territory for defence purposes.

There are certainly many other issues relating to the British Indian Ocean Territory that we can discuss such as fishing. My officials will be in touch soon to arrange a first meeting.

I have no doubt that these discussions will be conducted in the spirit of goodwill that has long existed between the UK and Mauritius.

Yours sincerely

Gordon

Dr The Hon Navinchandra Ramgoolam

Annex 120

Email exchange between Andrew Allen, Overseas Territories Directorate, and Joanne Yeadon, Head of "BIOT" & Pitcairn Section, UK Foreign and Commonwealth Office, 22 April 2008

(PW) Environment.

Joanne Yeadon

OTI 260/002/2008
29.4.08

From: Andrew Allen
Sent: Tuesday, April 22, 2008 5:55 PM
To: Joanne Yeadon
Cc: Shaun Earl; Doug Wilson
Subject: RE: BIOT: ENVIRONMENT: CALL BY PEW TRUST, TUESDAY 22 APRIL 2008

Joanne

Thanks for writing this up so quickly.

There is an appeal to the Pew proposal. But there are also real obstacles in its way. And it would mean a significant shift in our policy which we are not currently in a position to make.

Given the resource that Pew are putting in to further defining their proposal (and the large resources they have at their disposal and the high level political and military links they have), I think it is worth giving Meg Munn an information note on what their ideas are and how they are taking them forward. We need to be clear that the idea has not reached a stage where any decision of any sort is needed or is appropriate, but that the idea is likely to come to her in some form at some point later this year. I think we then need to point out the basic obstacles and the possible attractions. I'd rather she knew before she is approached on the idea. And she may spark in some way which will give us helpful early guidance.

In terms of giving them information, I think we should give as much help as we can on anything that is/could be in the public domain. But not go any further.

Andrew

----Original Message----
From: Joanne Yeadon
Sent: 22 April 2008 14:48
To: Andrew Allen; Shaun Earl
Subject: BIOT: ENVIRONMENT: CALL BY PEW TRUST, TUESDAY 22 APRIL 2008

Andrew,

1. Jay Nelson and Heather Bradner of the Pew Charitable Trusts called on us today at their request.

2. They explained that they were interested in the Chagos Islands as a potential site worthy for environmental protection ie., the creation of a no fishing zone. The Chagos Islands appeared to meet their 3 criteria: stable government, limited economic activity and an environmental commitment from those in charge.

3. You explained that while their idea of creating a no fishing zone had its attractions, BIOT could be difficult politically. We were committed to the environment but had not been able to do too much about it. The Pew idea was an attractive vision was in line with HMG's thinking. But there were obstacles: the first being: **Mauritius.** Mauritius had nationalistic and economic reasons for potentially not liking Pew's ideas. They wanted the islands back and would probably want to exploit them for tourism. HMG was, if you like, a temporary freeholder as we have said that we will return the islands to Mauritius once they are no longer needed for defence purposes. So, any agreement between the UK Government and Pew Trust may falter when Mauritius regains sovereignty.

4. Pew explained that they focussed on the ocean. If the Mauritians wanted to build a hotel, that was ok as long as the guests didn't fish! They thought that there was a strong possibility that the US would remain after 2036. In any case, they thought it worth taking the risk. You then moved onto the second problem: the **Chagossians** who wanted a fishing industry. You briefly explained the court case & its implications and said that any comment/movement on the Pew Trust ideas would need to wait til the judgment had been handed down in the Autumn.

5. Pew made a few requests:

Fisheries: they would like to draw up a fisheries paper. They knew that MRAG held information. Would we be able to help them access MRAG's data. You explained that some of it would be subject to commercial confidentiality but we

ie., BIOT Administration, would be able to provide Pew with information re: licensing process, how much we raised, spent etc.

Mauritius and inshore fishing: we explained that Mauritus did have some rights but had not exercised them recently. But this was a loophole that would need looking at.

Legal Issues: they asked for a document explaining the ramifications of the Mauritius problem and details of the land tender.

Biological story: they wanted to compile the information available on BIOT, its flora and fauna species etc. The information was available through scientific reports but it would be useful to have it more readily available. (NB: not really for us. You should be aware that this is similar to an OTEP bid prepared by the CCT for the next OTEP bidding round - I think they have estimated it would cost around £12,000.)

Pew said that information provided by us on the first 3 would remain confidential.

Comment

6. We are a bit in limbo over this (and the recent CCT proposals) until we have a judgment from the House of Lords). However, you mentioned that it might be worth starting to bring environmental issues in BIOT to the attention of Meg Munn.

Joanne

Joanne Yeadon
Head, BIOT & Pitcairn Section
Foreign & Commonwealth Office
K218
Tel: 020 7008 2890
FTN: 8008 2890
Fax: 020 7008 1589
E-mail: joanne.yeadon@fco.gov.uk

Annex 121

Information Note dated 28 April 2008 from Joanne Yeadon, Overseas Territories Directorate, UK Foreign and Commonwealth Office to Meg Munn

RESTRICTED

(2)

PA

28/4/08

From: Joanne Yeadon, OTD
Date: 28 April 2008

cc: Andrew Allen, OTD
Shaun Earl, OTD
Doug Wilson, Legal Advisers
Brad Porter, AD(S)
John Murton, Port Louis

Reference: OTI 260/002/2008

RECEIVED IN REGISTRY
27 MAY 2008

DESK OFFICER		REGISTRY
INITIAL	F.I.	ACTION TAKEN
To:	Meg Munn ✓	✓NU

SUBJECT: BRITISH INDIAN OCEAN TERRITORY: ENVIRONMENT: PEW CHARITABLE TRUSTS

1. You may be interested to know that we have been contacted by one arm of the Pew Charitable Trusts (a US body with assets of around $6 billion in 2007) about the possibility of turning the Chagos Islands into a Marine Reserve Area. This would effectively mean a total fishing ban in the 200 mile Fisheries and Conservation Management Zone of the British Indian Ocean Territory. Their thinking is at an early stage and there is no need to respond to them formally now. But given their size and contacts book, we can expect the proposal to return.

2. The Pew Environment Group is a non-profit organisation committed to educating the public and policy makers about the causes, consequences and possible solutions to environmental problems. They actively promote strong conservation policies in the United States and globally. Of primary concern is preventing the loss of the world's great marine eco-systems.

3. In 2006, they secured a protected marine reserve in the north-western Hawaiian Islands - an area of nearly 360,000 kilometres of ocean surrounding a chain of largely unspoiled reefs, atolls, shoals and islands. Following this success, they have turned their attention to other areas which they believe are of prime environmental importance and also meet their 3 criteria for potential sites: stable government, environmental commitment and limited economic activity. In this context, they are interested in the British Indian Ocean Territory (and 3 other areas). With this in mind, they requested an introductory meeting with OTD which took place on 22 April 2008.

4. The Pew idea certainly has its attractions; preserving fish stocks specifically, but also helping to maintain the unique environment of the archipelago, and giving an alternative vision for the future of the British Indian Ocean Territory. There are, however, two big obstacles for HMG to consider.

(a) Mauritius

We could expect a high level of opposition to any environmental plan for BIOT from Mauritius. We are coming under pressure from Prime Minister Ramgoolam to talk to Mauritius about BIOT issues as they see the upcoming court case as a threat to Mauritian ownership of, in particular, the outer islands. Mauritius wants the islands back and would probably wish to exploit them for tourism and fishing. As we have promised the islands to Mauritius once we "no longer need them for defence purposes", the UK Government is in effect a temporary freeholder. So any agreement that the UK Government and Pew Trust may make could not be assured when Mauritius eventually regains sovereignty and may be opposed by them in the meantime.

(b) Chagossians

Some Chagossians want to return to the outer islands and want the UK Government to pay resettlement costs. The recently-launched "Let Them Return" resettlement plan includes taking over the fishing licences and enlarging the industry by building a fishing refrigeration and processing plant on one of the outer islands. Any agreement undertaken by the UK Government which prevented this would be a red rag to a bull.

5. There is also the issue of costs. Creating such a reserve would require greater monitoring. If the proposal is pursued by Pew, we would need to ensure an appropriate financial agreement with them.

Comment

6. Despite the obstacles, Pew are keen to continue. As far as a potential change of landlord is concerned, they are prepared to take the risk. They have also taken on board our message that we cannot comment officially or move forward on any proposals before the judgment from the House of Lords expected at some point during the Autumn. In the meantime, Pew have asked us to provide further information eg., fish catches, income etc much of which we can provide as it is in the public domain. If the proposal looks as though it might have legs, we will come back to you.

Joanne Yeadon

Joanne Yeadon
Overseas Territories Directorate

Annex 124

Email dated 21 November 2008 from Joanne Yeadon, Head of "BIOT" & Pitcairn Section, UK Foreign and Commonwealth Office

Joanne Yeadon

From: Joanne Yeadon
Sent: 21 November 2008 15:38
To: [redacted]
Subject: TALKS WITH THE MAURITIANS
Importance: High
Security Label: UNCLASSIFIED - INTERNET

Dear Chris,

Re: our telecon this afternoon.

During a meeting in the margins of the Commonwealth Heads of Government meeting in Kampala in November 2007, the UK Prime Minister said that he was happy to establish a dialogue between the Mauritian High Commission in London and officials at the FCO about BIOT. He emphasised in later correspondence that during the talks the UK would need to bear in mind the UK's treaty obligations and our ongoing need of BIOT for defence purposes. But that there were other issues we could discuss such as fishing.

Earlier this month, we received a Note Verbale from the Mauritius High Commission proposing that the talks regarding the Chagos Archipelago begin. It looks as though the first meeting will take place at the FCO on 14 January 2008. It will be at FCO official level only.

The Mauritians may bill these talks as "Discussions on Sovereignty of BIOT with the UK". I would like to reassure you that we have no intention of ceding any part of the Chagos Archipelago to Mauritius until they are no longer needed for the defence purposes of the UK and US. However, there are issues on BIOT that we can discuss with Mauritius eg., traditional fishing rights, formalising the sovereignty issue in a treaty (as I explained, there has never been an Exchange of Notes or a formal Treaty arrangement with the Mauritians).

I hope this is clear. If you have any questions, please let me know. We will keep in close touch with you over these discussions and the agenda as soon as it becomes clearer.

Have a good weekend.

Joanne

Joanne Yeadon | Head of Section | BIOT & Pitcairn | Overseas Territories Directorate | K2.218 | Foreign & Commonwealth Office | SW1A 2AH |
☎ [redacted] | E-Mail: Joanne.Yeadon@fco.gov.uk |

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Annex 126

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ISLAND OF SHAME

The Secret History of the U.S. Military Base on Diego Garcia

With a new afterword by the author

David Vine

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"No person shall be . . . deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation."

—Fifth Amendment to the United States Constitution, 1791

"No one shall be subjected to arbitrary arrest, detention or exile. . . . No one shall be subjected to arbitrary interference with his privacy, family [or] home. . . . No one shall be arbitrarily deprived of his property. . . . Everyone has the right to freedom of movement and residence within the borders of each State."

—Articles 9, 12, 17, 13, Universal Declaration of Human Rights, 1948

"We, the inhabitants of Chagos Islands—Diego Garcia, Peros Banhos, Salomon—have been uprooted from those islands. . . . Our ancestors were slaves on those islands, but we know that we are the heirs of those islands. Although we were poor there, we were not dying of hunger. We were living free."

—Petition to the governments of the United Kingdom and the United States, 1975

CONTENTS

A NOTE TO THE READER

Quotations that appear in this book without citation come from interviews and conversations conducted during my research. Translations from French, Mauritian Kreol, and Seselwa (Seychelles Kreol) are my own. The names and some basic identifying features of Chagossians in the book (other than members of the Bancoult family and representatives of the Chagos Refugees Group) have been changed in accordance with anonymity agreements made during the research.

INTRODUCTION

Rita felt like she'd been sliced open and all the blood spilled from her body.

"What happened to you? What happened to you?" her children cried as they came running to her side.

"What happened?" her husband inquired.

"Did someone attack you?" they asked.

"I heard everything they said," Rita recounted, "but my voice couldn't open my mouth to say what happened." For an hour she said nothing, her heart swollen with emotion.

Finally she blurted out: "We will never again return to our home! Our home has been closed!" As Rita told me almost forty years later, the man said to her: "Your island has been sold. You will never go there again."

Marie Rita Elysée Bancoult is one of the people of the Chagos Archipelago, a group of about 64 small coral islands near the isolated center of the Indian Ocean, halfway between Africa and Indonesia, 1,000 miles south of the nearest continental landmass, India. Known as Chagossians, none live in Chagos today. Most live 1,200 miles away on the western Indian Ocean islands of Mauritius and the Seychelles. Like others, 80-year-old Rita lives far from Mauritius's renowned tourist beaches and luxury hotels. Rita, or Aunt Rita as she is known, lives in one of the island's poorest neighborhoods, known for its industrial plants and brothels, in a small aging three-room house made of concrete block.

Rita and other Chagossians cannot return to their homeland because between 1968 and 1973, in a plot carefully hidden from the world, the United States and Great Britain exiled all 1,500–2,000 islanders to create a major U.S. military base on the Chagossians' island Diego Garcia. Initially, government agents told those like Rita who were away seeking medical treatment or vacationing in Mauritius that their islands had been closed and they could not go home. Next, British officials began restricting supplies to the islands and more Chagossians left as food and medicines dwindled. Finally, on the orders of the U.S. military, U.K. officials forced the remaining islanders to board overcrowded cargo ships and left them on the docks in Mauritius and the Seychelles. Just before the last deportations, British agents and U.S. troops on Diego Garcia herded the Chagossians' pet dogs into sealed sheds and gassed and burned them in front of their traumatized owners awaiting deportation.

The people, the descendants of enslaved Africans and indentured south Indians brought to Chagos beginning in the eighteenth century, received no resettlement assistance and quickly became impoverished. Today the group numbers around 5,000. Most remain deeply impoverished. Meanwhile the base on Diego Garcia has become one of the most secretive and powerful U.S. military facilities in the world, helping to launch the invasions of Afghanistan and Iraq (twice), threatening Iran, China, Russia, and nations from southern Africa to southeast Asia, host to a secret CIA detention center for high-profile terrorist suspects, and home to thousands of U.S. military personnel and billions of dollars in deadly weaponry.

"You were born—"

"Peros Banhos," replied Rita Bancoult* before I could finish my question.

"In what year?"

"1928. . . . The thirtieth of June."

Rita grew up in Peros Banhos's capital and administrative center, *L'île du Coin*—Corner Island. *"Lamem monn ne, lamem monn reste,"* she added in the songlike, up-and-down cadence of Chagossians' Kreol: La-MEM moan NAY, la-MEM moan rest-AY. "The island where I was born is the island where I stayed."[1]

Corner Island and 31 neighboring islands in the Peros Banhos atoll form part of the Chagos Archipelago. Portuguese explorers named the largest and best-known island in the archipelago Diego Garcia, about 150 miles to the south. The archipelago's name appears to come from the Portuguese *chagas*—the wounds of Christ.[2]

"And your parents?" I asked. "What island were your parents born on?"

"My parents were born there too," Rita explained. "My grandmother—the mother of my father—was born in Six Islands—*Six Îles.* My father was also born in Six Islands. My grandfather was born there too. My grandmother on my mother's side was born in Peros Banhos."

Rita does not know where her other ancestors were born, one of the injuries still borne by people with enslaved forebears. However, she remembers her grandmother, Olivette Pauline, saying that Olivette's grandmother—Rita's great-great-grandmother—had been enslaved and had the name "Masambo" or "Mazambo." Rita thinks she was a *Malgas*—a person from Madagascar.

* Rita's last name has since changed to Isou, but for reasons of clarity I will refer to her throughout by the name Bancoult.

Rita and her family are some of Chagos's indigenous people.[3] Chagossians lived in Diego Garcia and the rest of the previously uninhabited archipelago since the time of the American Revolution when Franco-Mauritians created coconut plantations on the islands and began importing enslaved and, later, indentured laborers from Africa and India.

Over the next two centuries, the diverse workforce developed into a distinct, emancipated society and a people known initially as the *Ilois*—the Islanders. Nearly everyone worked on the coconut plantations. Most worked in the production of copra—dried coconut flesh—and coconut oil made by pressing copra. The people built the archipelago's infrastructure and produced its wealth. As some maps still attest, the islands became known as the "Oil Islands"—meaning coconut oil, not the petroleum that would prove central to the archipelago's recent history. A distinct Chagos Kreol language emerged. The people built their own houses, inhabited land passed down from generation to generation, and kept vegetable gardens and farm animals. By the time Rita was a mother, there were nurseries and schools for her children. In 1961, Mauritian colonial governor Robert Scott remarked that the main village on Diego Garcia had the "look of a French coastal village miraculously transferred whole to this shore."[4]

While far from luxurious and still a plantation society, the islands provided a secure life, generally free of want, and featuring universal employment and numerous social benefits, including regular if small salaries in cash and food, land, free housing, education, pensions, burial services, and basic health care on islands described by many as idyllic.

"You had your house—you didn't have rent to pay," said Rita, a short, stocky woman with carefully French-braided white hair. "With my ration, I got ten and a half pounds of rice each week, I got ten and a half pounds of flour, I got my oil, I got my salt, I got my dhal, I got my beans—it was only butter beans and red beans that we needed to buy.

"And then I got my fresh fish, Saturday. I got my salted fish too, of at least four pounds, five pounds to take. But we didn't take it because we were able to catch fish ourselves. . . . We planted pumpkin, we planted greens. . . . Chickens, we had them. Pigs, the company fed them, and we got some. Chickens, ducks, we fed them ourselves.

"I had a dog named *Katorz*—Katorz, when the sea was at low tide, he would go into the sea. He caught fish in his mouth and he brought them back to me," recalled Rita 1,200 miles from her homeland.

"Life there paid little money, a very little," she said, "but it was the sweet life."

During the winter of 1922, eight-year-old Stuart Barber was sick and confined to bed at his family's home in New Haven, Connecticut. A solitary child long troubled by health problems, Stu, as he was known, found solace that winter in a cherished geography book. He was particularly fascinated by the world's remote islands and had a passion for collecting the stamps of far-flung island colonies. While the Falkland Islands off the coast of Argentina in the South Atlantic became his favorite, Stu noticed that the Indian Ocean was dotted with many islands claimed by Britain.[5]

Thirty-six years later, after having experienced a taste of island life as a naval intelligence officer in Hawai'i during World War II, Stu was drawing up lists of small, isolated colonial islands from every map, atlas, and nautical chart he could find. It was 1958. Thin and spectacled, Stu was a civilian back working for the Navy at the Pentagon.

The Navy ought to have a permanent facility, Stu suddenly realized, like the island bases acquired during the Pacific's "island hopping" campaign against Japan. The facility should be on "a small atoll, minimally populated, with a good anchorage." The Navy, he began to tell his superiors, should build a small airstrip, oil storage, and logistical facilities. The Navy would use it "to support minor peacetime deployments" and major wartime operations.[6]

Working in the Navy's long-range planning office, it occurred to Stu that over the next decades island naval bases would be essential tools for maintaining military dominance during the Cold War. In the era of decolonization, the non-Western world was growing increasingly unstable and would likely become the site of future combat. "Within the next 5 to 10 years," Stu wrote to the Navy brass, "virtually all of Africa, and certain Middle Eastern and Far Eastern territories presently under Western control will gain either complete independence or a high degree of autonomy," making them likely to "drift from Western influence."[7]

All the while, U.S. and other Western military bases were becoming dangerous targets of opposition both in the decolonizing world and from the Soviet Union and the United Nations. The inevitable result for the United States, Stu said, was "the withdrawal" of Western military forces and "the denial or restriction" of Western bases in these areas.[8]

But Stu had the answer to these threats. The solution, he saw, was what he called the "Strategic Island Concept." The plan would be to avoid traditional base sites located in populous mainland areas where they were vulnerable to local non-Western opposition. Instead, "only relatively small, lightly populated islands, separated from major population masses, could be safely held under full control of the West." Island bases were the key.

But if the United States was going to protect its "future freedom of military action," Stu realized, they would have to act quickly to "stockpile" island basing rights as soon as possible. Just as any sensible investor would "stockpile any material commodity which foreseeably will become unavailable in the future," Stu believed, the United States would have to quickly buy up small colonial islands around the world or otherwise ensure its Western allies maintained sovereignty over them. Otherwise the islands would be lost to decolonization forever.[9]

As the idea took shape in his head, Stu first thought of the Seychelles and its more than 100 islands before exploring other possibilities. Finally he found time to gather and "scan all the charts to see what useful islands there might be": There was Phuket, Cocos, Masirah, Farquhar, Aldabra, Desroches, Salomon, and Peros Banhos in and around the Indian Ocean alone. After finding all to be "inferior sites," Stu found "that beautiful atoll of Diego Garcia, right in the middle of the ocean."[10]

Stu saw that the small v-shaped island was blessed with a central location within striking distance of potential conflict zones, one of the world's great natural harbors in its protected lagoon, and enough land to build a large airstrip. But the Navy still needed to ensure it would get a base absent any messy "political complications." Any targeted island would have to be "free of impingement on any significant indigenous population or economic interest." Stu was pleased to note that Diego Garcia's population was "measured only in the hundreds."[11]

When in late 1967 a mule-drawn cart ran over the foot of Rita's three-year-old daughter Noellie, the nurse in Peros Banhos's eight-bed hospital told Rita that the foot needed an operation. She would have to take Noellie to the nearest full-service hospital, 1,200 miles away in Mauritius.

Going to Mauritius meant waiting for the next and only boat service—a four-times-a-year connection with the larger island. Which meant waiting two months. When the boat finally arrived, Rita packed a small box with some clothes and a pot to cook in, locked up the family's wood-framed, thatched-roof house, and left for Mauritius with Noellie, her husband, Julien Bancoult, and their five other children.

After four days on the open ocean, the family arrived in the Mauritian capital, Port Louis, and rushed Noellie to the nearest hospital. As Rita recalled, a doctor operated but saw immediately that the foot had gone untreated for "much too long." Gangrene had set in. Noellie died a month later.

Mourning her death, the family had to wait two months until the departure of the next boat for Chagos. With the departure date approaching, Rita

walked to the office of the steamship company to arrange for the family's return. There the steamship company representative told her, "Your island has been sold. You will never go there again," leaving Rita to return to her family speechless and in tears.

When Julien finally heard his wife's news he collapsed backwards, his arms splayed wide, unable to utter a word. Prevented from returning home, Rita, Julien, and their five surviving children found themselves in a foreign land, separated from their home, their land, their animals, their possessions, their jobs, their community, and the graves of their ancestors. The Bancoults had been, as Chagossians came to say, *derasine*—deracinated, uprooted, torn from their natal lands.

"His sickness started to take hold of him," Rita explained. "He didn't understand" a thing she said.

Soon Julien suffered a stroke, his body growing rigid and increasingly paralyzed. "His hands didn't move, his feet didn't move. Everything was frozen," Rita said. Before the year was out, she would spend several weeks receiving treatment in a psychiatric hospital.

Five years after suffering the stroke, Julien died. Rita said the cause of death was *sagren*—profound sorrow.

"There *wasn't* sickness" like strokes or *sagren* in Peros Banhos, Rita explained. "There wasn't that sickness. Nor diabetes, nor any such illness. What drugs?" she asked rhetorically. "This is what my husband remembered and pictured in his mind. Me too, I remember these things that I've said about us, David. My heart grows heavy when I say these things, understand?"

After Julien's death, the Bancoults' son Alex lost his job as a dockworker. He later died at 38 addicted to drugs and alcohol. Their son Eddy died at 36 of a heroin overdose. Another son, Rénault, died suddenly at age eleven, for reasons still mysterious to the family, after selling water and begging for money at a local cemetery near their home.

"My life has been buried," Rita told me from the torn brown vinyl couch in her small sitting room. "What do I think about it?" she continued. "It's as if I was pulled from my paradise to put me in hell. Everything here you need to buy. I don't have the means to buy them. My children go without eating. How am I supposed to bear this life?"

"Welcome to the Footprint of Freedom," says the sign on Diego Garcia. Today, at any given time, 3,000 to 5,000 U.S. troops and civilian support staff live on the island. "Picture a tropical paradise lost in an endless

expanse of cerulean ocean," described *Time* magazine reporter Massimo Calabresi when he became one of the first journalists in over twenty-five years to visit the secretive atoll. Calabresi earned the privilege traveling with President George W. Bush and Air Force One during a ninety-minute refueling stop between Iraq and Australia. "Glossy palm fronds twist in the temperate wind along immaculate, powder white beaches. Leathery sea turtles bob lazily offshore, and the light cacophony of birdsong accents the ambient sound of wind and waves," he reported. "Now add concrete. Lots and lots of concrete. . . . Think early-'70s industrial park."[12]

Confined to an auditorium during his stay (but presented with a souvenir t-shirt bearing "pictures of scantily clad women and mermaids" and the words "Fantasy Island, Diego Garcia"), Calabresi was prevented from touring the rest of the island. If he had, he would have found what, like most overseas U.S. bases, resembles a small American town, in this case magically transported to the middle of the Indian Ocean.

Leaving Diego Garcia International Airport, Calabresi might have stayed at the Chagos Inn; dined at Diego Burger or surfed the internet at Burgers-n-Bytes; enjoyed a game of golf at a nine-hole course; gone shopping or caught a movie; worked out at the gym or gone bowling; played baseball or basketball, tennis or racquetball; swam in one of several pools or sailed and fished at the local marina; then relaxed with some drinks at one of several clubs and bars. Between 1999 and 2007, the Navy paid a consortium of private firms called DG21 nearly half a billion dollars to keep its troops happy and to otherwise feed, clean, and maintain the base.

The United Kingdom officially controls Diego Garcia and the rest of Chagos as the British Indian Ocean Territory (BIOT). As we will later see, the British created the colony in 1965 using the Queen's archaic power of royal decree, separating the islands from colonial Mauritius (in violation of the UN's rules on decolonization) to help enable the expulsion. A secret 1966 agreement signed "under the cover of darkness" without congressional or parliamentary oversight gave the United States the right to build a base on Diego Garcia. While technically the base would be a joint U.S.-U.K. facility, the island would become a major U.S. base and, in many ways, *de facto* U.S. territory. All but a handful of the troops are from the United States. Private companies import cheaper labor from places like the Philippines, Sri Lanka, and Mauritius (though until 2006 no Chagossians were hired) to do the laundry, cook the food, and keep the base running. The few British soldiers and functionaries on the atoll spend most of their time raising the Union Jack, keeping an eye on substance abuse as the local police force, and offering authenticity at the local "Brit Club." Diego

Garcia may be the only place in what remains of the British Empire where cars drive on the right side of the road.

In the years since the last Chagossians were deported in 1973, the base has expanded dramatically. Sold to Congress as an "austere communications facility" (to assuage critics nervous that Diego Garcia represented the start of a military buildup in the Indian Ocean), Diego Garcia saw almost immediate action as a base for reconnaissance planes in the 1973 Arab-Israeli war. The base grew steadily throughout the 1970s and expanded even more rapidly after the 1979 revolution in Iran and the Soviet invasion of Afghanistan: Under Presidents Carter and Reagan, Diego Garcia saw the "most dramatic build-up of any location since the Vietnam War." By 1986, the U.S. military had invested $500 million on the island.[13] Most of the construction work was carried out by large private firms like long-time Navy contractor Brown & Root (later Halliburton's Kellogg Brown & Root).

Today Diego Garcia is home to an amazing array of weaponry and equipment. The lagoon hosts an armada of almost two dozen massive cargo ships "prepositioned" for wartime. Each is almost the size of the Empire State Building. Each is filled to the brim with specially protected tanks, helicopters, ammunition, and fuel ready to be sent off to equip tens of thousands of U.S. troops for up to 30 days of battle.

Closer to shore, the harbor can host an aircraft carrier taskforce, including navy surface vessels and nuclear submarines. The airport and its over two-mile-long runway host billions of dollars worth of B-1, B-2, and B-52 bombers, reconnaissance, cargo, and in-air refueling planes. The island is home to one of four worldwide stations running the Global Positioning System (GPS). There's a range of other high-tech intelligence and communications equipment, including NASA facilities (the runway is an emergency landing site for the Space Shuttle), an electro-optical deep space surveillance system, a satellite navigation monitoring antenna, an HF-UHF-SHF satellite transmission ground station, and (probably) a subsurface oceanic intelligence station. Nuclear weapons are likely stored on the base.[14]

Diego Garcia saw its first major wartime use during the first Gulf War. Just eight days after the U.S. military issued deployment orders in August 1990, eighteen prepositioned ships from Diego Garcia's lagoon arrived in Saudi Arabia. The ships immediately outfitted a 15,000-troop marine brigade with 123 M-60 battle tanks, 425 heavy weapons, 124 fixed-wing and rotary aircraft, and thirty days' worth of operational supplies for the annihilation of Iraq's military that was to come. Weaponry and supplies shipped from the United States took almost a month longer to arrive in Saudi Arabia, proving Diego Garcia's worth to many military leaders.[15]

Since September 11, 2001, the base has assumed even more importance for the military. About 7,000 miles closer to central Asia and the Persian Gulf than major bases in the United States, the island received around 2,000 additional Air Force personnel within weeks of the attacks on northern Virginia and New York. The Air Force built a new thirty-acre housing facility for the newcomers. They named it "Camp Justice."

Flying from the atoll, B-1 bombers, B-2 "stealth" bombers, and B-52 nuclear-capable bombers dropped more ordnance on Afghanistan than any other flying squadrons in the Afghan war.[16] B-52 bombers alone dropped more than 1.5 million pounds of munitions in carpet bombing that contributed to thousands of Afghan deaths.[17] Leading up to the invasion of Iraq, weaponry and supplies prepositioned in the lagoon were again among the first to arrive at staging areas near Iraq's borders. The (once) secret 2002 "Downing Street" memorandum showed that U.S. war planners considered basing access on Diego Garcia "critical" to the invasion.[18] Bombers from the island ultimately helped launch the Bush administration's war overthrowing the Hussein regime and leading to the subsequent deaths of hundreds of thousands of Iraqis and thousands of U.S. occupying troops.

In early 2007, as the Bush administration was upping its anti-Iran rhetoric and making signs that it was ready for more attempted conquest, the Defense Department awarded a $31.9 million contract to build a new submarine base on the island. The subs can launch Tomahawk cruise missiles and ferry Navy SEALs for amphibious missions behind enemy lines. At the same time, the military began shipping extra fuel supplies to the atoll for possible wartime use.

Long off-limits to reporters, the Red Cross, and all other international observers and far more secretive than Guantánamo Bay, many have identified the island as a clandestine CIA "black site" for high-profile detainees: Journalist Stephen Grey's book *Ghost Plane* documented the presence on the island of a CIA-chartered plane used for rendition flights. On two occasions former U.S. Army General Barry McCaffrey publicly named Diego Garcia as a detention facility. A Council of Europe report named the atoll, along with sites in Poland and Romania, as a secret prison.[19]

For more than six years U.S. and U.K. officials adamantly denied the allegations. In February 2008, British Foreign Secretary David Miliband announced to Parliament: "Contrary to earlier explicit assurances that Diego Garcia has not been used for rendition flights, recent U.S. investigations have now revealed two occasions, both in 2002, when this had in fact occurred."[20] A representative for Secretary of State Condoleezza Rice said Rice called Miliband to express regret over the "administrative error." The State

Department's chief legal adviser said CIA officials were "as confident as they can be" that no other detainees had been held on the island, and CIA Director Michael Hayden continues to deny the existence of a CIA prison on the island. This may be true: Some suspect the United States may hold large numbers of detainees on secret prison ships in Diego Garcia's lagoon or elsewhere in the waters of Chagos.[21]

"It's the single most important military facility we've got," respected Washington-area military expert John Pike told me. Pike, who runs the website GlobalSecurity.org, explained, "It's the base from which we control half of Africa and the southern side of Asia, the southern side of Eurasia." It's "the facility that at the end of the day gives us some say-so in the Persian Gulf region. If it didn't exist, it would have to be invented." The base is critical to controlling not just the oil-rich Gulf but the world, said Pike: "Even if the entire Eastern Hemisphere has drop-kicked us" from every other base on their territory, he explained, the military's goal is to be able "to run the planet from Guam and Diego Garcia by 2015."

Before I received an unexpected phone call one day late in the New York City summer of 2001, I'd only vaguely known from my memories of the first Gulf War that the United States had an obscure military base on an island called Diego Garcia. Like most others in the United States, I knew nothing of the Chagossians.

On the phone that day was Michael Tigar, a lawyer and American University law professor. Tigar, I later learned from my father (an attorney), was famously known for having had an offer of a 1966 Supreme Court clerkship revoked at the last moment by Justice William Brennan. The justice had apparently succumbed to right-wing groups angered by what they considered to be Tigar's radical sympathies from his days at the University of California, Berkeley. As the story goes, Brennan later said it was one of his greatest mistakes. Tigar went on to represent the likes of Angela Davis, Allen Ginsberg, the Washington Post, Texas Senator Kay Bailey Hutchison, and Oklahoma City bomber Terry Nichols. In 1999, Tigar ranked third in a vote for "Lawyer of the Century" by the California Lawyers for Criminal Justice, behind only Clarence Darrow and Thurgood Marshall. Recently he had sued Henry Kissinger and other former U.S. officials for supporting assassinations and other human rights abuses carried out by the government of Chilean dictator Augusto Pinochet.

As we talked that day, Tigar outlined the story of the Chagossians' expulsion. He described how for decades the islanders had engaged in

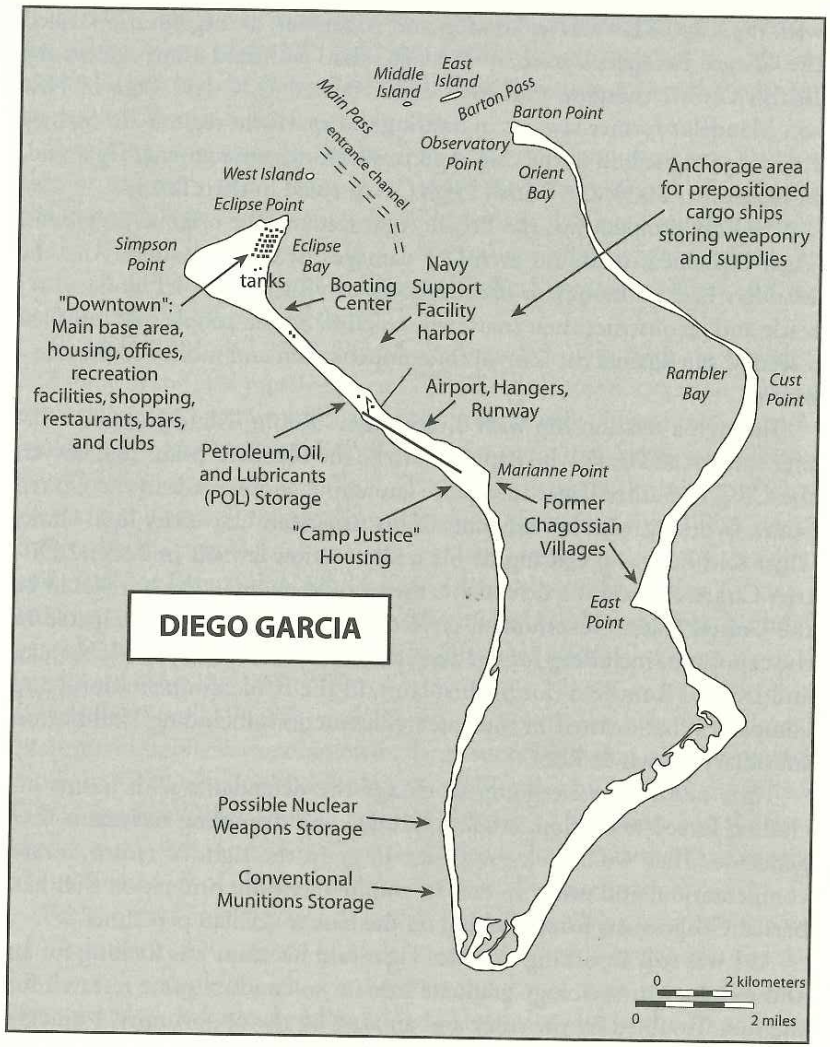

Figure 0.2 Diego Garcia, with base area at left.

a David-and-Goliath struggle to win the right to return to Chagos and proper compensation.

In 1978 and 1982 their protests won them small amounts of compensation from the British. Mostly, though, the money went to paying off debts accrued since the expulsion, improving their overall condition little. Lately, they had begun to make some more significant progress. In 1997,

with the help of lawyers in London and Mauritius, an organization called the Chagos Refugees Group, or the CRG, had launched a suit against the British Crown charging that their exile violated U.K. law. One of Nelson Mandela's former lawyers in battling the apartheid regime, Sir Sydney Kentridge, signed on to the case. And to everyone's amazement, Tigar said, in November 2000, the British High Court ruled in their favor.

The only problem was the British legal system. The original judgment, Tigar explained, made no award of damages or compensation. And the islanders had no money to charter boats to visit Chagos let alone to resettle and reconstruct their shattered societies. So the people had just filed a second suit against the Crown for compensation and money to finance a return.

Through a relationship with Sivarkumen "Robin" Mardemooto, a former student of Tigar's who happened to be the islanders' Mauritian lawyer, the CRG had asked Tigar to explore launching another suit in the United States. Working with law students in his American University legal clinic, Tigar said he was preparing to file a class action lawsuit in Federal District Court. Among the defendants they would name in the suit would be the United States Government, government officials who participated in the expulsion, including former Secretaries of Defense Robert McNamara and Donald Rumsfeld (for his first stint, in the Ford administration), and companies that assisted in the base's construction, including Halliburton subsidiary Brown & Root.

Tigar said they were going to charge the defendants with harms including forced relocation, cruel, inhuman, and degrading treatment, and genocide. They would ask the Court to grant the right of return, award compensation, and order an end to employment discrimination that had barred Chagossians from working on the base as civilian personnel.

As I was still absorbing the tale, Tigar said his team was looking for an anthropology or sociology graduate student to conduct some research for the suit. Troubled by the story and amazed by the opportunity, I quickly agreed.

Over the next six-plus years, together with colleagues Philip Harvey and Wojciech Sokolowski from Rutgers University School of Law and Johns Hopkins University, I conducted three pieces of research: Analyzing if, given contemporary understandings of the "indigenous peoples" concept, the Chagossians should be considered one (I found that they should and that other indigenous groups recognize them as such); documenting how Chagossians' lives have been harmed as a result of their displacement; and calculating the compensation due as a result of some of those damages.[22]

While I was never paid for my work, ironically enough, big tobacco helped foot some of the bill: Tigar reimbursed my expenses out of a human rights litigation fund he had established at American University with attorney fees won in a Texas tobacco suit.[23]

Not long after starting the project, however, I saw there was another side of the story that I wanted to understand. In addition to exploring the impact of the expulsion on the Chagossians, I wanted to tell the story of the United States and the U.S. Government officials who ordered the removals and created the base: How and why, I wanted to know, did my country and its officials do this?[24]

Between 2001 and 2008, I conducted research with both the islanders and some of the now mostly retired U.S. officials. To understand something of the fabric and texture of Chagossians' lives in exile, I lived in their communities in Mauritius and the Seychelles for more than seven months over four trips between 2001 and 2004. This meant living in the homes of Chagossian families and participating actively in their daily lives. I did everything with the people from working, cooking, studying, cleaning, praying, and watching French-dubbed Brazilian telenovelas on Mauritian TV to attending weddings, baptisms, first communions, public meetings, birthday parties, and funerals. In addition to hundreds of informal conversations, I conducted more than thirty formal interviews in Mauritian Kreol, Seselwa (Seychelles Kreol), English, and French, and, with the help of dedicated Mauritian interviewers, completed a large survey of living conditions with more than 320 islanders. I complemented this work by going to the British Public Records Office and the national archives of Mauritius and the Seychelles to unearth thousands of pages of historical and documentary records about the history of Chagos, the expulsion, and its aftermath.[25]

Back in the United States, I moved from New York to my hometown of Washington, DC, to try to understand the officials responsible for the base and the expulsion. I had no interest in turning them into caricatures, and wanted to dedicate the same anthropological attention and empathy to them that I had focused on the islanders.[26] During more than seven months of concentrated research in 2004 and 2005, and continuing over the next two years, I interviewed more than thirty former and current U.S. Government officials, primarily from the departments of Defense and State and the Navy, as well as journalists, academics, military analysts, and others who were involved in the story or otherwise knowledgeable about the base.[27]

Unfortunately, I was unable to speak with some of the highest-ranking and most influential officials involved. Many, including White House official Robert Komer and Admirals Elmo Zumwalt and Arleigh Burke,

were deceased. Two, Paul Nitze and Admiral Thomas Moorer, died early in my research before I could request an interview. Others, including Henry Kissinger, did not respond to repeated interview requests.

After repeatedly attempting to contact Robert McNamara, I was surprised to return to my office one day to find the following voicemail: "Professor Vine. This is Robert McNamara. I don't believe I can help you. At 91, my memory is very, very bad. And I recall almost nothing about Diego Garcia. Thank you."

When I hurriedly called him back and asked if he had any memory of conversations about people on the island, he responded, "None."

When I asked why the Department of Defense would have wanted to remove the Chagossians, he said, "At 91, my memory's bad."

I asked if he could recommend anyone else to speak with. "No," he replied. I asked if he could suggest any other leads. "None," he said. Fumbling around to think what else I could ask, I heard McNamara say quickly, "Thank you very much," and then the click of the connection going dead.

With these kinds of limitations, I balanced my interviews with an analysis of thousands of pages of government documents uncovered in the U.S. National Archives, the Navy archives, the Kennedy and Johnson presidential libraries, the British Public Records Office, and the files of the U.S. and British lawyers representing the Chagossians.[28] While the Navy's archives proved a critical resource, all the files from Stu Barber's office responsible for the original base idea had been destroyed.[29]

While many of the relevant surviving documents were still classified (after 30–40 years), Freedom of Information Act (FOIA) requests revealed some formerly secret information. However, government agencies withheld hundreds of documents, claiming various FOIA exemptions "in the interest of national defense or foreign relations." Tens of other documents were released to me "in part"; this often meant receiving page after page partially or entirely blank. Britain's "30 year rule" for the automatic release of most classified government documents, by contrast, revealed hundreds of pages of critical material, much of it originally uncovered by the Chagossians' U.K. legal team and a Mauritian investigative reporter and contributing to the 2000 victory.[30]

Like trying to describe an object you can't actually see, telling the story of Diego Garcia was further complicated by not being able to go to Diego Garcia. The 1976 U.S.-U.K. agreement for the base restricts access "to members of the forces of the United Kingdom and of the United States" and their official representatives and contractors.[31] A 1992 document explains, "the intent is to restrict visits in order . . . to prevent excessive access to military operations and activities."[32] Visits by journalists have been explicitly banned, making the island something of a "holy grail" for reporters (only technically claimed by the recent ninety-minute visit of President Bush's reporting pool, during which reporters were confined to an airport hangar). In the 1980s, a *Time* magazine chief offered a "fine case of Bordeaux to the first correspondent who filed a legitimate story from Diego Garcia."[33]

The U.S.-U.K. agreement does allow visits by approved "scientific parties wishing to carry out research." Indeed scientists, including experts on coral atolls and the Royal Navy Bird Watching Society, have regularly surveyed Diego Garcia and the other Chagos islands. Encouraged, I repeatedly requested permission from both U.S. and U.K. representatives to visit and conduct research on the islanders' former society. After months of trading letters with British officials in 2003 and 2004, I finally received word from Charles Hamilton, the British Indian Ocean Territory administrator, stating that "after careful consideration, we are unable to agree at the present time to a scientific visit involving a survey of the former homes of the Chagossians. I am sorry to have to send you such disappointing news."[34] All my other requests were denied or went unanswered. John Pike described the chance of a civilian visiting Diego Garcia as "about as likely as the sun coming up in the west."

Still, if I had had a yacht at my disposal, I could have joined hundreds of other "yachties" who regularly visit Peros Banhos, Salomon, and other islands in Chagos far from Diego Garcia. (Enterprising journalist Simon Winchester convinced one to take him to Chagos in 1985, even managing to get onto Diego Garcia when his Australian captain claimed her right to safe harbor under the law of the sea.[35]) Many yachties today enjoy the "island paradise" for months at a time. They simply pay a fee to the BIOT for the right to stay in the territory and enjoy beachside barbeques by the "impossibly blue" water, parties with BIOT officials, and free range over the islands and the Chagossians' crumbling homes. "Welcome to the B.I.O.T.," a sign reads. "Please keep the island clean and avoid damage to buildings. Enjoy your stay."[36]

Sadly, the Chagossians are far from alone in having been displaced by a military base. As we will see in the story ahead, the U.S. military has exhibited a pattern of forcibly displacing vulnerable peoples to build its military bases. In the past century, most of these cases have taken place

outside the United States. Generally those displaced have, like the Chagossians, been small in number, under colonial control, and of non-"white," non-European ancestry. Some of the examples are relatively well known, like those displaced in the Bikini Atoll and Puerto Rico's Vieques Island. Others have, like the Chagossians, received less attention, including the Inughuit of Thule, Greenland, and the more than 3,000 Okinawans displaced to, of all places, Bolivia.

It is no coincidence that few know about these stories. Few in the United States know that the United States possesses some 1,000 military bases and installations outside the fifty states and Washington, DC, on the sovereign land of other nations. Let me repeat that number again because it's hard to take in: 1,000 bases. On other people's sovereign territory. 1,000 bases.

More than half a century after the end of World War II and the Korean War, the United States retains 287 bases in Germany, 130 in Japan, and 106 in South Korea. There are some 89 in Italy, 57 in the British Isles, 21 in Portugal, and nineteen in Turkey. Other bases are scattered around the globe in places like Aruba and Australia, Djibouti, Egypt, and Israel, Singapore and Thailand, Kyrgyzstan and Kuwait, Qatar, Bahrain, and the United Arab Emirates, Crete, Sicily, and Iceland, Romania and Bulgaria, Honduras, Colombia, and Guantánamo Bay, Cuba—just to name a few (see fig. 2.1). Some can still be found in Saudi Arabia and others have recently returned to the Philippines and Uzbekistan, where locals previously forced the closure of U.S. bases. In total, the U.S. military has troops in some 150 foreign nations. Around the world the Defense Department reports having more than 577,519 separate buildings, structures, and utilities at its bases, conservatively valuing its facilities at more than $712 billion.[37]

It's often hard to come up with accurate figures to capture the scope of the base network, because the Pentagon frequently omits secret and even well-known bases—like those in Iraq and Afghanistan—in its own accounting. In Iraq, as President Bush's second term came to an end, the military controlled at least 55 bases and probably well over 100. In trying to negotiate a long-term military agreement with the Iraqi Government, the Bush administration hoped to retain 58 long-term bases in the country as part of a "protracted" presence of at least 50,000 troops, following the South Korean model; originally U.S. officials pressed for more than 200 military facilities. In Afghanistan, the base collection includes sixteen air bases and may run to over eighty in total amid similar Pentagon plans for permanent installations.[38]

While Pentagon and other officials have been careful never to refer to bases in Iraq and Afghanistan as "permanent," the structures on the ground tell a different story: A 2007 National Public Radio story reported that Balad Air Base near Baghdad, one of five "mega bases" in Iraq, housed some 30,000 troops and 10,000 private contractors in facilities complete with fortified Pizza Hut, Burger King, and Subway outlets and two shopping centers each about the size of a Target or Wal-Mart. "The base is one giant construction project, with new roads, sidewalks, and structures going up across this 16-square-mile fortress in the center of Iraq, all with an eye toward the next few decades," Guy Raz explained. "Seen from the sky at night, the base resembles Las Vegas: While the surrounding Iraqi villages get about 10 hours of electricity a day, the lights never go out at Balad Air Base."[39]

If you are anything like me and grew up in the United States, you may have a hard time imagining another nation occupying a military base on your nation's territory—let alone living next to such "simulacrums of suburbia" found the world over.[40] In 2007, Ecuadorian President Rafael Correa offered some insight into this phenomenon when he told reporters that he would only renew the lease on the U.S. military base in Ecuador if the United States agreed to one condition: "They let us put a base in Miami—an Ecuadorian base."

"If there's no problem having foreign soldiers on a country's soil," Correa added, "surely they'll let us have an Ecuadorian base in the United States."

The idea of an Ecuadorian military base in Miami, of a foreign base anywhere in the United States, is unthinkable to most people in the United States. And yet this is exactly what thousands of people in countries around the world live with every day: Military forces from a foreign country living in their cities, building huge military complexes on their lands, occupying their nations. About 95 percent of these foreign bases belong to the United States. Today the United States likely possesses more bases than any nation or people in world history.[41] Not to be confined to the globe alone, the Pentagon is making plans to turn outer space into a base as part of the rapid militarization of space.[42]

Growing recognition about the U.S. overseas base network has mirrored a renewed acknowledgment among scholars and pundits, following the wars in Afghanistan and Iraq, that the United States is in fact an empire.[43] With even the establishment foreign policy journal *Foreign Affairs* declaring, "The debate on empire is back," conversation has centered less on *if* the United States is an empire and more on *what kind* of empire it has become.[44]

Too often, however, the debates on empire have ignored and turned away from the lives of those impacted by empire. Too often analysts turn to abstract discussions of so-called foreign policy realism or macro-level

economic forces. Too often, analysts detach themselves from the effects of empire and the lives shaped and all too often damaged by the United States. Proponents of U.S. imperialism in particular willfully ignore the death and destruction caused by previous empires and the U.S. Empire** alike.[45]

In 1975, the *Washington Post* exposed the story of the Chagossians' expulsion for the first time in the Western press, describing the people as living in "abject poverty" as a result of what the *Post*'s editorial page called an "act of mass kidnapping."[46] When a single day of congressional hearings followed, the U.S. Government denied all responsibility for the islanders.[47] From that moment onward, the people of the United States have almost completely turned their backs on the Chagossians and forgotten them entirely.

Unearthing the full story of the Chagossians forces us to look deeply at what the United States has done, and at the lives of people shaped and destroyed by U.S. Empire. The Chagossians' story forces us to focus on the damage that U.S. power has inflicted around the world, providing new insight into the nature of the United States as an empire. The Chagossians' story forces us to face those people whom we as citizens of the United States often find it all too easy to ignore, too easy to close out of our consciousness. The Chagossians' story forces us to consider carefully how this country has treated other peoples from Iraq to Vietnam and in far too many other places around the globe.[48]

At the same time, we would be mistaken to treat the U.S. Empire simply as an abstract leviathan. Empires are run by real people. People made the decision to exile the Chagossians, to build a base on Diego Garcia. While empires are complex entities involving the consent and cooperation of millions and social forces larger than any single individual, we would be mistaken to ignore how a few powerful people come to make decisions that have such powerful effects on the lives of so many others thousands of miles away. For this reason, the story that follows is two-pronged and bifocaled: We will explore both sides of Diego Garcia, both sides of U.S. Empire, focusing equally on the lives of Chagossians like Rita Bancoult and the actions of U.S. Government officials like Stu Barber. In the end

** Throughout the book I use the term *U.S. Empire* rather than the more widely recognized *American Empire*. Although "U.S. Empire" may appear and sound awkward at first, it is linguistically more accurate than "American Empire" and represents an effort to reverse the erasure of the rest of the Americas entailed in U.S. citizens' frequent substitution of *America* for the *United States of America* (America consists of all of North and South America). The name of my current employer, American University, is just one example of this pattern: Located in the nation's capital, the school has long touted itself as a "national university" when its name should suggest a hemispheric university. The switch to the less familiar U.S. Empire also represents a linguistic attempt to make visible the fact that the United States is an empire, shaking people into awareness of its existence and its consequences.

we will reflect on how the dynamics of empire have come to bind together Bancoult and Barber, Chagossians and U.S. officials, and how every one of us is ultimately bound up with both.***[49]

To begin to understand and comprehend what the Chagossians have suffered as a result of their exile, we will need to start by looking at how the islanders' ancestors came to live and build a complex society in Chagos. We will then explore the secret history of how U.S. and U.K. officials planned, financed, and orchestrated the expulsion and the creation of the base, hiding their work from Congress and Parliament, members of the media and the world. Next we will look at what the Chagossians' lives have become in exile. While as outsiders it is impossible to fully comprehend what they have experienced, we must struggle to confront the pain they have faced. At the same time, we will see how their story is not one of suffering alone. From their daily struggles for survival to protests and hunger strikes in the streets of Mauritius to lawsuits that have taken them to some of the highest courts in Britain and the United States, we will see how the islanders have continually resisted their expulsion and the power of two empires. Finally, we will consider what we must do for the Chagossians and what we must do about the empire the United States has become.

The story of Diego Garcia has been kept secret for far too long. It must now be exposed.

*** Those interested in reading more about the book's approach as a bifocaled "ethnography of empire" should continue to the following endnote.

CHAPTER 1

THE ILOIS, THE ISLANDERS

"*Laba*" is all Rita had to say. Meaning, "out there." Chagossians in exile know immediately that *out there* means one thing: Chagos.

"*Laba* there are birds, there are turtles, and plenty of food," she said. "There's a leafy green vegetable . . . called cow's tongue. It's tasty to eat, really good. You can put it in a curry, you can make it into a pickled chutney.

"When I was still young, I was a little like a boy. In those times, we went looking" for ingredients for "curries on Saturday. So very early in the morning we went" to another island and came back with our food.

"By canoe?" I asked.

"By sailboat," Rita replied.

Peros Banhos "has thirty-two islands," she explained. "There's English Island, Monpatre Island, Chicken Island, Grand Bay, Little Bay, Diamond, Peter Island, Passage Island, Long Island, Mango Tree Island, Big Mango Tree Island. . . . There's Sea Cow Island," and many more. "I've visited them all. . . ."[1]

EMPIRES COMING AND GOING

"A great number of vessels might anchor there in safety," were the words of the first naval survey of Diego Garcia's lagoon. The appraisal came not from U.S. officials, but from the 1769 visit to the island by a French lieutenant named La Fontaine. Throughout the eighteenth century, England and France vied for control of the islands of the western Indian Ocean as strategic military bases to control shipping routes to India, where their respective East India companies were battling for supremacy over the spice trade.[2]

Having occupied Réunion Island (Île Bourbon) in 1642, the French replaced a failed Dutch settlement on Mauritius (renamed Île de France) in 1721. Later they settled Rodrigues and, by 1742, the Seychelles. As with its Caribbean colonies, France quickly shifted its focus from military to commercial interests.[3] French settlers built societies on the islands around enslaved labor and, particularly in Mauritius, the cultivation of sugar cane. At first, the French Company of the Indies tried to import enslaved people from the same West African sources supplying the Caribbean colonies. Later the company developed a new slaving trade to import labor from Madagascar and the area of Africa known then as Mozambique (a larger stretch of the southeast African coast than the current nation). Indian Ocean historian Larry Bowman writes that French settlement in Mauritius produced "a sharply differentiated society with extremes of wealth and poverty and an elite deeply committed to and dependent upon slavery."[4]

Chagos, including Peros Banhos and Diego Garcia, remained uninhabited throughout the seventeenth and early eighteenth centuries, serving only as a safe haven and provisioning stop for ships growing familiar with what were sometimes hazardous waters—in 1786, a hydrographer was the victim of a shipwreck. But as Anglo-French competition increased in Europe and spilled over into a fight for naval and thus economic control of the Indian Ocean, Chagos's central location made it an irresistible military and economic target.[5]

France first claimed Peros Banhos in 1744. A year later, the English surveyed Diego Garcia. Numerous French and English voyages followed to inspect other island groups in the archipelago, including Three Brothers, Egmont Atoll, and the Salomon Islands, before Lieutenant La Fontaine delivered his prophetic report.[6]

TWENTY-TWO

Like tens of millions of other Africans transported around the globe between the fifteenth and nineteenth centuries, Rita's ancestors and the ancestors of other Chagossians were brought against their will. Most were from Madagascar and Mozambique and were brought to Chagos in slavery to work on coconut plantations established by Franco-Mauritians.

The first permanent inhabitants of the Chagos Archipelago were likely 22 enslaved Africans. Although we do not know their names, some of today's Chagossians are likely their direct descendants. The 22 arrived

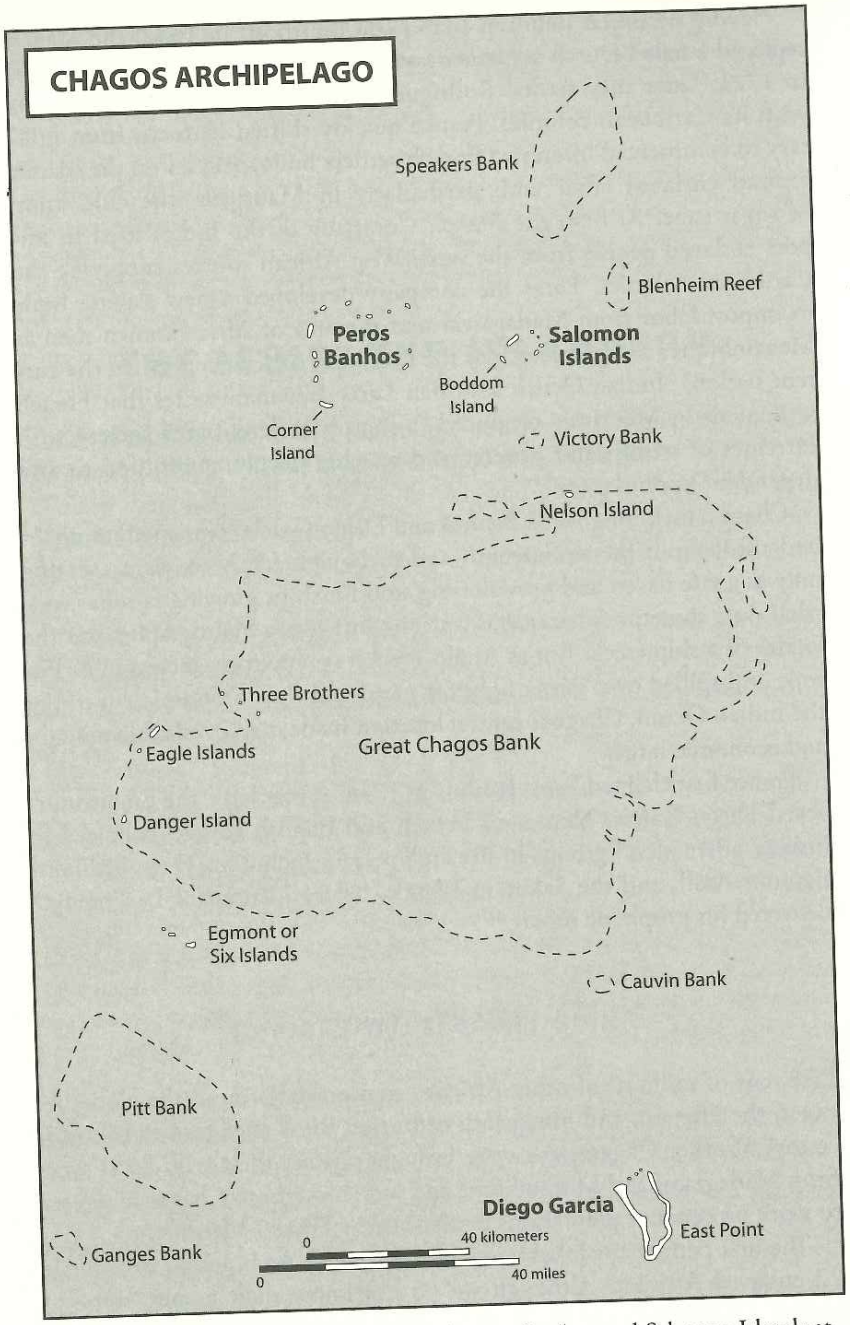

Figure 1.1 The Chagos Archipelago, with Peros Banhos and Salomon Islands at top center, Diego Garcia at bottom right.

around 1783, brought to the island by Pierre Marie Le Normand, an influential plantation owner born in Rennes but who left France for Mauritius at the age of 20.[7] Only half a century after the settlement of Mauritius, Le Normand petitioned its colonial government for a concession to settle Diego Garcia. On February 17, 1783, he received a "favourable reply" and "immediately prepared his voyage."[8]

Three years later, apparently unaware of Le Normand's arrival, the British East India Company sent a "secret committee" from Bombay to create a provisioning plantation on the atoll. Although they were surprised to find the French settlement, the British party didn't back down. On May 4, 1786, they took "full and ample Possession" of Diego Garcia and Chagos "in the name of our Most Gracious Sovereign George the third of Great Britain, France and Ireland King Defender of the faith etc. And of the said Honourable Company for their use and behoof."[9]

Unable to resist the newcomers, Le Normand left for Mauritius to report the British arrival. When France's Vicompte de Souillac learned of the landing, he sent a letter of protest to Bombay and the warship *Minerve* to reclaim the archipelago. To prevent an international incident liable to provoke war, the British Council in Bombay sent departure instructions to its landing party. When the *Minerve* arrived on Diego, its French crew found the British settlement abandoned and its grain and vegetable seeds washed into the sand.[10]

While France won this battle, governing Chagos along with the Seychelles as dependencies of Mauritius, its rule proved short-lived. By the turn of the nineteenth century and the Napoleonic Wars, French power in the Indian Ocean had crumbled. The British seized control of the Seychelles in 1794 and Mauritius in 1810. In the 1814 Treaty of Paris, France formally ceded Mauritius, including Chagos and Mauritius's other dependencies (as well as most of France's other island possessions worldwide), to Great Britain. Succeeding the Portuguese, Dutch, and French empires before it, the British would rule the Indian Ocean as a "British lake"[11] for a century and a half, until the emergence of a new global empire.

"IDEALLY SUITED"

Ernestine Marie Joseph Jacques (Diego Garcia). Joseph and Pauline Pona (Peros Banhos). Michel Levillain (Mozambique). Prudence Levillain (Madagascar). Lindor Courtois (India). Theophile Le Leger (Mauritius). Anastasie Legère (Three Brothers).[12] These are the slave names and birthplaces of some of the Chagossians' first ancestors.[13] While most arrived

from Mauritius, some may have come via the Seychelles and on slaving ships from Madagascar and continental Africa as part of an illegal slave trade taking advantage of Chagos's isolation from colonial authority.[14]

Not long after Le Normand established his settlement, hundreds more enslaved laborers began arriving to build a fishing settlement and four more coconut plantations established by Franco-Mauritians Dauquet, Lapotaire, Didier, and the brothers Cayeux. By 1808 there were 100 enslaved people working under Lapotaire alone. By 1813, a similar number were working in Peros Banhos, as settlement spread throughout an archipelago judged to have "a climate ideally suited to the cultivation of coconuts."[15] Less than eight degrees from the equator, Chagos's environment is marked by "the absence of a distinct flowering season and the gigantic size of many native and cultivated trees." The islands are also free from the cyclones (hurricanes) that frequently devastate Mauritius and neighboring islands. Meaning that coconut palms produce bountiful quantities of nuts year round for potential harvest. Hundreds more enslaved Africans were soon establishing new plantations at Three Brothers, Eagle and Salomon Islands and at Six Islands.[16]

THE PLANTATION SYSTEM

Despite being under British colonial rule, Mauritius and its dependencies surprisingly retained their French laws, language, religion, and ways of life—including that of enslaving Africans. "Mauritius became formally British but remained very French," explains one historian.[17]

Slavery thus remained the defining feature of life in Chagos from Le Normand's initial settlement until the abolition of slavery in Mauritius and its dependencies in 1835. Enslaved labor built the archipelago's infrastructure, produced its wealth (mostly in coconut oil), and formed the overwhelming majority of inhabitants. Colonial statistics from 1826 illustrate the nature of the islands as absolute slave plantation societies relying on a small number of Franco-Mauritians and free people of African or mixed ancestry to rule much larger populations of enslaved Africans.

The considerable gender imbalance in the islands is also important to note. Although it had generally equalized by the mid-twentieth century, the imbalance may help explain the power and authority Chagossian women came to exercise, as we will see in the story ahead.

Plantation owners at the time described their enslaved workforce as "happy and content" and their treatment as being of "the greatest gentleness." The laborers surely disagreed, working "from sunrise to sunset for six days a week" under the supervision of overseers.[18] However, outside these grueling workdays, each enslaved person was allowed to maintain a "*petite plantation*"—a small garden—to raise crops and animals and to save small sums of money from their sale. Significantly, these garden plots marked the beginnings of formal Chagossian land tenure.[19]

TABLE 1.1
Chagos Population, 1826.

	Male	*Female*
Noirs/Enslaved Blacks	269	108
Blancs/Whites	8	1
Libres/Free Persons	13	9

SOURCE: Commissioners of Compensation, Copy of Abstract of Biennial Returns of Slaves at Seychelles for the Year 1830, Minor Dependencies for the Year 1832, Port Louis, Mauritius, May 14, 1835, PRO: T 71/643.

Society in Chagos had little in common with the Maldivian islands and Sri Lanka several hundred miles away, sharing much more with societies thousands of miles away in the Americas from southern Brazil to the islands of the Caribbean and north to the Mason-Dixon line. What these disparate places (as well as Natal, Zanzibar, Fiji, Queensland, Mauritius, the Seychelles, Réunion, and others) shared was the plantation system.[20]

With the plantation system of agriculture well established in the sugar fields of Mauritius by the end of the eighteenth century, Franco-Mauritian entrepreneurs applied the same technology in Chagos. Like societies from Bahia to Barbados and Baltimore, Chagos had all the major features of the plantation world: a mostly enslaved labor force, an agriculture-based economy organized around large-scale capitalist plantations supplying specialized products to distant markets, political control emanating from a distant European nation, a population that was generally not self-sustaining and required frequent replenishment (usually by enslaved peoples and, later, indentured laborers), and elements of feudal labor control. Still, Chagos exhibited important particularities: Unlike most of the Americas, society was based on slavery and slavery alone. Similarly, there was no preexisting indigenous population to force into labor and to replace when they were killed off. And perhaps because of its late settlement, the plantations in Chagos never employed European indentured laborers, or *engagés*.[21]

Likewise, although Chagos was an agriculture-based economy organized around capitalist plantations supplying a specialized product—copra—to distant markets, the majority of the copra harvest was not produced for European markets but was instead for the Mauritian market. The islands were thus a dependent part of the Mauritian sugar cane economy, which was itself a dependent part of the French and, later, British economies. Put another way, Chagos was a colony of a colony, a dependency of a dependency: Chagos helped meet Mauritius's oil needs to keep its mono-crop sugar industry satisfying Europe's growing sweet tooth.

From the workers' perspective, the plantations were in some ways "as much a factory as a farm," employing the "factory-like organization of agricultural labor into large-scale, highly coordinated enterprises."[22] While some of the work was agricultural in nature, much of it required the repetitive manual processing of hundreds of coconuts a day by women, men, and children in what was essentially an outdoor factory area at the center of each plantation. Still, as in the Caribbean, most of the work was performed on a "task" basis, generally allowing laborers to control the pace and rhythm of their work. Plantation owners—who mostly lived far away in Mauritius—probably viewed the (relatively) less onerous task system as the best way to maintain discipline and prevent greatly feared slave revolts, given Chagos's isolation and the tiny number of Europeans.[23]

Authority over work regimens was carefully—and at times brutally—controlled, helping to shape a rigid color-based plantation hierarchy that mirrored the one in the French Caribbean. This was also undoubtedly related to owners' fears of revolt, which in Mauritius and the Seychelles made "domestic discipline," armed militias, and police the backbone of society.[24]

Plantation owners came from the *grand blanc*—literally, "big white"—ruling class and ran the settlements essentially as patriarchal private estates. "Responsibility for the administration of the settlements, before and after emancipation, was vested in the proprietors," explains former governor Scott. "For all practical purposes, however, it was normally delegated to the manager on the spot, the *administrateur*," who was usually a relative or member of the *petit blanc*—"little white"—class, running the plantation from the master's house, the *grand case*.[25]

Petit blanc or "mulatto" submanagers and other staff recruited to Chagos helped run the islands, and were rewarded with better salaries, housing, and other privileges rarely extended to laborers. The submanagers in turn delivered daily work orders and controlled the workers through a group of *commandeurs*—overseers—primarily of African descent who were given some privileges and, after emancipation, paid higher wages.

As on slave plantations elsewhere, owners and their subordinates generally ruled largely through fear.[26] Despite the constraints on their lives, some laborers achieved a degree of upward mobility by becoming artisans and performing other specialized tasks. The vast majority of the population were general laborers of African descent at the bottom of the work and status hierarchy in a system that, as in the U.S. South, became engrained in the social order.

CHANGE AND CONTINUITY

Slavery was finally abolished in Mauritius and its dependencies in 1835. After emancipation, a period of apprenticeship continued for about four years. The daily routine of plantation life during and after the apprenticeship period changed according to the dictates of each island's administrator. On some islands, like Diego Garcia, life and conditions changed little. On others, daily work tasks were reduced in accordance with stipulations ordered by officials in Mauritius.[27]

Following emancipation, plantation owners in Mauritius began recruiting large numbers of Indians to the sugar cane fields as a way to keep labor costs down and replace formerly enslaved laborers leaving the plantations en masse; by century's end, Indians constituted a majority in Mauritius. While plantation owners in Chagos also imported Indian indentured laborers, Indian immigration was relatively light and people of African descent remained in the majority.[28] So, too, Chagos did not experience the large-scale departure of formerly enslaved Africans (in fact, at least some of those previously enslaved on sugar plantations in Mauritius appear to have emigrated to work on Diego Garcia).[29]

This demographic stability, in such contrast to Mauritius, needs explanation: Ultimately it seems to point to a change in the quality of labor relations and the development of a society rooted in the islands. Newly freed Africans and the Indian indentured laborers who joined them massively outnumbered the plantation management of mostly European descent in a setting of enormous isolation. For management, this demographic imbalance and the lack of a militia or police force like the ones in Mauritius and the Seychelles made the threat of an uncontrollable labor revolt frighteningly real. Indeed the islands had a history of periodic labor protest. In one case in 1856, four workers who had been "kidnapped from Cochin" revolted and killed an abusive manager of Six Islands.[30] These facts combined with gradual improvements in salaries and workload (especially

compared to the brutal work of cutting sugar cane) suggest that despite the continuation of the plantation system after emancipation, the general nature of labor relations probably improved noticeably in favor of the Chagossians. Even before the end of the apprentice period, a colonial investigator charged with supervising apprenticeship conditions found the work to be "of a much milder nature than that which is performed on the Sugar Plantations of Mauritius" and the workers to be "a more comfortable body of people" due "to so much of their own time being employed to their own advantage" (he also credited the archipelago's absence of both outsiders and liquor).[31] In general it appears that Chagossians gradually struck what for a plantation society was a relatively—and I stress the word *relatively*—good work bargain. Indeed more than a century later, in 1949, a visiting representative of the Mauritian Labour Office commented on the generally "patriarchal" relations between management and labor in Chagos, "dating back to what I imagine would be the slave days—by this I do not imply any oppression but rather a system of benevolent rule with privileges and no rights."[32]

A "*CULTURE DES ÎLES*"

By the middle of the nineteenth century, a succession of laws increasingly protected workers from the continuation of any slavery-like conditions. Around 1860, wages were the equivalent of 10 shillings a month, a dollop of rum, and a "twist of tobacco if times were good." Rations, which were treated as part of wages, totaled 11–14 pounds a week of what was usually rice. Two decades later, wages had increased to 16 shillings a month for male coconut laborers and 12 shillings a month for women. Some women working in domestic or supervisory jobs received more. Men working the coconut oil mills earned 18–20 shillings a month and had higher status than "rat-catchers, stablemen, gardeners, maize planters, toddy-makers and pig- and fowl-keepers." A step higher in the labor hierarchy, blacksmiths, carpenters, assistant carpenters, coopers, and junior commandeurs made 20–32 shillings.[33]

Management often paid bonuses in the form of tobacco, rum, toddy, and, for some, coconut oil. Housing was free, and at East Point the manager "introduced the system of allowing labourers to build their own houses, if they so opted, the management providing all the materials." The system apparently proved a success, creating "quite superior dwellings," with wood frames and thatched coconut palm leaves, and "a sense

of proprietorship" for the islanders.[34] By 1880, the population had risen to around 760.

"As a general rule the men enjoy good health, and seem contented and happy, and work cheerfully," reported a visiting police magistrate. Fish was "abundant on nearly all the Islands, and on most of them also pumpkins, bananas, and a fruit called the 'papaye,' grow pretty freely."[35] Ripe coconuts were freely available upon request. Anyone could use boats and nets for fishing. Many kept gardens and generally management encouraged chicken and pig raising.

Although the exploitation and export of the coconut—in the form of copra, oil, whole coconuts, and even husks and residual *poonac* solids from the pressing of oil—dominated life in Chagos, the islands also produced and traded in honey, guano, timber, wooden ships, pigs, salt fish, maize and some vegetable crops, wooden toys, model boats, and brooms and brushes made from coconut palms. Guano—bird feces used as fertilizer—in particular became an increasingly important export for the Mauritian sugar fields in the twentieth century, reaching one-third of Diego's exports by 1957.[36]

For about six years in the 1880s, two companies attempted to turn Diego Garcia into a major coal refueling port for steamer lines crossing the Indian Ocean. About the same time, the British Navy became interested in obtaining a site on the island.[37] The Admiralty never followed through, and the companies soon closed as financial failures, having faced the "promiscuous plundering of coconuts" by visiting steamship passengers and revolt from a group of imported English, Greek, Italian, Somali, Chinese, and Mauritian laborers—which required the temporary establishment of a Mauritian police post.[38]

By the turn of the twentieth century, a distinct society was well established in Chagos. The population neared 1,000 and there were six villages on Diego Garcia alone, served by a hospital on each arm of the atoll. While conditions varied to some extent from island to island and from administrator to administrator within each island group, growing similarities became the rule. Chagos Kreol, a language related to the Kreols in Mauritius and the Seychelles, emerged among the islanders.[39] People born in Chagos became collectively known by the Kreol name *Ilois*.*[40] Most considered themselves Roman Catholic—a chapel was built at East Point in 1895, followed by a church and chapels on other islands—although religious and spiritual practices and beliefs of African, Malagasy, and Indian origins remain present

* Many today prefer the term *Chagossian*. In exile, the older name has often been used as a slur against the islanders.

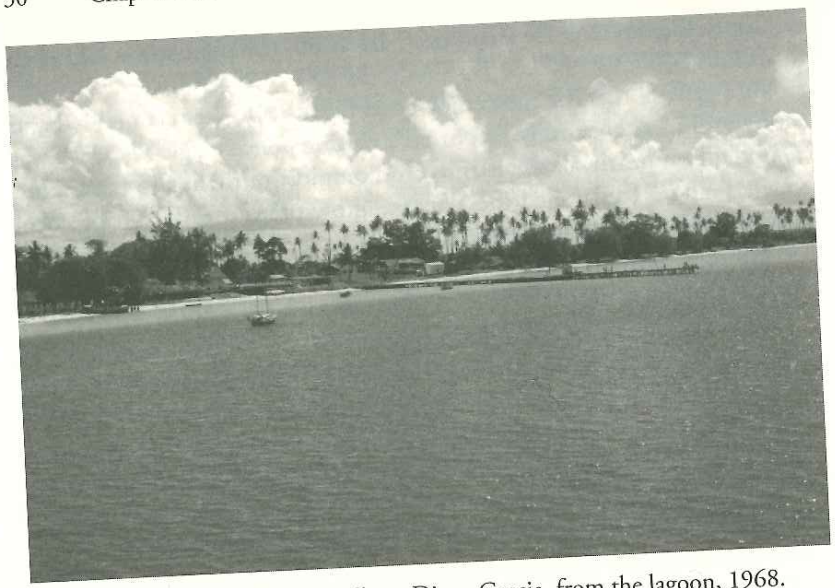

Figure 1.2 View of East Point village, Diego Garcia, from the lagoon, 1968. Photo courtesy of Kirby Crawford.

to this day. A distinct *"culture des îles"*—culture of the islands—had developed, fostered by the islands' isolation. "It is a system peculiar to the Lesser Dependencies," Scott would later write, "and it may be fairly described as indigenous and spontaneous in its emergence."[41]

KUTO DEKOKE

Most mornings, Rita rose for work at 4 a.m. "At four o'clock in the morning, I got up. I made tea for the children, cleaned the house everywhere. At seven o'clock I went for the call to work."

Each morning, she said, the manager gave work orders to the commandeurs, who delivered them to other Chagossians. There were many jobs: cleaning the camp, cutting straw for the houses, harvesting the coconuts, drying the coconuts, work for the manager and his assistant, work at the hospital, child care. Most men worked picking coconuts, 500 or more a day, removing the fibrous husk with the help of a long, spearlike *pike dekoke* knife, planted in the ground. This left the small hard nut within the coconut, which others transported to the factory center. There, like most other women, Rita shelled the interior nut, digging the flesh out with a specialized coconut-shelling knife, the *kuto dekoke.*

"I put it on the ground. I hit it. It splits. I have my knife. I scoop it in quickly, and I dump it over there: the shell on one side, the coconut flesh on the other," Rita explained.

Often she would complete the day's task of shelling 1,200 coconuts by 10:00 or 10:30 in the morning—meaning a rate of about one nut every 10 seconds. The women sat in groups, children often at their sides, amid hills of coconuts, cracked emptied shells, and bright white coconut flesh. Their hands were a concentrated swirl of movement—picking the nut, hitting it once, scoop, scoop with the knife between the flesh and the shell, flesh flying in one direction, empty shell in another. And again, pick, hit, scoop, scoop, flesh, flesh, shell. And again, pick, hit, scoop, scoop, flesh, flesh, shell. And again.

"Then there are other people who take the flesh," Rita said, "to dry it" in the sun. "When it's dry, they gather it up and put it in the *kalorifer,*" a heated shed fueled by burning coconut husks. There the flesh was fully dried, producing copra to make oil. Some of the copra was crushed on the spot in a donkey-powered oil mill. Most, Rita explained, went "to Mauritius—was sent all over."[42]

"THINGS WILL BE OVERTURNED"

On a seemingly ordinary Monday morning in August 1931, when Rita Bancoult was ten, Peros Banhos commandeur Oscar Hilaire gave his usual work orders to fifteen Chagossian men to go to Petit Baie island for a week to gather and husk 3,000 coconuts each. The fifteen refused the order.[43] Two days later they finally left for Petit Baie, but returned the same day, refusing to work any further. For the remainder of the week, the men went on strike and didn't report to work.

The following Saturday, nine islanders confronted the assistant manager, Monsieur Dagorne, about the size of a task of weeding he was giving some women. Two days later, a group again confronted Dagorne and demanded that he reduce the women's tasks. This time he complied.

A few hours later, according to a police magistrate's eventual report, one woman assaulted another "for having advised her fellow workers . . . to obey the orders of the staff and to refuse to obey those who wished to create a disorder on the estate." When the victim went to complain to the head manager, Jean Baptiste Adam, a crowd followed, yelling "threatening language" at Adam.[44]

The crowd then turned and hurried into the kalorifer. There they ripped from the wall a rod, the length of a French fathom, used to measure lengths

of rope made by elderly, infirm women working from their homes and paid by the length. They rushed back to Monsieur Adam with the rod and protested that it was a "false measure."[45] Moments later they returned to the kalorifer and placed a new measure on the wall—this one about 8 French inches shorter.

The next morning, the same group showed up at the center of the plantation and told the women to stop shelling coconuts. The group threatened to stop all work if Monsieur Adam did not add an extra laborer to the workforce at the kalorifer. The manager agreed to the change. Later they forced him to reduce the women's weeding and cleaning tasks, and still, all but two of the women walked off the job. The men told the manager they would refuse to unload and load the next cargo ship to arrive at Peros unless he and Dagorne were on the ship when it returned to Mauritius.

The insurgency continued into September. "Adam had lost all authority over these men," the police magistrate later reported. After a Chagossian drowned to death while sailing from Corner Island to another islet to collect coconuts, his partner and a crowd of supporters entered the manager's office, barred the exits, and forced him to sign a document granting her a widow's pension. They also forced him to give her free coffee, candles, sugar, and other goods from the company store to observe the islanders' traditional mourning rites.[46]

Over the next two weeks, leaders of the insurgency twice made Dagorne buy them extra wine from the company store. One leader, Etienne Labiche, again protested the task assigned to some women. "You are going on again because I am remaining quiet," Labiche challenged the managers in Chagos Kreol, according to the police magistrate. "We shall see when the boat arrives. *Sa boule-la pour devirer.*" Things will be overturned. Within minutes of issuing the challenge, the islanders had left work for the day. Days later Labiche and some supporters forced Dagorne to reveal that he was living with a mistress. Adam suspended Dagorne on the spot for "scandalous conduct."[47]

Labor unrest continued into a second month, with Labiche, Willy Christophe, and others forcing the manager to lower the price of soap at the company store when they suspected price gouging and Adam was unable to show them a price invoice. During the protest a few approached the store's back door. The island's pharmacist pulled out a revolver and "threatened to blow out the brains of the first man who tried to enter the shop."[48]

When two weeks later the cargo ship *Diego* finally came within sight on its voyage from Mauritius, the blast of a conch shell reverberated through the air as a signal among the islanders. Manager Adam went aboard the ship and returned to shore minutes later with his brother, the captain of the *Diego*. "The whole of the population met them at the landing stage," the magistrate's report recounts, "uttering loud shouts, and demanding to see the invoice" listing the prices for articles sold at the shop. The crowd accompanied Adam and his brother to the manager's house "shouting and threatening, climbed up the balcony stairs, and even into his dining room." There Adam unsealed the invoice. Someone in the crowd looked over Adam's shoulder and read the prices aloud. "Having noticed a mention in the official letter about a case of tobacco (plug) and the rise in the price . . . the crowd demanded the return of the case to Mauritius."[49]

At the next morning's call for work, none of the men appeared. When the captain of the *Diego* asked them why they were not coming to work, they told him they would only work if his brother and Dagorne were sent back to Mauritius. A standoff ensued. The ship eventually left with its cargo aboard, but with Manager Adam and Dagorne still in Peros.

Three months and two days after the beginning of the insurgency, Mauritian magistrate W. J. Hanning arrived in the atoll along with an armed guard of ten police constables, two police inspectors, and two noncommissioned officers. Hanning and Police Inspector Fitzgibbon charged, convicted, and sentenced 36 Chagossian men and women for offenses including "larceny soap," "larceny rope measure," "extortion of document," "coalition to prevent unloading cargo," and "coalition to prevent work." Two were convicted of "wounds & blows." Punishment for the charges of larceny and extortion ranged from three to twelve months' hard labor. Labiche received a total of 30 months' hard labor; others got up to 36 months. Hanning sent three commandeurs back to Mauritius and mandated the reading of the names of the convicted and their punishments throughout the rest of Chagos and the other Mauritian dependencies.[50]

"I have the honour to state that quiet has been restored at Peros," Magistrate Hanning wrote. Although he thought the insurgents' grievances "imaginary" and found the islanders "economically many times better off than the Mauritian labourer," he concluded his report by calling on the plantation owners to "exercise some leniency" over markups on prices for "articles of necessity" sold at the company store.[51]

GROWING CONNECTIONS

In 1935, new owners in Chagos established the first regular steamship connection between Mauritius and Chagos after completing the consolidation

Figure 1.3 Schoolchildren in Chagos, 1964. Photographer unknown.

of ownership over the various plantations, which had begun in the 1880s. Previously the islands sent copra, oil, and other goods to Mauritius and received supplies on twice-a-year boats. The new four-times-a-year steamship system decreased travel times significantly and provided a regular connection between Diego Garcia and the northern islands of Peros Banhos and Salomon, over 100 nautical miles away. Peros to Salomon transportation was by sailing ship and later motorboat. Transportation within each group and around Diego Garcia's lagoon was generally by small, locally built sailboats, and later by motorboats. News from the outside world came primarily from illustrated magazines and other reading materials supplied by the transport vessels visiting Chagos.

At the beginning of the twentieth century, Chagos had been so isolated that at the start of World War I, management on Diego Garcia supplied the German battleship *Emden* with provisions before learning that Britain and its colonies were already at war with Germany. By contrast, thirty years later during World War II, Diego Garcia became a small landing strip for Royal Air Force reconnaissance aircraft and a base for a small contingent of Indian Army troops. At war's end, the troops went home, leaving behind a wrecked Catalina seaplane that became a favorite playground for children.

By the mid-twentieth century, Chagos had moved from relative isolation to increasing connections with Mauritius, other islands in the Indian Ocean, and the rest of the world. Copra and coconut oil exports were sold in Mauritius and the Seychelles, and through them in Europe, South Africa, India, and Israel. Wireless communications at local meteorological stations connected the main islands with Mauritius and the Seychelles. Shortwave radios allowed reception of broadcasts from at least as far as the Seychelles and Sri Lanka.[52]

The Mauritian colonial government started showing increasing interest in the welfare of Chagos's inhabitants and its economy. Specialists sent by the government investigated health and agricultural conditions. With the help of their reports, the government established nurseries in each island group, schools, and a regular garbage and refuse removal system reported to be better than that in rural Mauritius.[53] Water came from wells and from rain catchment tanks. Small dirt roads traversed the main islands, and there were a handful of motorbikes, trucks, jeeps, and tractors.

"NOTHING WE HAD TO BUY"

By the 1960s, everyone in Chagos was guaranteed work on the plantations and pensions upon retirement.[54] The vast majority of Chagossians still worked as coconut laborers. A few male laborers rose to become foremen and commandeurs, and a few women were also commandeurs. Other men became artisans working as blacksmiths, bakers, carpenters, masons, mechanics, and in other specialized positions.

Wages remained low and paternalistic: Men harvesting coconuts earned about £2 a month, while women shelling the nuts earned less than half that. Artisans, foremen, and commandeurs earned six times what female laborers earned, and those in privileged "staff" positions earned considerably more. No matter the position or the gender, workers' monthly rations included about £3 worth of rice or flour, coconut oil, salt, lentils, fish, wine, and occasionally vegetables and pork.[55] Work benefits also included construction materials, free firewood, regular vacations—*promne*—with free passage to Mauritius, burial services, and free health care and medicines. Workers continued to occupy and receive land near their homes. Many used the land for gardens, raising crops like tomatoes, squash, chili peppers, eggplant, citrus and other fruits, and for keeping cows, pigs, goats, sheep, chickens, and ducks.

After the day's work task was completed, generally around midday, Chagossians could work overtime, tend to their gardens and animals, fish, or

hunt for other seafood, including red snapper, tuna, and other fish, crab, prawns, crayfish, lobster, octopus, sea cucumber, and turtles.

"Whatever time it was, you went to your house and your day marched on," Rita recounted. "A commandeur passed by, asked you if you were going to do overtime. So then you went to work for another day's work. . . . If you didn't go do it, no one made you.

"But," she continued, "our money, at the end of the month we got it, we just put it in our account. And what we earned from overtime, that we used for buying our weekly supplies, understand?"

On payday people went to the store and "the women would go to buy a little clothing. . . . That was the only thing we had to buy: our clothing, cloth to make clothing, sugar, milk.

"Apart from that, there was nothing we had to buy. Apart from cigarettes, which if you smoked, you needed to buy. There was beer at the shop to buy. There was rum to buy, but we made our own drink," Rita added, referring to Chagossians' own fermented drinks of dhal-based *baka* and palm toddy *kalu.*

"Then, you know Saturday *laba*," Rita explained, "Saturday what we did, with our coconut leaf brooms, we swept the court of the manager's house, everywhere around the chapel, the hospital, everywhere. When we finished that, then we'd go to the house. Around nine o'clock, we finished and left. Then we had Saturday, Sunday to ourselves. Monday, then we went back to hard work."

But on Saturday "the house, all the family, everyone was there. We had some fun. . . . We had an accordion, later we had a gramophone. . . . On Saturday, Saturday night, we had our *sega.*"

Although the long-standing popular institution featuring singing, playing, and dancing to sega music is found on islands throughout the southwest Indian Ocean, Chagos and most other islands had their own distinctive sega traditions. In Chagos, segas were an occasion for entire island communities to gather. On Saturday nights everyone met around a bonfire in a clearing. Under the moon and stars, drummers on the goat hide–covered *ravanne* would start tapping out a slow, rhythmic beat. Others would begin singing, dancing, and joining in on accordions, triangles, and other percussion and string instruments.

The sega allowed islanders to sing old traditional songs or their own originals, which were often improvised. Most segas followed a call-and-response pattern, with soloists singing verses, supported by dancers, musicians, and onlookers who joined in a chorus, providing frequent shouts, whistles, and outbursts of encouragement. In Chagos, segas were

filled with themes of love, jealousy, separation, and loss. Much as in the blues and other musical traditions, the sega was an important mode of expression and a way to share hardships and gain support from the community.

"The segas," Rita recounted, "at night, people opened their doors, everyone came out, beat the drum, sang, danced. And we carried on until early in the morning. Early in the morning, six o'clock. . . . six o'clock, until seven o'clock too, and then even the old ones went home."

I asked Rita if she danced to the sega. She said, "Yes."

I asked if she sang sega. She said, "Yes."

"What did you sing?" I asked.

"Everything. Those that I knew, I sang. I know how to sing sega very well. . . . I'm full of segas that I know," said Rita. And then she started to sing . . .

My father, you're yelling "Attention passengers! Embark passengers!"
This madame, her husband's going but she's staying.

Crying, madame, enough crying madame.
On the beach, you're crying so much,
The tears from your eyes are drowning the passengers list.

Crying, madame, even if you cry on the beach, even if you cry
Capitan L'Anglois isn't going to turn the boat around to come get you.

O li la e, O la e, O li la la.
O li le le, O li le la la.

L'Anglois answer me, L'Anglois, my friend
Answer me, L'Anglois, this sega that you left down in Chagos.

"FRENCH COASTAL VILLAGES"

"The people of Île du Coin were exceptionally proud of their homes," Governor Scott wrote of Rita's Peros Banhos after World War II. "The gardens usually contained an arrangement of flower-beds and a vegetable patch, almost always planted with pumpkins and loofahs trained over rough trellis-work, with a few tomato plants and some greens."[56]

By that time Salomon had a large timber industry for export and was known as the home of Chagos's boat building industry, widely renowned in the southwest Indian Ocean. Three Brothers, Eagle Island, and Six Islands had been settled for most of the nineteenth and early twentieth centuries before the plantation company moved their inhabitants to Peros and Diego to consolidate production. Eagle's population rose to as many as 100 and was "regarded by its inhabitants," according to Scott, "as a real home," with a "carefully tended" children's cemetery and evocatively named places like Love Apple Crossing, Ceylon Square, and Frigates' Pool.[57]

Looking on "from the seaward end of the pier," Scott compared Diego Garcia's capital East Point to a French coastal village: "The architecture, the touches of old-fashioned ostentation in the *château* and its relation to the church; the disposition of trees and flowering shrubs across the ample green; the neighbourly way in which white-washed stores, factories and workshops, shingled and thatched cottages, cluster round the green; the lamp standards along the roads and the parked motor-lorries: all contribute towards giving the village this quality."

Clearly charmed by the islands, Scott continued, "The association of East Point with a synthesis of small French villages, visited or seen on canvas, was strengthened by the warm welcome of the islanders, since their clothes and merry bearing, and particularly the small, fluttering flags of the school-children, were wholly appropriate to a *fête* in a village so devised."[58]

"Funny little places! Indeed they are. But how lovely!" wrote Scott's predecessor as governor, Sir Hilary Blood. "Coconut palms against the bluest of skies, their foliage blown by the wind into a perfect circle; rainbow spray to the windward where the South-East Trades pile in the Indian Ocean up on the reefs; in the sheltered bays to the leeward the sun strikes through shallow water to the coral, and emerald-green, purple, orange, all the rich colours of the world, follow each other across the warm sea," glowed Sir Hilary. "Its beauty is infinite."[59]

A WARNING

In 1962, ownership of the islands changed hands, purchased by a Mauritian-Seychellois conglomerate calling itself Chagos-Agalega Ltd. Around the same time, Chagossians saw the introduction of a more flexible labor supply revolving around single male laborers from the Seychelles, as well as the "drift" of permanent inhabitants from Chagos to Mauritius, drawn by the allure of Mauritius's "pavements and shop-windows, the cinemas and

football matches, the diversity of food and occupation." Scott compared the movement to the migration of people in Great Britain from villages to cities after World War I, but emphasized, "it is still only a drift."[60]

On the eve of the expulsion that no one in Chagos could have anticipated, Mauritian historian Auguste Toussaint wrote, "The insularity of this archipelago is total and, in this regard, Chagos differs from the Mascarenes and the Seychelles, which are linked with the rest of the world. The conditions of life there are quite specialized and even, believe me, unique."[61]

"The life that I had, compared to what I am experiencing now, David. All the time, I will think about my home because there I was well nourished and I didn't eat anything preserved or stored. We ate everything fresh," Rita told me.

"Doctors know that when we left the islands—they know—your health here isn't the same. Here, we eat frozen food all the time. . . . But *laba*, no. Even if something is only three or four days old, it isn't the same as fresh, David. . . .There we ate everything fresh."

"There, I tell you, you didn't have strokes, you didn't have diabetes. Only rarely did an old person die. A baby, maybe once a year, an infant might die at birth, that's it. Here, every day you hear about—I'm tired of hearing about death."

"Yes," I said softly.

"It's not the same, David. . . ." Rita continued, "I—how can I say this—I didn't leave there because the island closed. . . . I didn't realize" that the islands were being closed down. "And then I had a little girl named Noellie."

Writing in 1961, Governor Scott concluded his book with a sympathetic (if paternalistic and colonialist) description of the Chagossians. In it, one hears a chilling warning from one who as governor of Mauritius may well have known about developing plans aimed at realizing Lieutenant La Fontaine's original vision for harboring a "great number" of vessels in Diego Garcia's lagoon:

> It must also be recognized, however, that ignorance of the way of life of the islanders might open the way to attempts to jerk them too rapidly into more highly organized forms of society, before they are ready. They have never been hurried. Their environment has

probably inoculated them with an intolerance towards hurry. . . . This is far from being a plea to make the Lesser Dependencies a kind of nature reserve for the preservation of the anachronistic. It is, however, very definitely a plea for full understanding of the islanders' unique condition, in order to ensure that all that is wholesome and expansive in the island societies is preserved.[62]

CHAPTER 2

THE BASES OF EMPIRE

Around Washington, DC naval circles, Stu Barber was known as being "exceptionally far-sighted."[1] Two decades before President Carter announced his foreign policy doctrine—the consequences of which the world is feeling to this day—that the United States would intervene militarily in the Persian Gulf against threats to its interests, Stu proposed his own version. He called it the "South Atlantic and Indian Ocean Monroe Doctrine and Force." Developed during the 1960 presidential election campaign, Stu intended the idea "to be fed, somehow, to both Presidential candidates."[2]

During World War II, Stu served in naval intelligence on Ford Island, Hawai'i. Rising to the rank of lieutenant commander, he spent most of his time tracking and analyzing statistics from land-based air combat operations in the Pacific—combat flights launched primarily from island bases. After the war, Stu worked for the war housing authority before returning to the Navy as a civilian analyst.

Working at the Pentagon, he helped found a somewhat obscure new office, the Long-Range Objectives Group, in 1955. Called "Op-93" by the Navy bureaucracy, the Group was charged with planning the Navy's long-term technological, weapons, and strategic needs. The Group's first annual report declared it "mandatory" to have a "courageous approach" to its mission.[3] According to its highest-ranking staff members, "the brains of the outfit" belonged to Stu.[4]

Stu began work on his Strategic Island Concept idea around 1958. The premise of the plan was his recognition that in the age of decolonization, local peoples and the governments of newly independent nations were increasingly endangering the viability of many of the Navy's overseas bases. One of his first memoranda warned that in the event of hostilities in the Indian Ocean region, "access via Suez, and undisputed access via Singapore or through the Indies may be denied, as may air communications other

Annex 127

Note Verbale dated 6 January 2009 from UK Foreign and Commonwealth Office to Mauritius High Commission, London, No. OTD 01/01/09

NOTE NO. OTD 01/01/09

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the High Commission of the Republic of Mauritius and with reference to the High Commission's Note MHCL 886/1/03 V.17 of 23 December 2008 has the honour to confirm that the meeting of officials on the Chagos Archipelago/British Indian Ocean Territory will take place at the Foreign and Commonwealth Office on Wednesday 14 January at 10.00 am.

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland thanks the High Commission of the Republic of Mauritius for details of the Mauritian delegation and has the pleasure to inform the High Commission that the composition of the delegation of the United Kingdom will be:

Head of Delegation:

Mr Colin Roberts, Director of Overseas Territories Directorate and Commissioner for the British Indian Ocean Territory, FCO

Members:

Mr Andrew Allen, Overseas Territories Directorate, FCO
Mr Doug Wilson, Senior Assistant Legal Adviser, FCO
Mr John Murton, High Commissioner Port Louis
Ms Joanne Yeadon, Overseas Territories Directorate, FCO
Mr Ashley Smith, Assistant Director, Asia-Pacific, Ministry of Defence
Ms Rebecca Davies, Africa Department, FCO

The Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland would like to reaffirm that the United Kingdom has no doubts about its sovereignty over the British Indian Ocean Territory. With this in mind, the Foreign and Commonwealth Office would like to propose the agenda attached to this Note Verbale.

The Foreign and Commonwealth of the United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the High Commission of the Republic of Mauritius the assurance of its highest consideration.

FOREIGN AND COMMONWEALTH OFFICE

LONDON

6 January 2009

PROPOSED AGENDA FOR MEETING ON WEDNESDAY 14 JANUARY 2009

i) Delegation Introductory Statements

ii) UK/US defence needs to 2016 and beyond

iii) Possible Treaty formalising the UK undertaking to cede the Territory when no longer required for defence purposes.

iv) Fishing rights/protection of the environment

v) Co-operation on continental shelf

vi) Future visits to the British Indian Ocean Territory by Chagossians

vii) Conclusions.

Annex 129

Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, "Meeting of Officials on the Chagos Archipelago/British Indian Ocean Territory held at the Foreign and Commonwealth Office, London, Wednesday 14 January 2009, 10 a.m.", 23 January 2009

CONFIDENTIAL

Meeting of Officials

on the

Chagos Archipelago/British Indian Ocean Territory

held at

the Foreign and Commonwealth Office, London

Wednesday 14 January 2009

10. a.m.

Introduction

Following the meetings the Hon. Prime Minister of Mauritius had with his British counterpart in Kampala, Uganda in **2007** and subsequently in London in June 2008, both Prime Ministers discussed the issue of the Chagos Archipelago. Dr the Hon. Navinchandra Ramgoolam had proposed that both Mauritius and UK should start discussions on the issue of Chagos Archipelago including Diego Garcia.

Immediately after the House of Lords judgment delivered on the 22nd of October 2008 in favour of the UK Government over an appeal by the latter against the judgment of the Court of Appeal in favour of the Chagos Islanders, who questioned the validity of the BIOT Orders 2004 preventing their return to their homeland, the Government of Mauritius proposed that the 1st Meeting at Officials' level between Mauritius and the UK be held as early as possible.

The first meeting of Officials of both countries was held on 14 January 2009 at the Foreign and Commonwealth Office, London to discuss the issue of the Chagos Archipelago.

Attendance

From the British Side:

Head of Delegation

Mr Colin Roberts, Director of Overseas Territories Directorate and Commissioner for the BIOT, Foreign and Commonwealth Office (FCO)

Members:

Mr Andrew Allen, Overseas Territories Directorate FCO
Mr Doug Wilson, Senior Assistant Legal Adviser, FCO
Mr John Murton, British High Commissioner, Mauritius
Ms Joanne Yeadon, Overseas Territories Directorate, FCO
Mr Ashley Smith, Assistant Director, Asia Pacific, Ministry of Defence
Ms Rebecca Davies, Africa Department, FCO

From the Mauritius Side:

Head of Delegation:

Mr Suresh C. Seeballuck, Secretary to Cabinet and Head of Civil Service

Members:

Mr Anand P. Neewoor, Ambassador, Secretary for Foreign Affairs, Ministry of Foreign Affairs, Regional Integration and International Trade
Mr Dhiren Dabee, Solicitor-General
Mr Satyajit Boolell, Parliamentary Counsel
H.E. Mr A. Kundasamy, High Commissioner of Mauritius in London
Mr Bijayeduth Gokool, First Secretary, Ministry of Foreign Affairs, Regional Integration and International Trade
Mr Ian Brownlie, Legal Consultant

The **Agenda items** for the Meeting agreed by both sides were:

1. Delegation introductory statements
2. Legal position of Mauritius
3. UK/US defence needs to 2016 and beyond
4. Resettlement of the Chagos Archipelago
5. Possible Treaty formalising the UK undertaking to cede the territory when no longer needed for defence purposes
6. Access to natural resources of the maritime zone (including fishing rights/environmental protection)
7. Co-operation on the continental shelf
8. Future visits to the British Indian Ocean Territory by Chagossians
9. Conclusions.

Mr. Colin Roberts

Let me first of all welcome you to this meeting of today. I will not enter into the full history of the topic but a mere background to the meeting today. It is a meeting following the meeting the Prime Ministers of our two countries - Mr Brown and Dr Ramgoolam. During their exploratory talks on the BIOT, they had agreed to hold talk at officials' level. I have five points that I would like to put forward. These are:

(a) Britain attaches extremely important value to the friendly relations with Mauritius in view of its long association with the island.

(b) Clear the British position to this talk. We are not prepared to negotiate on the issue of sovereignty. Britain has no doubt over its sovereignty over the BIOT. We have, however, made clear to cede the BIOT when no longer required for defence purposes. I can repeat that to day.

(c) To explore whether there are areas where both sides see merit without prejudice to our sovereignty positions.

(d) International security - one which is challenging and unlikely to change in the future.

(e) In recent years it seems that the environmental consideration of BIOT has grown considerably probably as a result of not having a settled population. The value has grown up particularly in coral and marine environment. It is the fragility of the ecosystem that we have in our mind in relation to the territory.

Let me tell you, the Chagossians' movements do have political tractations in the United Kingdom. We can say more on these issues as we go along the discussions.

Mr Seeballuck (Head of delegation of Mauritius)

Let me on my side thank the British Government for the warm welcome extended to the Mauritius delegation to this meeting. We are grateful to you for the inclusion in the agenda of the items proposed by Mauritius. Allow me also to evoke the privileged relationships that exists between our two countries and which is characterised by the strong historical, political, economic and cultural ties.

Mr Chairman

Let me first introduce my delegation to you. I have on my right, the Secretary for Foreign Affairs, Ambassador Neewoor from the Ministry of Foreign Affairs, High Commissioner Cundasamy on my left, Mr Dabee, Solicitor General, Mr Boolell, Parliamentary Counsel, Mr Ian Brownlie, our legal Consultant and Mr Gokool, First Secretary of the Ministry of Foreign Affairs.

The discussions which we are about to engage is the outcome of a mutually agreed course of action mapped out by our respective Heads of States. It is a matter on which we have each other been speaking to others rather than to each other. We therefore welcome this opportunity. We open today, a new chapter in the UK/Mauritius relations and hope that our present and future discussions will be frank and constructive and will pave the way for our two Governments to define their future *rapport* on the question of the Chagos Archipelago in a meaningful manner and hopefully come to a mutually acceptable undertaking.

Mr Chairman

On behalf of my delegation, I can safely state that we are approaching this round of dialogue with a very open mind and conscious that if we are to move ahead, broad areas of agreement have to be established. In any event we start with the premise that the long term interests of both our countries are not divergent.

With these few words we are happy to move on to the agenda items.

Mr Roberts

I thank you for the kind words and if there is no objection then we may have a coffee break.

Mr Seeballuck

We have no objection.

[Tea Break]
Discussion resumes after coffee break.

Mr Roberts

May I ask Secretary about your decision to include agenda item No. 1 for discussion.

Mr Seeballuck

Thank you, Chair, for asking this question. We have proposed that the item "Legal Position of Mauritius" be inserted in the Agenda as we feel that it will set in a proper context the talks we are having. With your permission, I will give the floor to Mr Ian Brownlie who will address this issue.

Mr Ian Brownlie

I am grateful to have this opportunity to express the position of Mauritius as regard the sovereignty issue. I will be succinct and it will take about 20 minutes.

Mr Chairman, Mauritius is fully aware of the significance of the opening of a dialogue between the two Governments and looks forward to achieving results involving mutual benefits.

In order to have a constructive dialogue it is necessary for the UK side to understand the legal framework within which the position of Mauritius is to be assessed.

It is the position of Mauritius that her enjoyment of sovereignty in respect of the Chagos Archipelago has been deferred as a result of the policy of the UK Government and this without any legal justification.

In order to effect a restoration of legality in face of the *status quo* created in 1968 Mauritius considers that the following principles are applicable:

(a) recognition of the sovereignty of Mauritius in respect of the Chagos Archipelago;
(b) the restoration of the legal authority of Mauritius, involving political and administrative control, management of natural resources, and protection of the environment;
(c) freedom of access for citizens of Mauritius and the resettlement of individuals displaced in disregard of recognised standards of human rights;
(d) the recognition on the part of Mauritius of considerations of security in respect of Diego Garcia and adjacent maritime areas; and
(e) the payment of compensation as a necessary part of the restoration of legality including recompense for unjust eviction.

These principles are rooted in public international law and the consequences of applying the principles would include the payment of compensation as a part of the restoration of legality.

This represents our summary of the position in international law.

The foundations for this position are two-fold. First, the unit of self-determination relevant to the process of decolonisation was the Territory of Mauritius and its dependencies, which included the Chagos Archipelago.

In the opinion of the Government of Mauritius the excision of the Chagos islands prior to independence was an act incompatible with the principles of the UN Charter and also with general international law.

The key General Assembly resolution was Resolution 2066 (XX), of 16 December 1965 and the text of Resolution 2066 is very significant and it stands out as an affirmation of the Territory of Mauritius as a single unit of self-determination. It reads and I quote:

'The General Assembly,

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

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

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

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

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

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

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

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

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

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

The terms and determinations of Resolution 2066 are reinforced by the content of Resolution 2232(XXI) adopted on 20 December 1966, and also by the content of Resolution 2357 (XXII) adopted on 19 December 1967.

Both resolutions provide in the operative paragraphs as follows:

1. ***Approves*** *the chapters of the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to these Territories;*

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

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

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

The majority of member states of the United Nations recognised the title of Mauritius to the Chagos Archipelago. Mauritius has received support from the OAU as it was and the Non-Aligned Movement.

The 36th Ordinary Session of the OAU Assembly of Heads of State and Government held from 10 to 12 July 2000, adopted a decision AHG/Dec. 159 (XXXVI) wherein the delegations represented:

'1. ***EXPRESS CONCERN*** *that the Chagos Archipelago was unilaterally and illegally excised by the colonial power from Mauritius prior to its independence in violation of UN Resolution 1514;*

2. ***NOTE WITH DISMAY*** *that the bilateral talks between Mauritius and UK on this matter has not yet yielded any significant progress;*

3. ***URGE*** *that UK Government immediately enter into direct and constructive dialogue with Mauritius so as to enable the early return of the Chagos Archipelago to the sovereignty of Mauritius.'*

The title of Mauritius has been recognised by the leading states of the region including India.

In conclusion, the continuing possession of the Chagos by the United Kingdom since the independence of Mauritius has no basis in law and has not been recognised by a large number of States, and, in particular, by States in the region.

This exposition on behalf of the Government provides a framework for talks and in our view it is a framework which is not inherently opposed to the possibilities of agreements on a bilateral basis, relating to the exercise of sovereign rights on the part of Mauritius at least for certain purposes. I refer, for example, to resettlement, rehabilitation of the economy of certain islands, protection of the environment, fishing rights, and the resources of the continental shelf.

And I would like to emphasize that the Government of Mauritius fully appreciates the constructive features of the agenda proposed by the FCO. At the same time the UK delegation will understand that such agreements will be without prejudice to the issue of the title of Mauritius to the Chagos Archipelago.

Thus far I have focussed on the position within the context of international law and the Charter of the United Nations.

I turn now to an alternative legal framework, represented by the talks at Lancaster House in 1965, and the arrangements which resulted. These talks were exclusively devoted to the granting of Independence to Mauritius. It must be clear that the consent to the excision of the Chagos is regarded by the Government of Mauritius as invalid and this for two reasons. First, the Mauritian leaders did not have constitutional authority to conclude an agreement on excision and, secondly, such an agreement was incompatible with the principles of the UN Charter relating to self-determination and the modalities of decolonisation.

But, whatever the legal position, the Lancaster House talks do provide an alternative framework, which represents the position adopted by successive Governments of the United Kingdom over along period of time.
And this British position includes a series of inducements offered to the delegation of Mauritius at the Lancaster House talks. The existence of these promises is of obvious relevance for present purposes.

The records available contain a substantial quantity of evidence that the British side offered promises of reversionary rights to the Mauritian delegates. This is important in our view because, even if the Mauritius delegation gave their consent to the proposals for excision of the Chagos Archipelago, such proposals were accepted on the basis of certain understandings.

The evidence of the promises of reversion includes the following episodes.

First, the Meeting in Lancaster House on 23 September 1965

The record available includes the following significant paragraph:

Paragraph 22:

Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr Ramgoolam, Mr Bissoondoyal and Mr Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence and understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

(vi) *the British Government would use their good offices with the US Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable;*
(a) Navigational and meteorological facilities;

(b) Fishing Rights;

(c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) *that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;*

(viii) *that the benefit of any minerals or oil discovered in or near the Chagos Archipelago [REPEAT] should revert to the Mauritius Government.*

In the rehearsal of the terms and conditions points (vi), (vii) and (viii) stand out. In particular, point (vii) makes express reference to the contingency of a general reversion. [This text will be distributed by the way]

Second, I come to the British Record of the Final Meeting in London on Defence Matters

The record of the meeting on 23 September 1965 was transmitted to the Government of Mauritius under cover of Colonial Office Despatch No.423, dated 6 October 1965, the text of which was as follows:

'I have the honour to refer to the discussion which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of UK/US Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers. This record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr Mohamed, as being an accurate record of what was decided.

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)-(viii) in paragraph 22 of the enclosed record.

3. Points (i) and (ii) of paragraph 22 will be taken into account in preparation of a first draft of the Defence Agreement which is to be negotiated between the British and Mauritius Government before Independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

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

Paragraph 6 refers to points (vii) and (viii) of paragraph 22 of the British record of the meeting in Lancaster House on 23 September 1965.

Lastly, we come to telegram No. 313 from the Secretary of State for the Colonies dated 19 November 1965

This Telegram has a significant place in the sequence of documents. The text is as follows:

'UK/US defence interests.
There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraph 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions over sugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not therefore arise unless and until the islands were no longer required for defence purposes and were returned to Mauritius.'

(Passed to Ministry of Defence for transmission to Mauritius).

In this context it is necessary to accept the link between the British proposals of 1965 and the subsequent undertaking to cede the Chagos Archipelago. This link is expressly accepted by the British Government. Thus, in a reply in the House of Commons on 11 July 1980, the British Minister observed:

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

Of course, a policy of reversion would do no more than restore to Mauritius the enjoyment of the rights of sovereignty which inhere in Mauritius, legally speaking, in any event. However, such undertakings do involve an indirect recognition by the United Kingdom of the legal interest of Mauritius in the Chagos Archipelago.

The conclusion to be drawn from the evidence relating to a reversion is that, even within the framework of the Lancaster House talks, promises were given which formed part of the inducements offered to the Mauritian leaders seeking independence. It is thus in our view entirely fitting if the present talks were to involve offers from the UK side which reflect the content of the promises which appear in the record of the 1965 talks.

In closing, the Government of Mauritius wishes to emphasise that the legal framework adhered to is by no means incompatible with the conclusion of agreements relating to access to natural resources, the modalities of resettlement, and defence requirements, which would be without prejudice to the sovereignty of Mauritius and the conflicting claim of the United Kingdom.

Mr Roberts

Thank you for elaborating on the item and Mr Secretary do you have anything to add on this issue?

Mr Seeballuck

Chair, we have made our legal position known. As we are not in the presence of an adjudicator that could adjudicate the issue of sovereignty, we could pursue discussions on other items of the agenda on the basis that these discussions will be without prejudice to our sovereignty over the Chagos Archipelago.

Mr Roberts

I would reply by reiterating the British position on sovereignty over the BIOT. I would refer to the Treaty of Paris of 1814 and go on with other references to establish the fact that the BIOT was and is part of the United Kingdom territory. However, I agree that the discussions should be without prejudice to our respective positions on the BIOT/Chagos Archipelago. As a matter of fact we have prepared a draft Communiqué that summarises our discussions and that can be seen by public.

Mr Seeballuck

Chair, with your permission, I now invite the Secretary for Foreign Affairs, Amb. Neewoor to address a few words.

Amb Neewoor

Chair, the Head of our delegation spoke about the position of Mauritius and I would like to elaborate on that. But first of all let me also stress on the excellent bilateral relations that both countries have continued to enjoy and which continue to consolidate for mutual benefits. The purpose of this meeting was initiated during the Commonwealth meeting in Kampala, Uganda, where our Prime Minister, Dr N. Ramgoolam met with your Prime Minister, in the margin of the Commonwealth meeting. Among other issues regarding the Chagos Archipelago, they discussed the UK/US agreement. As you are aware, one of the conditions of the lease deals with the automatic renewal after 2016. The main position of Mauritius has been that the end of the lease should also bring the reversion of the territory to Mauritius. You would recognise that all things revolve on the sovereignty over the Chagos Archipelago. This is the "mother" of all issues. We can discuss it not necessarily now but it has to be there. The position of Mauritius is that everyone wants to see the Chagos Archipelago revert back to Mauritius. It is no doubt that the situation is very different from 1965. At that time we were divided on whether Mauritius should be independent or not. 44% voted against independence. This was understandable because of certain apprehensions. Today the situation is different.

I now refer to the condition in the lease. Paragraph (22) of the Agreement of 1976, entitled Duration and termination reads as follows:

> *"This Agreement shall continue in force for as long as the BIOT Agreement continues in force or until such time as no part of Diego Garcia is any longer required for the purposes of the facility, whichever occurs first."*

This situation is very complex in the sense that when no 'longer required' pre-supposes that at some stage total peace will prevail and the earth will turn into heaven.

There is no definite termination period in the lease. It is left to be indefinite. This does not seem to be within the legal norm governing lease agreements. We look forward to a finality of the lease come March 2016, which is not far from now.

Mr Roberts

I thank you for the clarification but I would reiterate on my opening remarks that we are ready to talk about issues in relation to BIOT but I do not have a mandate to discuss the substance of sovereignty issues except for the consideration that it will be returned when no longer required.

So this is the beginning of a process. You raise a number of points. We understand the complexity and sensibility of these. We can discuss other items on the agenda.

Mr Seeballuck

As I have indicated, we are prepared to discuss other items on the agenda without prejudice to our position of sovereignty. And I would propose that we take items (3) and (5) together.

Mr Roberts, Chairman

We agree.

On item 3, let me flag on two points:

(a) Recalling earlier remarks, UK expects BIOT to be needed for the *'foreseeable future'*

(b) UK does not see 2016 as a *significant date*. At some time between now and 2014 there will be a process by which we will continue to live with the current agreement. That will be a simple process. When that will be reached we will make it public. That is as much as I can say at this moment.

Mr Seeballuck

Chair, our former and present Prime Ministers have stated that we fully understand the security concerns of the West. We are not oblivious of the needs of the West with reference to the military base. We have already given

that undertaking to Britain and United States of America. So we are not asking for dismantling of the base come 2016.

I wish here to refer to a letter dated 28 March 2008 which our Prime Minister addressed to the British Prime Minister wherein he stated that he fully understands the security concerns of the West in relation to the Chagos Archipelago. I wish to refer to another letter dated 14 May 2002 when our former Prime Minister wrote to the US President stating that:

> *"We are fully conscious of the importance of Diego Garcia as an uninhabited and isolated strategic military installation for the United States and we do not propose any change with regard to your continued use of Diego Garcia."*

As Mr Brownlie has stated, since 1980, and on several occasions afterwards, successive British Governments have indicated that it is the defence interest of the West that has been dictating their positions on the issue of the Chagos Archipelago. The position of the UK has systematically been that, when no longer required for defence purposes, the islands would revert to Mauritius which is the only country recognised to have a legitimate interest in the islands.

Mr Chairman, as Mr Brownlie has evoked, we consider that the security concerns of the West are not incompatible with and can be reconciled with our exercise of sovereignty on terms that could be agreed by both parties.

At any rate, the Mauritian side considers that in any forthcoming initiative between the US and the UK regarding "2016 and beyond defence needs", Mauritius should be involved.

Mr Roberts

As regard item 5 of the agenda I do not think there will be a substantive discussion. It will be a simple talk. Both UK and USA would not be open to inclusion of a third party.

Mr Seeballuck

Chair, we wish to reiterate once again to our no-objection of the Chagos Archipelago as a military base in the light of the undertaking given by Mauritius. We would only wish to be associated with the exercise of extension.

[Secretary to Cabinet gives the floor to Mr Brownlie].

Mr Brownlie

I wish to say the agenda is very helpful and inclusive. There is a necessary connection between Diego Garcia and resettlement. We recognise the

importance of Diego Garcia for security purposes. Amb Neewoor has made some points on the infinity of the lease.

I'm sure some *'half-way-house'* could be created which would be without prejudice to the security of the West and Diego Garcia. This leads us to the discussion of "segregation" of the area concerned - Diego Garcia, its maritime areas. There are other areas where no limitation applies. We believe that rehabilitation of some islands is both politically and practically possible. Here we are appreciative that there is a continuity of dialogue. We would be *'depressed'* if the security concern would preclude what I call the *"segregated areas"*.

Separation/segregation of the defence areas is essential for us. If you need instructions from higher up, we would be encouraged if you give us the possibility to discuss that in future.

Amb Neewoor

Chair, we have to see it in the right perspective. The UK/US needs may be discussed together with Chagos Archipelago or separate from the Chagos Archipelago. We can discuss about UK/US defence needs irrespective of Chagos Archipelago. One time in an informal discussion it was said that the Chagos Archipelago was for defence of humanity on a land belonging to others.

Well, there are alternative ways available to us. *We are sensitive. We have been patient.* During the cold war we have been part of UK/US defence needs. We did not talk about Chagos Archipelago in any fora. We are a democracy as US and UK. We want preservation of democracy everywhere but we have to be sensitive to this as well. I believe there are different ways of addressing it. One of the very sticky part is the clause in the agreement: *"when it will not longer be needed"*, then Mauritius will be able to get its territory.

Mr Colin Roberts

We have undertaken to cede the territory to Mauritius when no longer required. We have also suggested a sort of formalising it into a treaty. I am taking note of all your comments, but I would like to open the question of resettlement.

There are various aspects of it. I will ask Mr Doug Wilson to explain the legal issue of it and Mr Andrew Allen the political part of it.

Mr Doug Wilson

The right to resettlement has been subject to court cases as we all know. The first of the litigations was in the 1970s and 1980s. It concerned the

compensation which the Chagossians were seeking. Following that case, Mr Bancoult brought a case challenging the BIOT Orders. He won in what I call the Bancoult (1). The British Government did not appeal against the judgement. Subsequent to the case the Foreign and Commonwealth Office carried out an independent feasibility study. It came out clearly that resettlement would not be possible without heavy British funding and also for environmental reasons.

On these very bases the United Kingdom came up with two BIOT Orders in 2004. There was another Court case again challenging the orders. Bancoult won the case. In October 2008 on an appeal against the decision of the Court of Appeal the House of Lords ruled in favour of the UK Government.

Between those cases the Chagossians lodged a proceeding to get additional compensation. The Court of Appeal ruled that compensation would not be paid. Mr Bancoult has made an application to the European Court of Human Rights (ECHR). The application was stayed pending the House of Lords decision. Now it has been reactivated. So, while the case has been completed at our level, the ECHR is yet to give its ruling. It remains possible that the ECHR will find that the Chagossians will be allowed to resettle.

Mr Andrew Allen

The question of resettlement has been subject of discussion at many levels. Pro-Chagossians agree that the Chagossians have a right to return. Let me also add that about 30 members of Parliament, including Government backbenchers have signed a *support campaign* in favour of the Chagossians. There is quite a swell in Parliament in favour of the Chagossians' right to return. I find it important to draw your attention to it. There is a continuing legal and political challenge. The arguments put forward by the Government cover issues like funding, security and environmental concerns.

Mr Bancoult is likely to continue the legal and political challenge. Let me also inform that the Foreign Affairs Committee of the House of Commons has suggested that the Chagossians should be included in the dialogue.

Mr Kundasamy,

It is important to remind ourselves that the issue of resettlement should be discussed between two states as already agreed.

Mr Seeballuck

Chair, on item (5) we humbly believe that a treaty which would restrict merely to cede a territory when no longer required would not reflect any step forward on the issue. We have several letters from the UK Government, replies given to

questions in the House of Commons where the UK Government has stated that the Chagos Archipelago will revert to Mauritius when no longer required for military purposes. And we have no reason to put in doubt the contents of these documents.

A treaty that would simply say that it will cede a territory when no longer required - we consider that unless the treaty includes a definite time - an open-ended treaty will not be for any benefit.

As regard resettlement, Mr Boolell, yes, please proceed.

Mr S Boolell

Chair, I want to follow up to where Mr Brownlie has stopped on the issue of segregation.

The overview by Mr Doug Wilson on the Court cases reminds us that we are bound to look at the different instances of the UK Court and the diverging views given by some of the judges.

The second thing in regard to the healthy discussion we are having today, we cannot forget the plight and sufferings of the Chagossians. There is no blame-game here. Your government has expressed regret about the plight of the Chagossians. The circumstances of the forcible removal of Mauritians of the Chagossian origins are well documented. We cannot as we sit down discussing the future of the Chagos Archipelago, remain indifferent to the plight of the Chagossians.

Chair, Lord Mance who formed part of the panel of Lords in the recent judgment of the House of Lords described the right of abode in one's home land as one of the fundamental liberties known to human beings however poor and barren the conditions of life. We would not do justice if we do not give justice to this human rights aspect.

So far two reasons have been put forward to prevent a return of the Chagossians to their homeland. The first one relates to the unsustainability of the resettlement and the second one to the potential security risks that are likely to arise should a permanent population settle on the islands other than Diego Garcia.

Chair, I wish to point out here that Mauritius has long and well known experience in the management of outer islands - Islands similar to those of Peros Bahnos and Solomon Islands ..... And I have in mind here St Brandon and Agalega inhabited by a permanent population - are already being managed by Mauritius in a sustainable manner. We share the views expressed in the

"Returning Home" document that the environmental problems cannot be regarded as insuperable. Similarly as regards the question of funding a resettlement, Mauritius as I have mentioned has wide experience in the management of outer islands and do not see the question of funding as being in any way an obstacle to resettlement.

By the way Peros Bahnos and Solomon Islands are approximately 140 miles away from Diego Garcia. The environmental risks described in earlier feasibility studies cannot be regarded as insuperable given the willingness of Chagossians to contribute to conserving the assets on which their livelihoods and long-term survival on the islands will depend.

I believe the question of resettlement and segregation of Diego Garcia should be looked together.

As regard the military aspect, I think I am not the one to answer. The House of Lords have put forward a simple explanation. And I refer to paragraph 166 of the House of Lords judgment of October 2008 and I quote paragraph 166 of the judgment: [Mr Boolell reads the paragraph]

> *Paragraph 166:*
>
> *Not all the points made in these letters (particularly the primary letter of 21 June 2000) are easy to follow, and some of them raise on their face more questions than they resolve. The letters appear all to have been addressed to the possibility of permanent and extensive re-settlement of the outer islands, an unlikely future event in June 2000 or 2004 or 2006. In any event, it is clear that the United Kingdom government in 2000 either did not share the United States' assessment or did not consider that it bore on or precluded the grant to the Chagossians of a right to enter and be present in the outer islands. This is clear from the terms of Mr Robin Cook's press statement and the BIOT Ordinance issued on 3 November 2000 after the decision in Bancoult 1. The United States authorities themselves also appear to have recognised a reality in somewhat different terms to that indicated in their letter of 21 June 2000, in view of the affirmative answer given (subject to correction, but none occurred) by Mr John Battle, Minister of State, Foreign and Commonwealth office, on 9 January 2001 to the Parliamentary question: "has the US agreed that the islanders may return to any of the outlying islands? The letter of 21 June stated that that could imperil the base's status. Has that now changed?" (193WH).*

Chair, as Mr Seeballuck said, we are not here for road map, but we can make out a case for the return of the Mauritian citizens of Chagossian origin to Solomon Islands and Peros Bahnos.

Mr Roberts

Is the Government of Mauritius, not happy that the UK is resisting the resettlement?

Mr D. Dabee

We are submitting that we should continue to have *our inter-state dialogue despite the Chagossians' independent move. Resettlement is one of the issues which should be discussed inter-state.*

Mr Kundasamy

Chair, the experience that we have as regard resettlement programme and in the context of inter-state dialogue, we can continue to work together.

Mr Brownlie

Chair, we do agree that there is a mutual recognition of the security aspect and therefore we can put Diego Garcia on one side and move on.

I am very uncomfortable, come 2016, because the issue of resettlement has been a matter of political concern. Whoever seeks to prevail over the resettlement - UK or US - the segregation arises which cuts across the agenda that is where my *'half-way-house'* comes into picture. Mauritius is given access to enjoy some benefits.

Resettlement has to go with economic aspect of the islands. The Government of Mauritius has the right to decide what is feasible. Resettlement is also a political process. Take New Zealand as an example, it is based on resettlement and is a welfare state - settlement is subsidized.

The question of setting aside the resettlement issue relates also to access to natural resources. All these agenda items pre-suppose an agreement between UK and Mauritius.

Mr Seeballuck

We would like to submit that resettlement is not incompatible with the need of Diego Garcia as military base. In future talks we would discuss lengthily on it. The issue of resettlement should be subject of bilateral discussion/agreement.

Mr Roberts

The first thing I would like to make is that from UK point of view I am not sure segregation is an issue. The only basis of the use of BIOT is defence purpose. It

has been discussed in the House of Lords judgment. It is highly unlikely that we would move ground on the question of segregation. We do not see segregation as the way forward. It will have grave political implications. I would like you to consider the two following grounds - economic and security.

At the moment our position is when no longer required we will cede the territory to Mauritius. There are a range of uncertainties. The Chagossians may be Mauritians, Chagossians, British.

Mr Andrew Allen

The population strategy need not be overlooked. The Chagossians may opt for British citizenship.

Amb Neewoor

That is why we have always maintained that the issue of resettlement should be between two governments. These islanders cannot be indefinite victims.

Mr S Boolell

Our position is that we have a right to Chagos. It is on this premise that we are developing our argument.

Mr Doug Wilson

Let me flag one point here. Chagossians living in Seychelles are not Mauritian. To supplement Andrew, when we talk of defence needs we are talking about the obligations by UK to US. This means that the whole territory and not only Diego Garcia is involved in the defence needs. The second pillar is based on defence needs. Lord Mance was in minority. In terms of legal basis, the gist of our understanding is that any right to self-determination will not be a good move.

Mr Brownlie

We can, nonetheless make a *half-way-house* arrangement as regards resources, fishing rights. These envisage practical arrangements. These are some agreements that can be concluded on empirical basis without prejudice to our respective claims.

Mr Roberts

We made it very clear to your Prime Minister that there were very serious limitations on areas we could go. One of them is sovereignty. In terms of expectation we signalled that this was well understood by the Prime Minister of

Mauritius. Talking on *half-way-house*, lets go through items on the agenda before we make any conclusion.

Mr Brownlie

There must be some physical attribution of areas without prejudice to sovereignty.

Mr Seeballuck

We are in the process of dialogue. We do not expect to come to definite conclusions on any item on the agenda. What we want is these items be open for further rounds of talks. Let us keep these discussions live.

Amb Neewoor

What we agreed is that we are informing each other of details to understand the issues. Secondly when we talk of the lease - fifty years have gone by! We have to be dynamic. It is rather amazing that it is not possible for you. You can have a process. We need not just look at the lease as a Charter or a Bible. It is and can be subject of discussion. If the islands are to come back - which they must - because they are ours, we will then be able to enjoy the economic benefits we are losing now since 50 years. These are the issues that we need to discuss.

Meeting adjourned for lunch

Resumed at 1.00 p.m.

Mr Roberts

Let me take it that items (6) and (7) be dealt with together.

Mr Seeballuck

We would like to hear from you on items (6) and (7)

Mr Roberts

We have a history of the background on the setting up of the British Mauritian Fisheries Commission (BMFC). There has not been a great deal of interest from Mauritian Companies. In the last twelve months there is only one vessel from Madagascar having Mauritian interest which is operating under licence.

But let me tell you that the BIOT Maritime Territory is rich in stock but not commercially profitable. The expenditure is too high. It is financially viable only through a subsidy from UK.

I want to hear from you on this issue.

The second is the environment issue. The coral structure has become the most important coral structure. The value lies more in the capacity of the coral structure for re-growth of all coral structures of the Indian Ocean. As government we have not formed a policy on this. The fishing industry is not very vibrant. We should look to it in the broader perspective to the benefits to the international community.

Mr Doug Wilson

There are basically three maritime zones. Territorial Sea, the Exclusive Economic Zone (EEZ), the Continental Shelf.

Art. 76 UNCLOS provides that a state make an application to the UN for Continental Shelf beyond 200 miles zone. UK has no interest to applying to the UN for extension. There is very little prospect for oil and gas. So reference to paragraph 22 of the 1965 letter would not be an issue.

We wanted to open a possibility to produce a joint submission to claim an extended Continental Shelf. That would require extensive scientific research and employment of qualified scientists. We can look forward for joint submissions.

Mr Seeballuck

I think I'll take the possibility of fisheries first. We are both signatory to United Nations Convention on the Law of the Sea (UNCLOS). We have a duty to manage the resources in an efficient manner.

On the question of fisheries I wish to refer to the talks in Lancaster House in 1965. In those talks a series of inducements were granted. Among them was fishing rights and benefits of minerals, oil on or near Chagos Archipelago. Those benefits should revert back to Mauritius.

Chair, I wish to underline the importance of those inducements. Coming to British Mauritian Fisheries Commission (BMFC), in 1994, the obvious lack of interest was that Mauritius vessels were required to take a licence. The mere fact of applying for a licence has an impact on our position of sovereignty. I am told that in Chagos maritime areas fishes die of old-age.

We are prepared in the context of our talks to have a fresh look at it. We want the resources to be exploited in an equitable and responsible manner.

I would suggest that in the course of our next round of talks we start to discuss the modalities of such agreement.

With regard to Continental Shelf, we have a deadline of 13 May 2009 to make our submission. The deadline is there. We welcome your suggestion for a joint submission and possibly we have to work in earnest to achieve it. We have, on the basis of research, some basic data. We are prepared to exchange same with the UK side for the joint submission.

In making our joint submission with Seychelles, we received support from the Commonwealth Secretariat.

However, we would like to point out that Mauritius will be favourable for a joint submission on condition that there should be an equitable sharing of resources which the extended Continental Shelf will generate.

Mr Doug Wilson

On the deadline we can put an outline submission and following that we may proceed.

Mr Robert

Can I just clarify on one aspect. We have no expectation of deriving any benefit from what we will get. It will flow to Mauritius when the territory will be ceded to you. It is one of the reasons why we have not invested resources to collect data. We recognize the underlying structure of this discussion. You may wish to take action and we will provide political support.

Amb Neewoor

Right from 1965 we are aware that the benefit will be to Mauritius. Now the question is we don't know when we will enjoy the benefits. We were under the impression that you had the data and we could get from you. It seems that you have not invested much. We have the right to know what awaits us in future. Would you be agreeable to Mauritius arranging on its own for research and collection of data. This we can discuss.

Mr Roberts

You are talking about the exploration and data collection?

Amb Neewoor

We need to arrange to collect on our own.

Mr Brownlie

There is source of confusion. Is your position on Continental Shelf, fisheries and minerals consistent or different? Secondly, does that mean that we can't have sharing of resources? Could we have a sharing regime as regard resources?

Mr Roberts

We take our responsibility to manage fisheries according to international norms. But as we agreed in 1994, we are prepared to grant privileged access to Mauritius.

The Continental Shelf issue - we are looking at establishing claims according to international standards. At this state we want to open up the subject to see whether you would be interested in registering a claim on the basis of the agreement of 1994 under which, we granted privileged access to Mauritius. If you want a dialogue we are ready. If you want to cooperate on a joint submission we might be ready to talk on it.

Amb Neewoor

As Head of the Mauritius delegation to the BMFC meeting in 1998, I am âware of the BMFC and I can say that as legal owner and future definite owner of the Chagos Archipelago, we could not go along with the arrangement of a licence. The question of time is also an issue. This was too much. The basic question has been whether Mauritius should have a licence.

Mr Seeballuck

I am happy that you mentioned the privileged access and the BMFC. In practical sense we are asking that Mauritius gets its equitable share of the stock in the Chagos Archipelago and we would probably, within the framework of the Commission we would see the sustainability. We cannot jeopardize our sovereignty position. This should be clear. I am a bit perplexed. You are insisting on your sovereignty position and on the other side you are ready for joint submission.

Mr Doug Wilson

It is not a weakness, not an obligation. We want to be useful, to help Mauritius. We think this cooperation is useful. We are not obliged.

Mr Seeballuck

In that case we agree provided we get the equitable share of the stock. We may look at the modalities for exploitation in a responsible manner in the course of our future talks.

Mr Brownlie

We are entitled to see contradiction in your position. Article 76 - you referred to is about resources, sovereign rights of exploitation of resources.

We are surprised you are not showing signs of agreeing on the Continental Shelf.

Mr Boolell

Chairman, a series of inducements was given in 1965. The Territory to be ceded when no longer needed. This is clearly a commitment which UK consistently honour. The second is the fishing rights – This cannot be severed. Both have the same status. This should also be honoured. I would invite you to reconsider the request.

Mr Seeballuck

Chair, we reiterate again our willingness to join the UK on the joint submission notwithstanding our sovereignty position but provided we are allowed our equitable share of benefits and exploitation. We are not here to get a definite agreement. This is the first time we are having a frank and open dialogue on many Chagos issues.

Mr Roberts

We have come to the end of the agenda. Oh yes the visit of the Chagossians.

We thank the government of Mauritius for the support extended.

Mr Seeballuck

Chair, any future visit to the Chagos Archipelago should be agreed in the same spirit as regard cost-sharing, supervision and consultation. All visits, whether small or big should be within the supervision of Mauritius and UK.

Mr Roberts

I do not think we should agree on it as there is an issue there.

Thank you and the delegation for being in London for these talks. Thanks for the very constructive input to the talks. I want to reiterate the point that we do take that (the talks) very seriously. It is not surprising that we have not reached agreement on all issues. *There is the umbrella of sovereignty.* In the talks today there are issues of value to discuss and we would be ready to continue discussions. We need not finalise. But the agenda of today would serve for further discussions. On the question of treaty, I take your point of **not** agreeing to it. Let's meet again. On the question of Continental Shelf, there are terms and limits. Let's see with our legal experts. That will determine the pace on which we can work.

Things that are difficult for us - the issue of segregation. Please recognize that the British position is based on the basics of mature reflection of all factors.

I think a "Communiqué" will be a good point. It takes into account all aspects we discussed except resettlement. I need to be extremely careful that there is no agreement that we are opening an option for discussion of resettlement as this will undermine the House of Lords' decision and the pending case at the ECHR.

Mr Seeballuck

On behalf of the Mauritius delegation we wish to thank you to have given us opportunity to talk on Chagos Archipelago. This is the first opportunity after 1965 that we are talking. This is the start of a process. We did not come here to get answer to the sovereignty aspect. We have put our legal position, items have been lengthily discussed and we hope we will make some progress in Port-Louis.

We are open to see the draft communiqué.

Mr Brownlie

There is not much practical need for a joint communiqué.

Mr Roberts

If no communiqué then fine. But what we are saying or doing is to fulfil our Prime Minister's request for such talks to be held.

Mr Seeballuck

The fact that we already agreed to continue the process, that is already a progress. We are now ready to talk about other issues.

Second break 2.20 p.m.

[To discuss the draft communiqué which the Mauritius delegation finally agreed to consider]

Talks resume.

Mr Seeballuck

Chair, we are suggesting certain amendments.

Mr Roberts

Let's discuss. We are agreeable to the amendments. We may therefore sign.

Thank you again.

Ministry of Foreign Affairs, Regional Integration and International Trade

23 January 2009

Annex 130

Email dated 21 April 2009 from Joanne Yeadon, Head of "BIOT"& Pitcairn Section, to Colin Roberts and Andrew Allen, Overseas Territories Directorate, UK Foreign and Commonwealth Office

(AJ) R'thos wa. M.

Joanne Yeadon

From: Joanne Yeadon
Sent: 21 April 2009 09:03
To: Colin Roberts; Andrew Allen
Cc: [redacted]
Subject: MAURITIAN APPLICATION FOR FISHING LICENCE
Security Label: [redacted] INTERNET

22/4/09

All,

A Mauritian-flagged vessel has applied for and been granted an inshore licence to fish in BIOT waters. As agreed with the Mauritians previously, no fee has been charged.

I flag this up in the context of the proposed Chagos Marine Park - the Mauritians have got historic fishing rights and now, for the first time in years, have used them. This may well be a one-off. It is one vessel not a fleet! Also interesting in view of the Mauritian line at the January talks ie., that they wouldn't apply for licences as it would be tantamount to an admission of UK sovereignty.

Joanne

Joanne Yeadon | Head of Section | BIOT & Pitcairn | Overseas Territories Directorate | K2.218 | Foreign & Commonwealth Office | SW1A 2AH | ☎ [redacted] E-Mail: Joanne.Yeadon@fco.gov.uk |

Annex 131

Email dated 1 May 2009 to Joanne Yeadon, Head of "BIOT" and Pitcairn Section, UK Foreign and Commonwealth Office & Minutes of a meeting between the Chagos Environment Network and the UK Government held at 11:30 hrs on 23 April 2009

(1) Pew Trust

Joanne Yeadon

From: [redacted]
Sent: 01 May 2009 16:17
To: Joanne Yeadon
Subject: RE: GOVERNMENT/CEN MEETING 23 APRIL 2009
Security Label: UNCLASSIFIED - INTERNET

6/5/09

Reply sent to Simon Hughes

6/5/09

Hi Joanne,

Couple of things I think were missing from the minutes.
The first is Colin's comment about "not getting the steps wrong otherwise you'd blow the whole thing out of the water before it got started" - with reference as how to set up the marine park (ie all at once or piecemeal).

The other was a smaller point with reference to the marine park zone protecting more against invasive species, by for example, getting visiting ships to exchange balast water, etc.

[redacted]

[redacted]

K.2.218 King Charles Street
London SW1A 2AH
Tel: [redacted]
Fax:
[redacted]

From: Joanne Yeadon
Sent: 01 May 2009 15:31
To: [redacted]
Subject: FW: GOVERNMENT/CEN MEETING 23 APRIL 2009

[redacted]

Can you check for any glaring errors.

Joanne

From: Simon Hughes [mailto:simonhughes@hughes-mccormack.co.uk]
Sent: 01 May 2009 10:48
To: Joanne Yeadon
Subject: GOVERNMENT/CEN MEETING 23 APRIL 2009

Dear Joanne,

I attach my notes on the meeting held at the FCO between Government and the Chagos Environmental Network.

Before I circulate it to those present, please could you make any improvements that you see as

desirable. Thank you.

Yours,

Simon.

Simon E Hughes
Secretary
Chagos Environment Network
Ground Floor Flat 29 Champion Hill
London SE5 8AL
Tel: [redacted]

Chagos Environment Network meeting with Government

Held at the Foreign & Commonwealth Office
King Charles Street, London SW1A 2AH
on Thursday 23 April 2009 at 1130

Those present:

Colin Roberts (CR), Director Overseas Territories, Commissioner BIOT, FCO, Chairman.
Andrew Allen (AA), Head of Southern Oceans Team, Deputy Commissioner BIOT, FCO.
Paul Buckley (PB), International Officer, Royal Society for the Protection of Birds.
Alison Debney (AD), Marine & Freshwater Programme Manager, Zoological Society of London.
Rachel Garthwaite RG), International Officer the Royal Society.
William Marsden (WM), Chairman Chagos Conservation Trust.
Jay Nelson (JN), Director Ocean Legacy, Pew Environmental Group.
Tara Pelembe (TP), Overseas Territories Officer, JNCC.
Sarah Sanders (SS), UK OT's Programme Manager, Royal Society for the Protection of Birds.
Professor Charles Sheppard (CS), Warwick University.
Ashley Smith (AS), Assistant Head Asia Pacific, International Policy and Planning, MOD.
Dr Ruth Temple (RT), Executive Secretary Linnean Society.
Zoe Townsley (ZT), Assistant Administrator BIOT, FCO.
Joanne Yeadon (JY) Head of BIOT and Pitcairn Section, BIOT Administrator, FCO.
Simon Hughes (SH), Secretary Chagos Environment Network, Secretary.

Item 1. Introduction.

Colin Roberts welcomed those present and said that it was an important meeting; input and support from all was needed to make progress. He asked the Chagos Environment Network (CEN) to outline its position.

WM said that CEN wanted the government to put in place a robust, internationally supported, framework for the long-term conservation of BIOT (the Chagos Archipelago). This might draw on the ideas for a Chagos conservation area or marine park set out in the booklet *The Chagos Archipelago; Its Nature and the Future* (launched recently by CCT at the Royal Society).

CR emphasised the need to articulate convincingly the benefits of the proposal (above all) and to consider factors affecting implementation, including finance, organisation and political issues.

Item 2. Marine protected area(s).

JN pointed out that some 6-11% of the terrestrial world was environmentally protected in some way, but that only 0.08% of the oceans. If Chagos was protected it would form 16% of the protected ocean area and would be the largest protected area on the planet. It would be globally significant and the more valuable as it was relatively untouched. 90% of some of the world's main fish stocks had already been destroyed in past decades; large no-take zones in marine protection areas were needed for fish stock regeneration, as these had proved successful. The Indian Ocean has no such zones and this would be of importance to the whole ocean, especially the African littoral states.

Benefit: UK seen to be protecting biodiversity to the benefit of countries around the Indian Ocean and more widely.

[A post meeting and more detailed calculation of areas contributed by JN is at Annex 1]

CS said that the Chagos Conservation Management Plan of 2003 foresaw the provision of one third no-take zones, ie the protection of one third of important fishery areas. This proportion has proved successful, but has also proved to be the absolute minimum. Full protection is much more successful.

WM recalled that the CCT proposal of 2004 to extend the Ramsar area in Phase 1 to the 3 nautical mile zone round all the islands ('Chagos Islands Ramsar site') was agreed in principle by Ministers. A Phase 2 extension including the whole 200 mile zone ('Chagos Archipelago Ramsar site') was also on the table. The inclusion of high seas in a Ramsar site had been questioned for legal reasons, though the Ramsar Secretariat had cited precedents. The designation of a Ramsar site was relatively easy since designation was the responsibility of only the government.

In answer to a query, it was confirmed that the provision of one sort of protection, eg a Ramsar site, is not in conflict with any other sort of protection.

JN, on the basis of Pew's experience with the creation of other large marine protected areas, pointed out that however large or small the area concerned, there would be considerable political and other hassle for each zone, large or small, at every step; a gradual bit-by-bit approach would entail all this political grief repeated for each new small area. It had therefore proved much easier to take one large step and do it all at once.

It had also proved best to set out for a complete no-take zone leaving if needed a little fuzziness (for example, in the case of Chagos, for recreational fishing at Diego Garcia or Mauritian artisanal fishing).

CR said that it was important to get the steps right otherwise the whole idea could be blown out of the water before started.

It was suggested that it would be useful to gain International Maritime Organisation recognition. This organisation would not bar transit shipping, but, usefully, could request notice of any ship wishing to transit.

Item 3. BIOT islands ecological management.

PB said that Chagos was the most important bird area in the Indian Ocean. A whole large area needs to be protected for the birds, as breeding birds use, for example, the tuna to lead them to their prey. Important Bird Areas are valuable but the whole region is needed to ensure that the birds survive.

Benefit: Bird and marine life regeneration. It is a valuable refuge for all marine and bird life which can replenish African and other coastal stocks.

CS noted that demand placed on marine resources was increasing exponentially and that there was a need to restore plundered reefs etc to their former health. One of very few places where this former health existed was in the Chagos, which was unexploited and had shown that it could recover well from climate change events, which had devastated reefs elsewhere in the Indian Ocean and indeed the world.

Benefit: an understanding of reef regeneration, for the benefit of the Ocean's marine management.

Preliminary results from research carried out on the genetic identity of groups of species in Chagos and on the African coasts indicated that the Chagos could be an essential stepping stone for species and thus replenishing those reefs. Further results were expected soon from several international universities.

CR queried whether there would be any developmental benefits in protecting Chagos for other regions of East Africa, for example would it contribute to food security?

Monitoring of the flagship species (turtles etc) needed to be accompanied by the monitoring of the 50,000 other species which support them. A total habitat approach is called for needing total habitat protection over a wide area.

Benefit: a huge protected area benefiting all species and protecting biodiversity.

In answer to a query as to whether it was possible to articulate the value of a large scale reserve, Charles pointed out that this had been done by insurers in connection with the compensation demanded for large scale pollution of marine areas. Although this could put a price on the area it could not fully measure the value in this case, which was unique, especially in the way Chagos could inform managers regarding the regeneration of the devastated African coral reefs.

[A post-meeting comment on the subject by Professor Sheppard is at Annex 2]

Chagos was seen as certain to qualify as a natural World Heritage site on scientific grounds and now that terrestrial 'cultural' sites were becoming over numerous UNESCO wished to redress the balance with more 'natural' sites.

Item 3. Science.

WM said a prestigious scientific programme for BIOT would have major benefits both for science and for international support for conservation of the area.

RG confirmed that the Royal Society recognised the very high scientific and environmental values of the Chagos and supported the urgent need for a comprehensive programme of research. The Society also supported the need to increase the scientific and environmental profile of the region.

CS emphasised that the Chagos was scientifically very important because it was relatively untouched and provides us with a benchmark showing how the web of life functions in its natural state; and this is important in helping us to understand and deal with such problems as pollution, loss of biodiversity and climate change. The value is incalculable, as Chagos reefs give an invaluable base line. Almost nowhere else in the world is this the case. Continuous monitoring of the Chagos was necessary and many scientists from all over the world have clear and important reasons to carry out research in this unique and unpolluted area.

Due to an expedition in the 70s and several since, scientists know what is there in some detail, and more importantly how it was before climate change and how it has changed, been devastated and recovered over the years. What needs to be done further has been listed and prioritised and was published recently in *Chagos News*. [This list is at Annex 2 to these minutes]

Benefit: research will assist climate change studies.

RSPB, the Royal Society, the Zoological Society and the Linnaean Society were particularly supportive of the need to carry out this scientific work in the archipelago. The Zoological Society wanted to carry this through to general education of the public, as the UK had the 7th largest area of reefs and yet no-one has heard of the Chagos. The fact that people cannot go to the reefs and islands was not seen as a serious disadvantage as techniques have now been

developed for the reefs and islands to be brought to the people via web links etc, as planned for example, and developed for the BIOTA! Aquarium.

Item 4. Organisation, Finance, Enforcement.

Organisation

WM suggested that a study of best international practice in managing conservation parks be undertaken, taking into consideration such sites as those managed by Australia in the Pacific and Indian Oceans and also Aldabra in the Indian Ocean (an organisation in which The Royal Society had played an important role). Cousin Island managed by Nature Seychelles was also mentioned.

It was expected that the small organisation required to manage a conservation area would be under government control. It was suggested that there could be a framework, with a financial foundation, for involving, advising and supporting organisations.

JN said that the Pew Environment Group was ready to discuss with the UK Government financial issues for the establishment of the framework up to 2011.

It was suggested that a limited degree of vessel based visiting, especially specialist ecological and scientific visiting would be compatible with conservation, bearing in mind that 90% of Aldabra's administrative income was so generated.

It was also suggested that Chagossians who were interested should be included in the conservation education and awareness-raising efforts undertaken by some CEN members. The FCO confirmed that there was no bar to Chagossians living and working on Diego Garcia, which both the UK and US encouraged. At the same time it would be a mistake to raise unrealistic expectations. The model for an effective conservation policy framework should not involve new 'footprints' from installations, residents and exploitation. Visiting yachts are being looked at carefully in the same light.

A way of convincing Mauritians that their long term interests lay in conservation was clearly desirable. Mauritian commercial fishing and tourism interests were at present hardly compatible with conservation concepts.

Monitoring and enforcement are well understood issues and a study of future requirements and costs was needed. Pew can offer help here. As poachers could also represent a military threat, and as underwater detection devices are always improving, it should not be too difficult to encourage some military cooperation in this area. The Ministry of Defence would investigate further.

FCO was going through a stage of stakeholder review and had already consulted with the Natural Environment Research Council, British Geological Survey and the National Oceanographic Centre.

Item 5. Arrangements for Further Discussion

The division of responsibilities between different government departments (*FCO, Defra, Dfid)* for Overseas Territories Environmental matters was being actively considered, and a report had been issued by JNCC to recommend a solution. Defra was likely to take over the lead on biodiversity policy in respect of Overseas Territories.

CEN would be invited to a further meeting in June/July, before the recession of Parliament.

Simon

Simon E Hughes
Secretary
Chagos Environment Network
secretary@chagos-trust.org
1 May 2009

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Annex 1.

Calculation of protected areas.

[Post meeting note from Jay Nelson]

If the Chagos (544,000 sq km) were entirely designated as a no-take marine reserve it would constitute 15% of the world's total Marine Protected Areas (MPAs) and 64.4% of the no-take MPAs in the world.

If we wanted to be more dramatic, the area of the Chagos Environment Protection and Preservation Zone represents 18 percent of the area of existing global MPAs and 181% of the area of existing no-take MPAs.

The numbers can be calculated from the information below which is the latest from the IUCN.

544,000 sq km	Chagos Archipelago
300,000 sq km	Existing area of global no-take MPAs May 2009
3,040,000 sq km	Existing area of global MPAs, May 2009

The no-take MPA figures do not include the Papahanaumokuakea Marine National Monument which will not become a no-take reserve until June 15, 2011 when the last of the minimal commercial fishing ceases.

Annex 2.

Note on Economic Value of a Conservation Area

[Post meeting note from Professor Charles Sheppard]

Based simply on global averaged values from the Costanza team developed a decade ago, the crude answer is $400 million per year.

This has too many caveats of course to mean much yet. It is based on just those 10% of BIOT's reefs which are easily accessible from land - 90% of BIOT consists of huge additional submerged banks as you know. This sum also excludes any tourism values, which increase this number in most places.

But the sum includes nothing for:

- *shoreline protection values (not properly recognised until more recently);*
- *value attributable to the fact that BIOT is one of a vanishingly small number of near-pristine scientific reference sites left, with all the scientific and management benefits we touched on;*
- *nothing for the fact that it is only the existence of healthy corals etc. that enable whatever value the UK and USA places on having a presence there;*
- *nothing for any 'species stepping stone' values.*

Valuations are being done for several countries now, and I have documents (e.g. from the World Resources Institute of the USA) explaining how this could be done much more accurately for any country. It would not be straightforward for BIOT given the above comments, but could probably be done in a crude way. (And simple-minded press love to misuse the numbers of course.)

Annex 3.

Objectives for scientific work in Chagos.

Charles Sheppard[1], Nick Graham[2], Al Harris[1], Chris Hillman, Geoff Hilton[3], Rachel Jones[4], Andrew Price[1], Sam Purkis[5], Pete Raines[6], Bernhard Riegl[5], Anne Sheppard[1], Mark Spalding[7], Jerker Tamelander[8], John Topp[9], John Turner[10].

1 Warwick University UK, 2 James Cook University Australia, 3 RSPB UK, 4 Zoological Society London, UK, 5 National Coral Reef Institute USA, 6 Coral Cay Conservation UK, 7 The Nature Conservancy, 8 IUCN, 9 Chagos Conservation Trust, 10 Bangor University UK

The Chagos archipelago is widely known to be an exceptional system of coral reefs and islets. The Pew Foundation's Ocean Legacy Program has identified it as one of six globally most important marine wilderness areas. In a time of cataclysmic decline in coral reefs world-wide, with firm predictions of worse to come, it provides a rare example of a reference area for coral reef ecology and climate change related research.

Because the ability of tropical marine environments to support the millions of people that depend on them is threatened, and indeed has already failed in many places, there is a need for research into ways of understanding and then minimizing threats to reefs. Sites such as Chagos are extremely valuable in this regard.

The Chagos Conservation Management Plan was accepted by the BIOT Government in 2003. Parts of it have been implemented, based on previous research. Each element proposed below supports the objective of permitting continued and future adaptive management of the archipelago, and of maintaining and enhancing its worldwide value.

Three broad categories of research work have been undertaken in Chagos which should be developed along the lines below. They overlap. **Category A** is basic monitoring necessary to maintain adequate environmental management of the archipelago, which is an obligation of the BIOT Government. **Category B** relates to global issues. It is one of very few global locations where climate change effects are not complicated by direct forms of pollution and coastal development. Its geographical location also means it fills a gap in global programmes, or appears to be a crucial stepping stone in oceanic species distributions. **Category C** covers work which should be done if the already recognized high ecological value of Chagos is to be restored and improved.

Costs: Some items are inexpensive, others costly. Cost to BIOT is generally no more than granting permission to visit and permission to use the BIOT Patrol Vessel or others offered by foundations in the manner done before. Funding would be as for all research, via applications to suitable bodies for post field work laboratory costs and staff time. Funds for several of the following are held already by potential visiting scientists.

A. Monitoring of reef and island condition

1. Repeated measurements of coral cover, community structure and juvenile recruitment to estimate extent and timing of recovery from previous climate change impacts.
2. Repeated measurements of reef fish status, abundance measurements of key groups and estimates of fish biomass, as indicators of responses to climate change and as a reference point for global comparisons.
3. Improve existing estimates of extent and damage from poaching, especially of shark, grouper and sea cucumbers.
4. Substantially upgrade monitoring of the internationally important seabird populations and their responses to environmental change and fluctuations.
5. Continued monitoring for marine diseases and species introductions, and consider preventative and remedial measures.
6. Micro-atoll measurements for data on past, present and future sea levels.

7. Accurate base-line measurements of coastlines and linked measures of erosion.
8. Establish an ocean water alkalinity data series to measure acidification.
9. Improve understanding and modeling of reef and lagoon currents and circulations, to identify locations most at risk from shoreline alteration and erosion.
10. Continuation of direct temperature measurements at depth intervals.
11. Preliminary plankton studies of key groups which underpin much of this marine system.

B. **Global environmental research needs**

12. Geochemistry cores of reef and corals to develop historical temperature records over the past 3-4 centuries, for referencing future changes.
13. Geochemistry cores for linkage and calibration of global climate oscillations.
14. Measurements of atmospheric gasses for calibration of geochemistry cores, and to fill the gap in global coverage that exists in the Indian Ocean.
15. Continued genetic analyses to establish the biological 'connectedness' of Chagos with the rest of the ocean, and to understand its role as stepping stone and as a source of biological replenishment for depleted, inhabited areas.
16. Tagging studies to investigate species movements of key migratory fish species.
17. Biodiversity inventories to feed into international databases.

C. **Restoration of ecosystems and management improvements**

18. Conduct island vegetation mapping, soil structure and stability assessments.
19. Rat eradication on Eagle Island (and subsequently other infested islands).
20. Chicken eradication on Nelsons Island, Eagle Island and the Three Brothers.
21. Vegetation restoration of Nelsons Island, Three Brothers and Eagle Island in conjunction with rat eradication.
22. Development-reestablishment of hardwood tree nursery on Diego Garcia for offsetting arrangements on Diego Garcia and to supply seedlings for other islands.
23. Investigation of turtle management (hatchery) with a view to accelerating their recovery from the past depredations.
24. Removal of flotsam where it is impeding turtle nesting success.
25. Building on GIS completed in 2007, complete archipelago-wide mapping of shallow-water habitats using satellite imagery; identification and mapping of highly vulnerable areas such as spawning sites, nursery areas and breeding grounds; areas of high erosion and likely inundation.
26. Exploration of unexamined areas such as the submerged banks and atolls, which are likely to influence archipelago resilience.
27. Linkage of the GIS to an image database.
28. Strategic environmental impact assessment to determine potential impacts and their consequences from a broad range of natural and anthropogenic factors.
29. Meta-analyses of Chagos research data and publications, to further define the global and regional (Indian Ocean) conservation value of the archipelago, including as a biodiversity refuge for reseeding degraded reef areas and as a natural heritage area.
30. Supply advice to BIOT for reducing poaching and fishing in the archipelago, in particular of top predators (sharks), iconic species (turtles) and lagoonal sand cleaners (sea cucumbers)
31. Adaptively refine Marine Protected Area boundaries and management plan based on all of above.

This programme is comprehensive. It would maximise the unique opportunity which Chagos provides for scientific research, to permit its effective management and to benefit other reef areas which need intervention or management. Many of the elements are likely to greatly reduce future costs of environmental management.

Annex 133

Paper submitted on 5 May 2009 by Colin Roberts, Director, Overseas Territories Directorate, to the Private Secretary to the Foreign Secretary, "Making British Indian Ocean Territory the World's Largest Marine Reserve"(version with fewer redactions)

[redacted]

From: Colin Roberts, OTD
Date: 05 May 2009

cc: PS/Gillian Merron
PS/Lord Malloch Brown
PS/PUS
[redacted]

Reference:

To: Private Secretary

SUBJECT: BRITISH INDIAN OCEAN TERRITORY: THE WORLD'S LARGEST MARINE RESERVE?

1. I attach a short paper on the marine reserve concept for BIOT in advance of tomorrow's briefing session.

2. Professor Charles Sheppard, BIOT's Environmental Adviser, will be joining us.

Colin Roberts
Director, Overseas Territories
WH2.307(A)
Tel: [redacted]
Fax: [redacted]

NO. OF ATTACHMENTS: 1

[redacted]

MAKING BRITISH INDIAN OCEAN TERRITORY THE WORLD'S LARGEST MARINE RESERVE

This note sets out where matters stand on the question of turning British Indian Ocean Territory (BIOT) into a large-scale marine reserve, and what further work needs to be done.

What is BIOT?

BIOT is a British overseas territory in the centre of the Indian Ocean. Its reason for being is the military base on the atoll of Diego Garcia. Its land surface is negligible. Diego Garcia supports the US base with a fluctuating military and contracted civilian population of a few thousand. The other 50-odd islands are uninhabited. The territory includes the world's largest coral atoll, the best preserved coral atolls in the world, the UK's richest marine biodiversity and some quarter of a million square miles of the world's cleanest ocean. The territory is administered from the FCO, with BIOT Administration functions on the ground delivered by a 40 strong UK naval and marine contingent.

What, in a nutshell, is the marine reserve proposal?

In practical terms the broad concept would be to declare the entirety of BIOT's EEZ a no-take Marine Protected Area (MPA), bring an end to fishing and legislate for the protection of the seas and atolls. The military base arrangements on Diego Garcia would be unchanged.

What are the benefits of turning the territory into a marine reserve?

There are numerous benefits and a wide range of potential beneficiaries. These include:

Conservation benefits: The absence of a settled human population and the strict environmental regime and minimal footprint of the military base have enabled a high level of environmental preservation with very low administrative inputs. The key control is limited and conditional access. Commercial interest in the fishery is limited, although we suspect that there there is a high level of illegal fishing mostly carried out by Sri Lankan vessels . The only internationally recognised protection measure is a small Ramsar site on Diego Garcia itself. Our stated aspiration is to administer the territory to World Heritage Site standards. Overall our approach has been ad hoc, cautious and we have not encouraged media interest in the territory's environmental assets. In recent years scientists and environmentalists have stressed the value of a large-scale ecosystem approach to conservation. For geographical, economic and political reasons there are not many places where this is possible. BIOT is one of the few. An impressive range of UK and international environmental organisations have come together in the Chagos Environment Network to help enhance environmental protection in BIOT. These include the International Union for the Conservation of Nature, the UN Environment Programme, the Nature Conservancy, The Linnean Society, the Pew Environment Group, the Royal Society, the RSPB, the Zoological Society of London. The creation of a marine reserve in BIOT would be a move of global significance in environmental terms.

Climate Change benefits: BIOT has a special and growing significance in climate change science as a "control" against which to measure changes in the marine environment elsewhere. Reserve protection would help guarantee this in the future.

Scientific benefits: BIOT offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change. These are core research issues for UK science. At the moment scientific research in BIOT is ad hoc. The National Environmental Research Council bodies (the National Oceanography Centre and the British Geological Survey) have expressed an interest in providing a structured framework for scientific work in BIOT.

Development benefits: BIOT is likely to be key, both in research and geographical terms, to the repopulation of coral systems along the East coast of Africa and therefore to the recovery in marine food supply in sub-saharan Africa.

Reputational/political benefits: BIOT would not just be a large marine reserve, but the largest marine reserve in the world and the most globally significant. There would be a tremendous welcome for the move from the British and international environmental community. It would help confirm UK credentials, setting an example for others to follow. This would bring benefits to Defra who have found it difficult to make progress against their international commitments on MPAs and biodiversity. It should also help promote a positive image of the overseas territories in the public's mind and offset some of the negative associations with Diego Garcia.

Security benefits: overall the creation of a reserve could involve greater control over access to the territory. This would bring a net security benefit.

How do we create a marine reserve?

Declaration/Legislation

The creation of a reserve is essentially a declaratory act followed by the implementation of a legislative and administrative framework to give it effect. In the case of BIOT we would also need to repeal the existing fisheries legislation. We would need to ensure compliance with UNCLOS and notify a range of international organisations, regional and other governments.The Foreign Secretary has full legislative powers in BIOT. We could declare BIOT a marine reserve today, repeal the fisheries legislation, revoke all licences and legislate for the governance of the reserve. In practice we would take this in stages and take account of the sensitivities of the fishing nations. (Those whose nationals have an interest in BIOT and those who have a general regional interest, for example, members of the Indian Ocean Tuna Commission, some of which are opposed in principle to MPAs). We could choose between a Big Bang approach (going straight for a full reserve for the whole EEZ) and a gradualist approach (protecting first those areas known to be of exceptional scientific interest and gradually extending the protection).

[redacted]

Monitoring and enforcement

We would need a reasonable level of monitoring and enforcement to enable us to know when vessels were in the reserve and to prevent fishing or other illegal activity. Much of this is already in place and paid for by the BIOT Administration. We have a modest fisheries protection, immigration and customs capability. We would be looking for technological solutions to enhance monitoring [redacted] through BIOT waters. We would not aim at total protection, but would expect the international community to assist by ensuring BIOT's reserve status is effectively communicated to fishing and shipping interests. We would also need to take more robust action with Sri Lanka to curb illegal fishing. Defra have some useful (but unused) levers in this regard. They might be less reluctant to exert pressure if they had a genuine stake in BIOT.

Framework for science

Science is integral to the reserve concept. We need a strong scientific basis to support the creation of an MPA (some we have, some needs putting in place). Although there is a significant body of scientific opinion in favour of large-scale marine reserves, opting for a full EEZ reserve would be a political as well as a scientific decision. Research is also necessary to exploit and demonstrate the value of the reserve over time. We would need a managed programme of scientific research to be carried out in BIOT. This would need to meet recognised international benchmarks. We are discussing with NERC whether they might be ready to take this on. We have asked them to look at the possibility of managing an international research programme with no permanent footprint in BIOT. This would be a pattern of ship-based visits.

What are the risks and how can they be managed ?

The big risks are political:

1. Mauritius

Mauritius claims sovereignty over BIOT on the grounds that its excision from the colony of Mauritius in the independence process was unlawful. We have committed to ceding sovereignty of BIOT to Mauritius when the territory is no longer needed for the defence purposes of the UK and US. In reality this is likely to be at least a generation away. Mauritius pursues its claim for the most part in a low key, although Mauritian domestic politics can always drive it up the agenda. We are confident of our sovereignty. However, a less well-disposed Mauritian government could well succeed in securing a UN General Assembly Resolution for an ICJ Advisory Opinion. We need to deter this. We have not yet had substantive official talks with them on the marine reserve proposal, but we know they are opposed. They have formally stated their opposition on grounds of sovereignty, but we know they are also bothered by the risk of losing forever the chance to exploit the fishery. [redacted]

[redacted]

[redacted]

We believe it would be possible, if very difficult, to convince the government of Mauritius that creation of a marine reserve would be in its interest. This would involve

- reminding them that there has in practice been very little take up of BIOT fishing licences by Mauritians. There are no (legal) livelihoods dependent on the BIOT fishery.
- finding a role for the government of Mauritius in the governance of the reserve which does not infringe our position on sovereignty
- engaging with the conservation lobby in Mauritius
- convincing Mauritius that a reserve would enhance the future value of BIOT and reassure them that we would manage the reserve in a way which did not tie their hands when BIOT is ceded. That is, we would avoid any public commitment that BIOT would continue to be a reserve when no longer under British sovereignty.
- heavy lifting by the Foreign Secretary and possibly the Prime Minister
- possibly some other sweetener

2. The Chagossian movements

The people removed from the territory when the military base was established, with their descendants, number several thousand. They now live in communities in Mauritius, Seychelles and the UK (mostly in Crawley). Many are British citizens. They have a number of representative organisations and diverse objectives. They have attracted a large measure of support in the UK parliament for their return to resettle the outer islands of BIOT. Following the House of Lords judgment of 22 October 2008 which allowed the government's appeal in the Judicial Review of the 2004 BIOT Orders in Council, they have gone to the ECtHR. In addition, they have ratcheted up political pressure for the government to re-think its policy on resettlement through the establishment of a very active cross-party All Party Parliamentary Group on Chagos (BIOT). The FAC have also said that the Government has a "moral responsibility" to let the Chagossians return and expressed their views most recently at the Westminster Hall Debate on the OTs on 23 April. Their plans for resettlement are based on the establishment of an economy based on fishing and tourism. In the specific context of BIOT this would be incompatible with a marine reserve. They are therefore hostile to the proposal, unless the right of return comes with it. They have expressed unrealistic hopes that the reserve would create permanent resident employment based on the outer islands for Chagossians.

Assuming we win in Strasbourg (contingency for losing the case is dealt with in earlier submissions), we should be aiming to calm down the resettlement debate. Creating a reserve will not achieve this, but it could create a context for a raft of measures designed to weaken the movement. This could include:

- presenting new evidence about the precariousness of any settlement (climate change, rising sea levels, known coastal defence costs on Diego Garcia)
- activating the environmental lobby
- contributing to the establishment of community institutions in the UK and possibly elsewhere
- committing to an annual visit for representatives of the communities to the outer islands on All Saints' Day
- inclusion of a chagossian representative in the reserve governance

[redacted]

[redacted]

[redacted]

3. The US military

We do not expect opposition from the US administration, but we expect we will have our work cut out to reassure the US military that creation of a reserve will not result in trouble for them. Trouble could be any rise in the security risk, any impediment to their freedom of maneouvre, or any significant raising of the bar in terms of environmental regulation. We think we can give these reassurances. We are drawing on the experience of the Pew Foundation who have worked closely with the US Navy in setting up the two American large scale reserves (Western Hawaii and Mariana Trench).

How would the project be funded?

There is also, at this stage, a degree financial risk. We have not yet reached the point of doing the budgetary modelling necessary to confirm that the creation of a reserve would be budget neutral to the FCO. However, the status quo is unsatisfactory and possibly unsustainable. The revenue from fishing licences, mooring fees and other enterprises contributes less than 30% of the cost to the FCO of administering BIOT. The main expense is the charter of a ship for fisheries protection, law enforcement and inter-atoll transport. The Overseas Territories Programme Fund fills the deficit (c £1.25m in FY 2008-9). Second, Creating a marine reserve is not necessarily resource intensive. The main recurring costs falling to the BIOT Administration would be monitoring and enforcement. Third, the establishment of a marine reserve will create a new range of stakeholders, including in Whitehall.

We will need to explore a range of revenue and subsidy sources:

- increased mooring fees for yachts

- limited high-end ship-based tourism. We have been looking at the model of Aldabra (to Seychelles) where a scheme was set up by the Royal Society. The Royal Society have expressed an interest in helping develop a tourism model for BIOT.

- photography and film permits (subject to base security requirements)

- Defra. Defra are supportive of the reserve proposal in very general terms. We also hope shortly to reach an agreement with them under which they would formally assume the Whitehall lead for biodiversity issues in the overseas territories. This will involve an increase and relaunch of the Overseas Territories Environment Programme (OTEP). Currently a £1m joint FCO/DfID fund, we are aiming to make it a £2m Defra/FCO/DfID fund. Given its remit OTEP would be a reasonable source of funding for a reserve in BIOT

We would look to NERC to fund the science programme in the normal way, flowing from the necessary policy decisions by the FCO, Defra and DfID

[redacted]

There would be a spike in start up costs. The Pew Foundation have earmarked funds for this, although these will only be available until 2011.

Are there other risks to take into account?

Timing: we will need to judge carefully the relative merits of a Big Bang or a more gradual approach. A Big Bang would be administratively and legislatively simpler, and have the greatest public impact. But it would also trigger - as things stand today - the sharpest reaction from Mauritius and the Chagossians and their parliamentary supporters. A gradual approach would avoid some heavy flak, but could have much less impact. However we proceed we need to take account of a range of variables: the Chagossian legal process, Mauritian politics, other environmental initiatives and the state of the rendition issue. Any active steps by us in the short term would need to weigh potential impact on the case in Strasbourg. This might be concluded later this year, but could drag on longer.

It may be possible to manage some of these risks through a qualified statement of intent ("government would like to explore possibility of establishing an MPA in BIOT and will want to consult interested parties on how this might be achieved") or by launching a formal public consultation process.

Natural or man made disaster: BIOT is vulnerable to a range of risks including rising sea levels, tsunami, increase in water temperature and oil spillage. These could cause such damage that benefits of reserve status become less obvious.

Where are we now and what are the next steps and realistic timelines?

The formal position is that a generic proposal to turn BIOT into a marine reserve has been made by the Chagos Environment Network. I attach their pamphlet. This has received a bit of publicity both positive and negative . The proposal does not pretend to address the practical and political issues covered above. We have not commented on the proposal other than to take credit for the high level of environmental protection in BIPT to date and to confirm that we are engaging with the international environmental and scientific community on options for enhancing environemental protection.

The focus of our work so far has been to identify and engage with stakeholders and to develop the thinking summarised in this note.

If Ministers wish to proceed next steps would include:

- pursuing our negotiations with partners in government and NGOs

- financial modelling to evaluate and manage the budgetary risk to the FCO

- commissioning specialist work on Monitoring and Enforcement

- commissioning work on the tourism model

[redacted]

- building a project team to take forward and learn from the experience of the recently established US marine reserves

- opening talks with Mauritius

- opening talks with the US

-developing a communications strategy to help deliver and ensure we exploit to the full a decision to establish a reserve.

We would need to make significant progress in all these areas before publicly committing to a reserve

In slower time we would need to

- develop a scientific research approach with the NERC and others

- after the ECtHR judgement, develop measures for the Chagossians

Overseas Territories Directorate

5 May 2009

[redacted]

3rd Draft (PW) NOC W'shop

Marine conservation in British Indian Ocean Territory (BIOT): science issues and opportunities

Report of workshop held 5-6 August 2009 at National Oceanography Centre Southampton, supported by the NERC Strategic Ocean Funding Initiative (SOFI). Draft 3

1. Background

The 55 islands of the British Indian Ocean Territory (Chagos Archipelago) have a combined land area of less than 60 sq km – around 15% of the size of the Isle of Wight. However, they are surrounded by an estimated 3,400 sq km of coral reefs, and the potential BIOT Exclusive Economic Zone for management of marine resources is at least 540,000 sq km – more than twice the total UK land area. This marine space includes mid-ocean ridges, trenches and abyssal plains, as well as coral reefs, atolls and banks. Whilst the UK government is already committed to strong environmental protection[1-4] of the Territory and its surrounding marine resources, as if it were a World Heritage site[1], the case for additional safeguards has recently been made[5] by the Chagos Conservation Trust and the Chagos Environmental Network, as discussed at a meeting at the Royal Society on 9 March 2009.

To assess the scientific justification for such action, the UK Foreign and Commonwealth Office (FCO) sought independent advice from the National Oceanography Centre Southampton (NOCS) on environmental considerations relevant to the possible designation of a BIOT Marine Protected Area (MPA, see below). In response, NOCS, in partnership with university co-convenors, obtained NERC SOFI support for a workshop held on 5-6 August in order to i) widen the informal evidence base for such scientific advice, through involvement of relevant experts in the UK research community and elsewhere, and ii) identify knowledge gaps and associated marine science opportunities[6].

Workshop participants were made aware of the unique historical and legal complexities relating to the Territory. Furthermore, it was recognised that many issues relating to MPA establishment and governance for this area were beyond the scope of a two-day meeting considering scientific questions in the context of existing conditions, and arranged at relatively short notice. A full evaluation would instead require wider stakeholder engagement and attention to human dimension issues (that include socio-economic, political, ethical, jurisdictional and defence considerations) at both national and international levels[7].

Annex 1 of this paper provides the workshop programme; Annex 2, the participants list; and Annex 3, references and notes.

2. MPA definition and global context

The workshop adopted the International Union for Conservation of Nature (IUCN) definition of a Protected Area, whether land-based or marine, as "A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values"[8]. This definition is also used by the Convention on Biological Diversity (CBD).

Protected Area designation regulates, but does not necessarily exclude, human use. Six categories are recognised by IUCN, depending on the objectives of protection and the nature of allowable human activities. As follows: strict nature reserve/wilderness area; national park; natural monument or feature; habitat/species management area; protected landscape/seascape; and protected area with sustainable use of natural resources. Although features of the IUCN categories were considered by the workshop; no explicit category-specific recommendations were developed and no assumptions were made with regard to the possibility of future re-settlement of any of the currently uninhabited BIOT islands. It was, however, emphasised that the proposed BIOT MPA would need to include terrestrial habitats and the lower atmosphere, as well as reef systems, the deep sea-floor and the open ocean water column.

In 2006, the CBD estimated[9] that MPAs covered 0.6% of the world ocean (2.2 million sq km), and, on the basis of recent progress, it could take more than 60 years to reach the internationally-agreed target coverage of 10%, initially set for 2012. Since then, MPA coverage has nearly doubled, but without any significant UK contributions: the increase has been almost wholly due to six new designations in the Pacific, by the US (Papahanaumokuakea [Northwestern Hawaiian Islands] Marine National Monument, 2006; Marianas Trench Marine National Monument, Pacific Remote Islands Marine National Monument, and Rose Atoll Marine National Monument, 2009), Kiribati (Phoenix Islands Protected Area, 2008) and Australia (Coral Sea

Conservation Zone; interim status, 2009). Representative Indian Ocean ecosystems remain poorly protected or unprotected; as a result, the US-based Pew Environmental Group currently considers the Chagos Archipelago to be "top of the global list" as the marine area most worthy of MPA status.

3. Scientific (and societal) importance of the BIOT area

Through national legislation (Marine and Coastal Access Bill), European commitments (e.g. EU Marine Strategy Framework Directive, EU Habitats Directive, Natura 2000) and international agreements (e.g. CBD, Ramsar Convention on Wetlands, UN Convention on Law of the Sea, and 2002 World Summit on Sustainable Development), the UK government recognises the importance of MPAs in providing direct and indirect human benefits. Their generic rationale is detailed elsewhere[10]. The workshop therefore focussed on the environmental features of the BIOT area[11] that are either unique or particularly valuable in an MPA context. As follows, and in Tables 1 and 2 below:

- Large size. Many conservation-related benefits of Protected Areas increase non-linearly with size, since smaller areas are much less effective in maintaining viable habitats or populations of threatened species (particularly in the face of global warming, causing major spatial shifts in weather patterns and climatic regimes). Furthermore, the scale of a possible BIOT MPA would be global news, clearly delivering on UK political objectives for environmental protection and sustainability. Thus if all the potential EEZ is included (subject to international agreement, via UNCLOS), the BIOT MPA would be the world's second largest to date, only exceeded by Australia's Coral Sea Conservation Zone – and if all the MPA were a no-take zone, it would more than double the total world marine area with fully protected status.

- Habitat diversity. Whilst most conservation attention has to date focussed on shelf and coastal sea habitats (temperate and tropical), the BIOT area also includes an exceptional diversity of deepwater habitat types. Thus a very wide range of geomorphological and tectonic features are indicated from survey transects and satellite altimetry (sea surface height used as a proxy for bathymetry), with such features including plate separation, sea-floor spreading, sea-mounts and mid-ocean ridges (Chagos-Laccadive Ridge and Central Indian Ridge, the latter likely to support chemosynthetic vent communities); deep trenches, to ~6000m (Chagos Trench and Vema Trench); and abyssal plains (mid-Indian Ocean Basin). Although the deepwater habitats of the BIOT area have not been mapped or investigated in any detail, work elsewhere has shown that: i) deepwater biodiversity is closely linked to physical diversity; ii) there may be marked temporal and spatial variability in community composition and abundances; and iii) species richness can be very high (particularly at the microbial scale; e.g. molecular analyses of deep sea sediment yielding >1000 species of a single class, Actinobacteria, per sample, with >90% being novel taxa)[12].

- Near-pristine conditions. Human impacts on the BIOT area are minimal, and less than any other tropical island groups in the Indian, Pacific or Atlantic Oceans. Fishing is limited and relatively well-regulated (see Section 4 below), and there are currently no significant economic activities on the islands other than those associated with the US military base on Diego Garcia. Direct anthropogenic impacts elsewhere relate to the introduction of non-native terrestrial species (coconut palms and rats, but not on all islands); mooring damage by visiting yachts; low-level poaching for sea cucumbers and reef sharks, with occasional temporary encampments; and some strandline marine litter, originating outside the BIOT area. Sea-water quality is exceptionally high (even in the Diego Garcia lagoon), with pollutant levels mostly below detection limits. The combination of these factors results in the BIOT area supporting around half the total area of 'good quality' coral reefs in the Indian Ocean, on the basis that 17% of that total is estimated to have been effectively lost, 22% is in a critical condition, 32% is threatened by a range of human activities, and only 29% (with BIOT providing 14%) remaining in an apparently natural condition[13]. The health of marine ecosystems in the BIOT area gives them crucial importance as the 'control' for research and management activities elsewhere, where human impacts are very much greater.

- High resilience of Chagos coral reefs. Since the late 1970s, coral reefs worldwide have increasingly suffered mass mortalities from temperature-induced bleaching, due to the breakdown of the symbiotic relationship between corals (animals) and algae (plants), the former relying on the latter for photosynthetically-derived energy. Whilst Chagos surface water temperatures have warmed by ~1°C since the late 19th century, and many reefs there were badly affected by bleaching in 1998, they have recovered more, and faster, than any other known coral reef system[14]. This resilience has been ascribed to the lack of suspended sediment, pollution and other human impacts, providing beneficial consequences both for ecosystem integrity and water clarity. Thus grazing reef-fish limit prevent overgrowth by

macro-algae, whilst high light penetration allows Chagos corals to grow to depths of ~60m where they are less prone to thermal stress (cf lower limits of 20-40m elsewhere in the Indian Ocean). Chagos corals may also benefit from locally-favourable hydrodynamic conditions (intermittent inflows of cooler water, due to vertical movements of the thermocline), and/or genetic factors (prevalence of heat- and light-resistant dinoflagellate clades[15]). Whatever the basis for this resilience – currently subject to research attention, and meriting additional effort – it is of global conservation significance, in the context of recent dire prognoses for the future survival of coral reefs[16-18].

- Role as regional stepping-stone and re-seeding source. A key role for MPAs is their natural export of 'surplus' production and reproductive output, providing other areas with biomass and propagules (juveniles, larvae, seeds and spores) of species important either for commercial exploitation, conservation purposes or more general ecosystem functioning. This replenishment is hard to quantify, yet can be critical to the viability of heavily-harvested populations, particularly if they are also subject to regionally or temporarily variable breeding success. Preliminary studies of connectivity for the BIOT area, based on species similarity coefficients and genetic markers, indicates potentially strong export[19] (and hence scope for population replenishment) to the western Indian Ocean, consistent with ocean current data. In particular: corals and turtles are connected east-west, not north-south, whilst early fish genetics results indicate a high connectivity for species studied to date. Other groups currently being tested (by US, German, Canadian and Taiwanese researchers) include terns and boobies, coconut crabs, and reef invertebrates. High-resolution biophysical modelling (combining life cycle features, dispersal behaviour and ocean hydrodynamics) could also advance our understanding of crucial connectivity issues; for example, as developed for zooplankton in the North Atlantic[20].

Table 1. Specific issues raised by the FCO to assist in assessing the conservation value of the BIOT area.

Question	Priority assessment*	Summary response
Are there areas kept inviolate from human interference so that future comparisons may be possible with localities that have been affected by human activities?	XXXX	Nowhere on Earth is inviolate from human impacts, but the BIOT area is amongst the least affected (with many pollutants lower than in polar regions). Land access is highly controlled and limited to military personnel and support workers, the BIOT administration, and authorised scientists. Most of Diego Garcia is a designated Ramsar site[21]; the Chagos Bank is a proposed Ramsar site; and five reef/island areas are managed as Strict Nature Reserves (all or part of Peros Banhos Atoll, Nelson's Island, Three Brothers and Resurgent Islands, Cow Island and Danger Island). Non-native terrestrial species are problematic on some islands; a recent attempt at eradicating rats from Eagle Island was unsuccessful. All the BIOT area is a Fisheries Conservation Management Zone, with commercial catches regulated by licence and limited to 'surplus production'. However, some illegal fishing (for sea cucumbers, sharks and reef fish) does occur, and the BIOT area is affected by over-fishing elsewhere (e.g. ~90% depletion of sharks throughout the Indian Ocean since 1970s).
Are there representative examples of major marine ecosystems or processes? What is the level of heterogeneity?	XXXX	Very wide range of (tropical) marine habitats and ecosystems. Shallow water and land areas are all reef-based, including the world's largest atoll (Chagos Bank). Reef heterogeneity is high, depending on wave-exposure, shelter and water depth, with different coral assemblages. Some island ecosystems affected by historical use. Deep seafloor ecosystems expected to be highly diverse, based on large-scale geomorphological variety, but have not been surveyed or studied in detail. Water column (planktonic) ecosystems inherently less heterogeneous.
Are there areas with important or unusual assemblages of species, including major colonies of breeding native birds or mammals? Is there type locality or is the planning region the only known habitat of any species?	XXXX	The BIOT area is host to ~60 endangered species on the IUCN Red List[22] (including the world's largest arthropod, the coconut crab); 10 Important Bird Areas recognised by Birdlife International[23], at least 784 species of fish, 280 land plants, 220 corals, 105 macroalgae, 96 insects and 90 birds (24 breeding); and undisturbed and recovering populations of Hawksbill and Green Turtle. Bird breeding populations are amongst the densest in the Indian Ocean (eg 22,000 nests on Nelson Island, that has a total area of only 80 ha). Vegetation includes remnants of Indian Ocean island hardwoods. Marine endemics and type localities include the Chagos Brain Coral *Ctenella chagius* and the Chagos Clownfish *Amphiprion chagosensis*. However, there are relatively few other endemics, supporting the case for high connectivity between BIOT and other areas.
Are there areas of particular interest to ongoing or planned scientific research?	XXX	Over 200 publications have arisen from scientific visits to date, that have been limited in number, duration and platform capabilities. Current work focuses on reef resilience and palaeo-climate studies (on 300 yr old corals). Considerable scope for globally-significant work on ocean acidification and climate change,

Nelson Island

		using the BIOT area as mid-ocean 'clean' reference site for observations on atmospheric composition and ocean carbonate chemistry, and testing climate prediction models. Also opportunities for deep sea 'discovery' studies, and for developing understanding of spatial scaling of population connectivity, from field-based and theoretical perspectives.
Are there examples of outstanding geological or geomorphological features?	XXX	Unique or near-unique reef features include: i) Chagos Bank is the world's largest atoll; ii) archipelago has a very high number of drowned and awash atolls yet with good coral growth; iii) Diego Garcia is possibly the most completely enclosed atoll with a sea connection; iv) the calcareous algal ridges are the most developed of the Indian Ocean (these stop atolls from eroding); only long-swell Pacific atolls show the development seen in Chagos; v) there are lagoonal spur and groove systems (only site where this is reported; vi) most lagoon floors are carpeted with corals instead of sand and mud; vii) light penetration to ~60 m in deep lagoons and seaward slopes, linked to exceptionally deep peak coral diversity (20 m); viii) earlier Holocene still-stand cuts and caves clearly visible at 30–45 m depth; ix) location is seismically active, resulting in examples of recent uplifted limestone (raised reef islands) and some down-jolted, now submerged reefs. As noted above, deepwater geology and geomorphology in the BIOT area is also potentially of great interest, but has yet to be subject to detailed scientific study.
Are there areas of outstanding aesthetic and wilderness value?	XXX	Nearly all of it. Most small islands and lagoons are extremely picturesque and idyllic, with several smaller islands in near-pristine condition. The 'bird islands' are exceptionally rich. Reef quality and health is at a level that has not been seen at most other global locations for > 50 years, with water clarity for seaward reefs near its theoretical maximum.
Are there any sites or monuments of recognised historic value?	XX[24]	Known historic sites include the restored old settlement on eastern Diego Garcia. Settlements on other atolls have mostly disintegrated, especially those on Egmont and Eagle which were abandoned in 1950s. Graveyards on Diego Garcia, Peros Banhos and Egmont with some recent restoration. Some pre-settlement wrecks deduced from collections of artefacts, such as Ming pottery, copper and brass naval items from various times over last 400 years. An Australian expedition in November 2009 will look for even older remains or evidence of settlement from very early ocean-faring societies.
What is the general state of Indian Ocean fisheries and reef fish, and is the status of blue water and reef fish in Chagos different?	XXXX	Indian Ocean reef fisheries are mostly grossly over-exploited, with low catch per unit effort. Catch per unit effort of reef fish n the mostly un-exploited BIOT area are ~20 times higher than in East Africa and elsewhere (although that does not mean 20-fold higher harvests could be sustained). Licensed blue water fisheries in BIOT focus on migratory tuna (in BIOT waters for only 10-20% of their lives), with some by-catch.

Salom

*XXXX, very high global/regional importance; XXX, high global/regional importance; XX, moderate regional importance; X, low importance.

Table 2. Preliminary assessment of relative economic values (use and non-use) for the environmental goods and services[25, 26] provided by the BIOT area, excluding mineral resources [from Slide 4 of presentation prepared for the workshop by Pippa Gravestock]. Darker shading = higher value.

	USE VALUES		NON-USE VALUES		
	Direct use	Indirect use	Option value	Bequest value	Existence value
Tourism					
Fisheries					
Shoreline protection					
Research					
Scientific baseline					
Aesthetic land/seascapes					
Support for Indian Ocean fisheries					
Cornerstone of Indian Ocean reef recovery					
Model for Indian Ocean reef restoration					
Spiritual and cultural values					
Iconic					
Pristine					
Biodiverse(ity)					
Unique					

X ?

The analyses given in Tables 1 and 2 indicate that non-use values of BIOT natural resources are generally higher than use values. Preliminary monetary values were also included in Gravestock's presentation. Global studies done on the economic benefits of coral reefs estimate their value to range between $100,000 - $600,000 per sq km per year. That range compares with current BIOT protection costs of ~$5 per sq km per year. There was not, however, the opportunity at the workshop for detailed discussions of the economic valuations.

4. Fishery issues

As already noted, fisheries in the BIOT area are both protected and exploited to some degree. MRAG Ltd (formerly Marine Resources Assessment Group) is currently contracted to the BIOT Administration for the provision of relevant services and advice, primarily relating to fishery management within the 200 nm BIOT Fisheries Conservation Management Zone (FCMZ) declared in 1998[2].

The expectation for an MPA is that it becomes a no-take zone for fishing, either immediately or phased-in, on the basis that the protected area thereby assists in achieving stock recovery, and/or maximising longterm yields over a larger area. No-take zones should also eliminate any by-catch problems, that might threaten endangered, non-target species[27]. However, many large-scale MPAs are not fully no-take; some are zoned, whilst in others e.g. the Kiribati MPA, artisanal fishing is still permitted. The situation for the BIOT area is complicated by: i) modest recreational fishing activity in Diego Garcia and from visiting yachts ii) Mauritian/ Chagossian historical fishing rights, at present regulated through free licences (with the numbers of licences based on assessments of surplus allowable catch); iii) the migrations of the currently commercially-fished species (yellowfin, skipjack and bigeye tuna), that might only spend 1-2 months per year in the BIOT area; and iii) arrangements for the basin-wide, international management of tuna stocks by the Indian Ocean Tuna Commission (IOTC), of which the BIOT ~~Administration~~ is a member.

MRAG representatives at the workshop questioned whether full formal closure of all BIOT fisheries would achieve the desired conservation benefits, providing a paper[28] that argued that:

- The most likely outcome of tuna fishery closure would be a displacement of the fishing fleets to the edge of the BIOT area; total fishing effort (and tuna catches) might therefore remain much the same, the only difference being that the BIOT Administration would no longer receive licence income.
- If all the BIOT area were a no-take zone, the BIOT Administration would probably lose its membership of, and conservation influence within, the IOTC
- Furthermore, illegal fishing in the BIOT area might increase, since licensed fishing vessels currently assist in the policing (and exclusion from the FCMZ) of unlicensed ones. Such an increase would have cost implications for management and surveillance, no longer covered by licence fees.
- The above factors make it preferable to fully or partly continue the commercial fishery, by zoning the BIOT MPA, or by limiting its size to less than the current FCMZ.

Whilst acknowledging the complexities of the above issues, other workshop participants were not fully persuaded by these arguments. Coupled modelling of fishing fleet behaviour and tuna population dynamics under different zoning scenarios was suggested as an approach that might assist in quantifying key interactions, together with an analysis of the effects of the current 'closure' of Somali waters (due to risk of piracy). An interim measure for the BIOT area could include a more comprehensive research and observer programme for the licensed tuna fisheries, to increase the database on tuna spawning, juvenile catches and bycatches, and sensitivity of individual and population movements to climate change[29] and other environmental variables. If the tuna fishery in the BIOT area were to continue, on the basis of MPA-zoning, then such research activities could, in MRAG's view, contribute to longterm population conservation whilst also identifying any areas of aggregation of protected, endangered or threatened species that might benefit from targeted time-area closures.

Ultimately the decision on the extent of the open ocean no-take zone within a BIOT MPA will be a political one. There is undoubted attractiveness in the simplicity – and greater presentational impact – of a large, no-take MPA; for either a scaled-down version or a zoned one, more subtle justifications would be needed, with the risk that the latter options might appear to be no different from business-as-usual.

The issue of Mauritian/Chagossian fishing rights was also considered to be a political one, that could only be resolved by negotiation and international agreement.

5. Threats, risks and uncertainties

The workshop discussion groups identified a number of events, activities and possible developments that, depending on their location, timescale, severity and combination, might either strengthen the case for MPA establishment or jeopardise its future success. These could be grouped under three general headings – environmental changes, human activities, and policy-science interaction issues – as below. This list does not claim to be comprehensive; for additional details on several of these topics, see the Chagos Conservation Management Plan (2003)[4].

Environmental changes

- Direct climate change impacts. In addition to a likely increase of ~ 2°C in sea surface temperatures over the next 20-30 years (with serious implications for the frequency of coral bleaching[16, 17]), significant changes in storm activity, rainfall, and ocean circulation are now near-inevitable[30]. All these aspects of climate change will impact the integrity and ecosystem functioning of coral reef ecosystems not just in the Indian Ocean but globally, increasing the societal and scientific value of near-pristine reefs that have shown greatest resilience to date, and that are therefore mostly to survive in future.

- Ocean acidification. Closely linked to climate change, increases in dissolved CO_2 cause decreases in pH and aragonite saturation – with potentially serious implications for coral calcification[31]. Thus ~50% reduction in coral growth rates are predicted[32] if atmospheric CO_2 levels reach 450 ppm (considered the 'safe' target in international climate negotiations; levels are currently ~385 ppm). Ocean acidification may already be affecting the rate of post-bleaching recovery, and is highly likely to hasten the demise of coral reefs subject to other stressors.

- Sea level rise. Closely linked to climate change (but also affected by local vertical land/seafloor movements), relative sea level at Diego Garcia has increased by ~5 mm per year since 1985, around twice the global average for absolute sea level change. If future increases are not fully matched by the upward growth of reef flats – considered unlikely on the basis of historical evidence – the consequence will be increased shoreline wave energy, erosion of island rims and much greater flooding risk, particularly during extreme weather events. Since the maximum elevation of most islands in the northern Chagos Archipelago is only 1-2 m, these are at risk of becoming submerged or 'drowned' atolls within a century on the basis of business-as-usual climate change scenarios.

- Introduced species. Current (land-based) problems for invasive non-native animals and plants are relatively well known, and the need for control measures recognised. Marine introductions have not been a problem to date, but continued care, e.g. re ballast water discharge in Diego Garcia lagoon, is necessary.

Human activities

- Illegal fishing. Current levels of illegal near-shore and reef fishing are a concern, and any increases could require a step-wise increase in protection and enforcement effort, in the form of an additional fishery protection vessel (that could also be available for research). Underlying factors include the increase in the small-vessel fishing fleets of Sri Lanka and other nearby nations, in part due to post-tsunami aid; the rapid growth of populations all around the Indian Ocean; and the declining condition of coral reefs elsewhere, with severe over-exploitation of their fisheries.

- Visitors. Anchor-damage from visiting yachts was highlighted as a concern in the 2003 Management Plan, and remedial action has since been taken. Scientists are also occasional visitors, and great care must be taken they do not themselves cause environmental damage. The workshop considered that the development of commercial tourism would risk ecological damage and disturbance, and was pragmatically unlikely because of current defence activities; the very limited land available for infrastructure (~16 sq km, excluding Diego Garcia); and constraints on freshwater supply and waste disposal. Nevertheless, it would be important goal for a BIOT MPA to provide virtual visits online (via Google Earth, and websites of IUCN, Marine Education Trust and others). Such access should involve underwater and land-based webcams and opportunities for 'citizen science' engagement in research and educational projects.

- Sound pollution. Underwater seismic surveys and defence-related underwater sound operations are potentially damaging to marine mammals such as whales and dolphins. Such activities would need to be either excluded from, or strictly regulated within, a BIOT MPA.

- Oil pollution, marine litter. No marine oil-spill incidents to date. Most UK legal measures to minimise the incidence of oil pollution and assign liability for clean-up costs already apply to BIOT. Marine litter (flotsam/jetsam, mostly plastic debris originating outside the BIOT area) is a shoreline problem on northern islands; its periodic removal is desirable to maintain beach quality for nesting turtles.

- Seabed mineral extraction. Although not currently of economic importance, deep sea mineral exploitation may occur in future as land-based ore reserves become depleted and metal prices rise. The Central Indian Ocean abyssal plain is rich in ferromanganese nodules[33] and deposits of polymetalic sulphides and cobalt-rich ferromanganese crusts may occur in the mid-ocean ridge features within the BIOT area[34]. An ISA licence for polymetallic nodule exploration[35] was issued to India in 2002 for an area of 150,000 sq km outside national jurisdiction to the south-east of the Chagos Archipelago. The environmental impacts of commercial-scale seabed mineral extraction have yet to be determined.

- Bioprospecting. The high genetic diversity of coral reef ecosystems makes them attractive targets for biotechnological and pharmacological applications[36]. However, bulk harvesting is generally not required; instead small samples are used for initial screening, with subsequent laboratory-based molecular characterisation and production scale-up of any novel bioactives. The high cost of drug safety testing, together with patenting problems for natural products, has limited commercial development to date.

Science-policy interactions

- Political uncertainties. The senior FCO representative at the workshop stated the UK government position with regard to Chagossian re-settlement, US military use, and Mauritian sovereignty claims for the Chagos Archipelago: on all of these issues, no changes to existing arrangements were envisaged in the immediate future. Nevertheless, in view of the current involvement of the European Court of Human Rights, the non-FCO workshop attendees considered that more detailed planning for an MPA could not preclude re-settlement scenarios, and/or the return of all or some of the islands to Mauritian jurisdiction. Acknowledgement of such possibilities was important to avoid the (mis)perception that the motives for MPA designation might be geopolitical, rather than for the purpose of conserving a global-scale heritage for the wider public good.

- Sustainability of human settlement. The co-existence of the US military base and the Ramsar conservation site on Diego Garcia shows that relatively high numbers of people and environmental protection of a coral atoll are not incompatible. However, almost all food and other material requirements of that population depend on high cost, long-distance imports, that would be more difficult to sustain on other Chagos islands. The workshop did not, however, attempt to quantify either island-specific nor total (non-military) human carrying capacities of the islands that would be compatible with MPA-level ecosystem protection.

- Financial commitment. MPA designation, establishment and maintenance are not cost-free activities: a longterm financial commitment is needed for their success[37]. Protection costs for the BIOT area are currently modest (estimated by Gravestock to be ~$5 per sq km per year), at the low end of a global analysis[38] of MPA costs that had a median of $775 per sq km per year. Whilst larger areas can be expected to have lower costs when expressed on a per area basis, site-specific factors keeping costs low for a BIOT MPA include the very low visitor numbers (reducing infrastructure and maintenance costs) and the negligible opportunity costs (income that might otherwise be available from alternative uses).

- Stakeholder support. As already noted, wide stakeholder support would be crucial for the success of a BIOT MPA, where stakeholders are defined as all groups involved in achieving project objectives – not just in terms of permission or financial support, but also those who are directly or indirectly affected, and with the ability to influence public opinion.

6. Science needs and opportunities

A recent online review[39] identifies a very wide range of environmental science topics (mostly coral-reef related) considered to be of high importance for the Chagos Archipelago, grouped under 16 headings: Stepping stone in the Indian Ocean; ocean warming effects; coral mortality from warming; coral recovery and trajectories; fore- and hindcasting of coral population trajectories; lagoon responses; fish responses to climate change in Chagos; acclimation by zooanthellae clades; water, exchange, clarity and sand budgets; reef geomorphology from remote sensing; estimates of fish diversity from remote sensing; pollution and water quality; invasive and introduced species; bird life; exploitation and poaching; and geochemistry and climate teleconnections.

The workshop had neither the time nor the expertise to consider all of these in detail. Nevertheless, it did re-group some key knowledge gaps, including deepwater considerations but not socio-economic issues, in the context of both wider understanding (hypothesis-testing research opportunities, that might be of interest to NERC, the Royal Society or NSF) and MPA management (more operationally-focussed requirements, for support by BIOT Administration/FCO, DfID, Defra or NGOs), as summarised in Table 3 below.

Table 3. Summary of some environmental science needs and opportunities for the BIOT area

	Knowledge gap	Context of wider understanding	Context of MPA management
1. Survey-based research and mapping	Deep sea bathymetry in MPA area	Geomorphological evolution of West Indian Ocean basin; plate tectonics and other seafloor processes	Basic mapping and knowledge of habitat diversity; requirement for EEZ recognition under UNCLOS, and e MPA boundary definition
	Deep sea biodiversity in MPA area	Development of biodiversity rules re ubiquity/endemism, trophic structuring, and upper ocean - lower ocean connectivities; potential for novel discoveries	Inventories of species' presence and abundances within the MPA area; reference for future changes
	Detailed mapping of island vegetation and soil structure	Comparison of natural and human-influenced tropical island ecosystems; improved calibration/validation of satellite-based data	Baseline information for monitoring and stability/ erosion assessments
2. Monitoring environmental change	Atmospheric and marine chemistry observations in the mid-Indian Ocean	Dynamics of air-sea exchange processes in remote region; testing and development of global models of climate change and Earth system biogeochemistry (including ocean acidification)	Basic parameters for detecting site pollution and anthropogenic impacts
	Measurements of key coral reef parameters (for corals, reef fish invertebrates, turtles and birds) as indicators of ecosystem health	Distinguishing responses to local, regional and global environmental change; quantifying factors determining ecosystem resilience; reference data for studies elsewhere	Information on MPA status and management effectiveness (protection, restoration or remedial action)
	Open ocean plankton studies and abundance estimates for top predators (blue water fish and sea mammals)	Regional studies of ocean productivity, linkage to ocean circulation changes; development of ecosystem approach to marine resource management	Information on MPA status and management effectiveness
	Physical oceanography measurements over range of spatial scales, including sea-level changes	Improved models of reef and lagoon currents and circulations within wider context; impacts of extreme events and future climate change	Identification of coastal erosion risks
3. Large-scale or generic science questions	Palaeo-climate studies using coral cores (century-scale)	Understanding responses of reef system to past changes	Quantifying natural variability and referencing future changes
	Biological connectivity of BIOT area to wider region (via genetics, tagging and modelling, and including open-ocean fisheries)	Theoretical basis for ecosystem scaling and delivery of goods and services; optimising design and effectiveness of protected areas	Quantifying benefits of MPA for food security in wider Indian Ocean; maintained engagement with Indian Ocean Tuna Commission
	Factors determining recovery from coral bleaching and wider ecosystem resilience	Improved understanding of species interactions, non-linear ecosystem changes, emergent properties of intact systems and functional redundancy	Information on MPA status and management effectiveness; 'best practice' approaches for application elsewhere

NERC support could either be through individual, responsive-mode research grant proposals; consortium bids, assessed on scientific merit and involving a multi-institute research team; or a large-scale Research Programme, addressing NERC strategic priorities and initiated through theme leaders' Theme Action Plans. The workshop noted that grant bids were highly competitive, and that Research Programme development and approval was likely to be a lengthy and uncertain process. Nevertheless, multi-sector linkages (involving marine, terrestrial, geological and atmospheric research communities) could enhance the likelihood of success, with co-support arrangements also being potentially advantageous, e.g. research proposal development via the multi-agency Living with Environmental Change (LWEC) programme[40].

8. Conclusions and recommendations

i) There is sufficient scientific information to make a very convincing case for designating all the potential BIOT Exclusive Economic Zone as a Marine Protected Area, to include strengthened conservation of its land area.

ii) The justification for MPA designation is primarily based on the size, biodiversity, near-pristine nature and health of the Chagos coral reefs, that are likely to make a significant contribution to the wider biological productivity and food security of the Indian Ocean. The potential BIOT MPA would also include a wide diversity of unstudied deepwater habitats.

iii) Such a designation would safeguard around half the high quality coral reefs in the Indian Ocean whilst substantially increasing the global total coverage of MPAs. It would provide either the world's second largest single MPA to date, or the largest fully-protected area.

iv) Whilst the expectation is that the current commercial tuna fishery within the proposed MPA would be phased out, this issue would benefit from additional research attention to avoid unintended consequences.

v) Climate change, ocean acidification and sea-level rise jeopardise the longterm sustainability of the proposed MPA. They also increase its value, since coral reef areas elsewhere (that are mostly reduced in diversity and productivity) seem likely to be more vulnerable to such impacts.

vi) To safeguard the current condition of the coral reefs, human activities need to continue to be carefully regulated. Novel approaches to wider sharing of the benefits and beauty of the MPA would need to be developed, primarily through 'virtual tourism'.

vii) Several important knowledge gaps have been identified, with implications both for BIOT MPA management and for advancing our wider understanding of ecosystem functioning, connectivity, and the sustained delivery of environmental goods and services.

viii) Detailed planning of the practicalities of MPA designation would require increased attention to *inter alia* site boundary issues, possible zoning, and socio-economic considerations, with wider engagement and consultations involving other UK government departments (e.g. Defra/JNCC, DECC and DfID); neighbouring nations (e.g. Mauritius, Seychelles, Maldives and Sri Lanka); NGOs with interests; and other key stakeholder groups (including Chagossian representatives).

Annex 1. Workshop programme

Wednesday 5 August

10.30 *Coffee and registration*

10.45 Welcome, scene setting and current progress

- Context of meeting, broad outline (Lindsay Parson)
- UK government perspective of Chagos/BIOT MPA (Joanne Yeadon)[41]
- Chagos protection as of now (Charles Sheppard)
- Chagos – shallow water ecosystems and issues (John Turner)
- Chagos – mid- and deepwater ecosystems and issues (David Billett)

12.00 Discussion

12.30 *Lunch*

13.30 Short presentations/contributions with discussion, including:

- Fisheries management in the Chagos FCMZ (Chris Mees)
- Marine conservation: the Pew perspective (Jay Nelson)
- The economic value of the British Indian Ocean Territory (Pippa Gravestock; presentation given by Charles Sheppard)
- Marine conservation: the IUCN perspective (Dan Laffoley)
- Issues relating to MPA development and design (Francesca Marubini)
- Marine conservation in SE Asia (Heather Koldeway)
- MPA development in Southern Ocean (Susie Grant)
- Shallow marine benthic biodiversity: tropical-temperate comparisons (Andrew Mackie)

16.30 Scientific review; key issues

17.30 *Close*

19.30 *Workshop dinner: The Olive Tree*

Thursday 6 August

09.00 Short presentations/contributions with discussion, continued

- Deepwater bathymetry and habitat mapping (Colin Jacobs)

09.15 Working Groups on science justification for BIOT MPA : benefits, threats and research issues

12.00 Reports from Working Groups (Rapporteurs: David Billett, Phil Williamson)

12.30 *Lunch*

13.30 Concluding discussions

15.30 *Close of meeting.*

Annex 2. Workshop participants

The following individuals attended:

David Billett	National Oceanography Centre Southampton
Alan Evans	National Oceanography Centre Southampton
Susie Grant	British Antarctic Survey
Simon Harding	Institute of Zoology
Peter Hunter	National Oceanography Centre Southampton
Colin Jacobs	National Oceanography Centre Southampton
Douglas Kerr	Foreign & Commonwealth Office
Heather Koldewey	Institute of Zoology
Dan Laffoley	International Union for Conservation of Nature / Natural England
Andrew Mackie	National Museum of Wales
Francesca Marubini	Joint Nature Conservancy Council / Univ of Aberdeen
Chris Mees	MRAG Ltd
Jay Nelson	Pew Environment Group: Ocean Legacy Program
Iain Orr	Independent observer
Scott Parnell	Foreign & Commonwealth Office
Lindsay Parson	National Oceanography Centre Southampton
John Pearce	MRAG Ltd
Katharine Shepherd	Foreign & Commonwealth Office
Charles Sheppard	Univ of Warwick / Chagos Conservation Trust
John Turner	Univ of Bangor
Keith Wiggs	BIOT Administration
Phil Williamson	Univ of East Anglia / NERC
Ian Wright	National Oceanography Centre Southampton
Joanne Yeadon	Foreign & Commonwealth Office

Others invited to attend but unable to do so included NERC Theme Leaders (Biodiversity and SUNR) and representatives from Plymouth Marine Laboratory, Scottish Association for Marine Science, Univ of Exeter, Univ of Newcastle, Defra, Royal Society, Linnean Society and UNEP Coral Reef Unit. Lynda Rodwell (Univ of Plymouth) and Mark Spalding (The Nature Conservancy) declined to participate on the basis of perceived deficiencies in stakeholder representation.

Comments and other written submissions were provided both before and after the workshop by Pippa Gravestock (Univ of York), Sidney Holt (ex FAO), Peter Sand (ex-UNEP lawyer, Univ of Munich) and David Snoxell (Coordinator of Chagos All Party Parliamentary Group), also on behalf of the Chagos Refugee Group (Olivier Bancoult) and the Mauritius Marine Conservation Society (Philippe la Hausse de Lalouvière and Jacqueline Sauzier). Most of these inputs were either circulated to all workshop participants or made available at the meeting.

Annex 3. References and notes

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41. Apart from this initial short presentation, stating the current UK government position, FCO participants had an observer role at the meeting.

No!

Need to

Workshop report prepared by P Williamson with assistance of editing group comprising D Billett, D Laffoley, L Parson and C Sheppard.

Annex 134

Email exchange between Colin Roberts, Director, Overseas Territories Directorate, and Matthew Gould, Principal Private Secretary to the Foreign Secretary, UK Foreign and Commonwealth Office, 7 May 2009

Joanne Yeadon

From: Colin Roberts
Sent: 07 May 2009 16:37
To: Andrew Allen; Joanne Yeadon
Cc: Heather Christie; Jane Rumble; Scott Parnell; Zoe Townsley
Subject: FW: Restricted: BIOT
Security Label: RESTRICTED

(PW) Pew.

Colin Roberts
Director, Overseas Territories Directorate
Telephone: 00 44 (0)207 008 2742
Fax: 00 44 (0)207 008 2108
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Address: WH2.307A, FCO, King Charles Street, London SW1A 2AH

27/5/09.

From: Matthew Gould
Sent: 07 May 2009 16:17
To: Colin Roberts
Cc: Catherine Brooker
Subject: RE: Restricted: BIOT

Colin

This looks right, and good. The Foreign Secretary was really fired up about this after the meeting, and is enthusiastic we press ahead with this. So do press ahead as you suggest, but my advice would be to keep the timelines taut, to keep him involved, and to ensure that the creation / announcement of the reserve is scheduled within a reasonable timescale.

Matthew

From: Colin Roberts
Sent: 07 May 2009 12:37
To: Matthew Gould
Subject: Restricted: BIOT

Matthew,

Many thanks for delivering the Foreign Secretary yesterday!

On the basis of the FS's comments I propose

1) to continue our private "bilateral" engagement with stakeholders

2) to develop and implement a communications strategy/public diplomacy to build support for a reserve

3) to devise a public consultation process which takes account of the key legal and political risks identified, but is not dependent on resolution of all issues. I would aim to launch a consultation process in the second half of this year.

4) to develop around this an overall delivery plan with timelines.

I will keep Ministers informed of progress and expect to submit in due course for ministerial approval of the nature and exact timing of the public consultation process.

Does this match your understanding of what the FS wants to happen?

Colin

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Annex 136

Email dated 6 July 2009 from [redacted]@mrag.co.uk to Joanne Yeadon, Head of "BIOT"and Pitcairn Section, UK Foreign and Commonwealth Office, "Summary of the activities of Mauritian Fishing Vessels"

[redacted]

From: [redacted]@mrag.co.uk
Sent: 06 July 2009 16:10
To: Joanne.Yeadon@fco.gsi.gov.uk
Subject: Mauritian fishing in BIOT
Attachments: Summary of the activities of Mauritian Fishing Vessels.docx

Dear Joanne

Further to our conversation this morning when you requested 'a full history of fishing in BIOT by Mauritian vessels'. The Mauritians have engaged in the offshore tuna fishery with purse seine fishing vessels, and in the inshore demersal (banks) fishery. The attached document summarises the number of licences issued each year since 1991, the days in the zone and the catch taken. Considerably more detail is available in the background papers to the BMFC but I am not sure that you need this for your purposes (e.g. species caught, fishing locations etc). If you require more detailed information, please let me know. With respect to the inshore fishery, there was a Mauritian 'Banks' fishery that prosecuted the Chagos fishery for many years prior to the declaration of the BIOT FCMZ. Details are available in the following report which I produced under a DFID Fisheries Management Science Programme project, and may be of interest (probably more detail than you need, but see Table 7 which shows catches as far back as 1977):

http://www.fmsp.org.uk/Documents/r5484/R5484_Rep2.pdf

Previously you asked me about how much tuna caught in BIOT FCMZ goes to Mauritius. As I indicated, this information is not available directly on MRAG's database. However under the rules of origin this information will be available. There is the Princes cannery in Mauritius and also a fresh fish processing facility for tuna. Both Princes and the other facility should be able to indicate the quantity of fish derived from BIOT. Additionally, the Mauritian authorities will have this information, though they may not have extracted it as such, but it would be possible to ask them. MRAG also have contacts in Princes and could ask for this information, though they may suggest that such detail is commercial in confidence. Please let me know if you want me to do any more to obtain this information.

Best wishes

[redacted]

[redacted]
Development Director
MRAG Ltd, 18, Queen Street, London, W1J 5PN, UK
Tel: [redacted] (General)
Tel: [redacted] (Direct)
Fax: [redacted]
Web : http://www.mrag.co.uk

MRAG managed the DFID Fisheries Management Science Programme
Web: http://www.fmsp.org.uk

Summary of the activities of Mauritian (flagged and owned) vessels in the BIOT FCMZ by year 1991 to date

Inshore Fishery

Year	Licences Issued	Days in Zone	Catch (t)
1991	6	na	299.196
1992	4	136	305.170
1993	7	68	199.683
1994	8	116	308.134
1995	8	117	217.479
1996	8	159	319.450
1997	3	145	302.025
1998	3	60	80.712
1999	2	59	124.009
2000	4	108	311.524
2001	6	112	185.275
2002	2	110	218.640
2003	2	119	242.994
2004	3	101	127.532
2005	0	0	0
2006*	1	44	136.070
2007*	1	48	121.135
2008	0	0	0
2009*	2	Ongoing	Ongoing

* Note that since 2006 Talbot fishing company have reflagged their vessels to Madagascar and Comoros. However they remain Mauritian owned and so we have included them in the above table.

In 2009 one of the vessels applying for a licence is Mauritian flagged and owned

Under the terms of the agreement with Mauritius, no licence fee is charged for Mauritian flagged vessels.

Purse Seine Fishery

Year	Licences Issued	Days in Zone	Catch (t)
1991	3	6	356
1992	6	40	606
1993	6	24	421
1994	4	52	612
1995	4	4	75
1996	4	7	75
1997	2	0	0
1998	4	5	79
1999	3	0	0
2000	0	0	0
2001	0	0	0
2002	0	0	0
2003	0	0	0
2004	0	0	0
2005	0	0	0
2006	0	0	0
2007	0	0	0
2008	0	0	0
2009	0	0	0

Mauritius operated two purse seine vessels, Lady Sushil I and II. Licences issued were for 3 months at a time. Under the terms of the agreement with Mauritius, no licence fee was charged for Mauritian flagged vessels. Neither vessel is still fishing and no licences have been issued since 1999.

Annex 137

Email dated 9 July 2009 from Development Director of MRAG to Joanne Yeadon, Head of "BIOT"& Pitcairn Section, UK Foreign and Commonwealth Office, &"MRAG Comments on the proposal to designate the BIOT FCMZ as a marine reserve"

[redacted]

From: [redacted]@mrag.co.uk
Sent: 09 July 2009 09:42
To: Joanne.Yeadon@fco.gsi.gov.uk
Subject: BIOT MPA? MRAG comments and advice.
Attachments: BIOT MPA MRAG comments_Final.docx; BIOT MPA MRAG comments_Final.pdf

Dear Joanne

Further to our recent conversations and your request for MRAG's advice in advance of the formal public consultation on the proposal to make the BIOT FCMZ a marine reserve, please find attached our comments. I have provided both a Word and PDF version.

I understand that we will discuss this issue with Colin Roberts next week but please let me know if there is any further information you require in advance of that meeting. Similarly with regard to additional information on Mauritian engagement in the BIOT fisheries that we shall also be discussing.

Best regards

[redacted]

[redacted]
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MRAG managed the DFID Fisheries Management Science Programme
Web: http://www.fmsp.org.uk

MRAG Comments on the proposal to designate the British Indian Ocean Territory (BIOT) Fisheries Conservation Management Zone (FCMZ) as a marine reserve.

8 July 2009

Overview

We understand that the FCO is exploring the possibility of making the British Indian Ocean Territory (BIOT) the world's largest marine reserve. The broad concept would be to declare the entirety of BIOTs Exclusive Economic Zone (EEZ) and Territorial Sea a no-take Marine Protected Area (MPA), bringing to an end the current licensed fishing activity and legislating for the protection of the seas and atolls. Full public consultation is due for October 2009.

The following comments are provided by MRAG in advance of any formal consultation. They are intended to highlight likely outcomes of the proposal as it stands and alternative options that we suggest would have equal or enhanced conservation outcomes while avoiding several issues of significant concern for the BIOT Administration. In addition to conservation these include political, economic and legal issues. We also indicate where additional research may be relevant to aid decision making. MRAG are contracted to the BIOT Government until May 2010 for the provision of services and advice for the Management of the BIOT fisheries regime. The advice we provide is objective and independent, however, we must acknowledge an interest in the decisions taken by the BIOT Administration with respect to the future management of the Fisheries Conservation and Maritime Zone.

Whilst recognising and supporting the broad conservation aims of the proposal, we question their applicability to offshore fisheries and their validity under international law when applied to the whole FCMZ. We propose an alternative designation (e.g. closure of an area encompassing the islands and the Great Chagos Bank – for example out to 12 nmiles) that would achieve the same political impact, would be commensurate with international law, and would be more properly focussed on that part of the BIOT FCMZ that would benefit from closure and conservation – the vulnerable reefs. Our alternative and its implications are first summarised. In the remainder of this paper we explain in more detail the background and our rationale for this alternative proposal.

Summary and alternative proposal

1. **There are alternatives to declaring the entirety of BIOTs Exclusive Economic Zone (EEZ) a no-take Marine Protected Area (MPA) that can achieve similar environmental and political benefits, could have a more beneficial economic outcome and would be consistent with international law.**

An alternative to closing the entire EEZ would be to consider declaring a zone that would protect the vulnerable reefs of the Archipelago. For example, a zone could be defined that includes not just the islands and Territorial Sea but also an area demarcated by 12 nm from, say, the 200 m depth contour around the Great Chagos Bank (see Figure 1). An area of 53,270 square kilometres would be protected.

This would:

- Deliver the same or similar political punch when announced.
- Protect the more vulnerable reef ecosystems that are able to benefit from no-take protection and be in accordance with UN General Assembly Resolution 61/105 concerning the effects of fishing on Vulnerable Marine Ecosystems (see Section 2.c).
- Be consistent with coastal state responsibilities under UNCLOS (see Section 4.a).
- Enable licensed commercial fishing for offshore tunas and tuna like species which would not be significantly protected by a no-take closure, thus continuing to generate a sustainable revenue stream to support management and surveillance (see Section 2.a).
- Reduce the likelihood of IUU fishing by commercial tuna vessels and thus keep the costs for offshore surveillance down. VMS would remain a valid monitoring tool (see Section 3 and 5.a)
- Retain engagement with IOTC and continued influence over the conservation and management of tuna stocks (see Section 2.b).
- Enable other conservation measures to be announced as appropriate (e.g. the already implemented measures for sharks)

This would not:

- Address the issue of Mauritian historical fishing rights to the inshore fisheries (see Section 4.b).
- Address the question of recreational fishing on Diego Garcia – under this designation it would be banned unless an exception is made (see Section 4.c)
- Address the issue of artisanal or commercial fishing should the Ilois return (see Section 4.d).

  We note that in protected areas it is also usual to have designated zones for different activities, including fishing, so these points, could be accommodated although this would provide less protection than a strict no take zone.

- We also note that this proposal would do nothing additional to deter IUU fishing in the inshore area and the need for continued management and surveillance would remain (see Section 3).

In conjunction with designating this inshore marine protected area Pew could then provide a number of significant inputs and contributions:

- Financial support for a dedicated inshore patrol vessel able to navigate the reefs and thus better detect IUU Sri Lankan vessels. This would enable the BIOT administration to focus its finances on an offshore patrol vessel.
- Provide funding and deliver an awareness raising programme in Sri Lanka to more directly tackle the IUU issue 'at home'. This may include supporting alternative livelihoods for Sri Lankan fishers.
- Support baseline research and continued monitoring of the reefs in the closed area (usually detailed baseline studies would be performed before closure).
- Provide financial support in order to deliver a more comprehensive observer programme for the licensed tuna fisheries. This would then provide more detail on the tuna fisheries and could generate a database of information to look at issues such as bycatch and juvenile catches, identify if any areas of aggregation of protected, endangered or threatened (PET) species occur within the BIOT FCMZ at any time that could benefit from targeted time-area closures[1] etc.

At the same time as closing the inshore reefs, BIOT should maintain its offshore tuna fishery and its membership of IOTC in order to ensure it receives an equitable allocation of fishing rights in future. At that point the BIOT Administration would be in a strong position to consider how best to serve conservation of tuna (see Section 2.b).

In total, the package of an inshore marine protected area, properly managed offshore fisheries, increased observer and science coverage both inshore and offshore would lead to significant environmental benefits of which it could be justifiably proud, and which would be commensurate with UK OTs conservation principles.

Additional information in more detail

2. Closure of the BIOT FCMZ will not address all conservation concerns; after the initial political impact, the conservation outcomes of the closure are likely to fall short of expectations and may be negative in some cases.

a. Closures have limited applicability for tuna stocks

Fixed marine protected areas (closed areas) are of limited applicability to highly migratory species such as tunas, which in the Indian Ocean follow an annual migration around the ocean and are in abundance in the BIOT FCMZ in the period November to February. Instead of providing protection of tunas the result of closure is likely to be displacement of the fishing fleets and concentration of fishing elsewhere. In the Indian Ocean this problem is already exacerbated by the piracy spreading out from Somalia. The Somali problem illustrates what

[1] Note that from existing observer studies fishing in BIOT targets large adults and usually from free schools rather than around aggregating devices. Juvenile bycatch has not been a significant problem. Tuna also tend to spawn throughout the year when conditions are right rather than in aggregations and we do not currently have information to suggest that BIOT is a particular spawning area. More observer coverage would be valuable to explore these and other relevant questions.

is currently happening and verifies this point – during 2009 the fishing fleets have remained fishing in the Mozambique Channel and have fished close to the BIOT EEZ at times when they would otherwise have been in the Somali EEZ, maintaining fishing despite the defacto Somali closure.

b. Tuna stocks are best managed at an international level; the best way of achieving conservation aims for tuna stocks is to remain actively engaged with IOTC

Highly migratory stocks cannot be managed solely at a national level but require international cooperation. The Indian Ocean Tuna Commission is the relevant responsible body and UK-BIOT is currently a member. A core problem faced globally for all tuna fisheries is that of overcapacity; closures do not address this problem.

For tuna stocks maintaining active engagement in IOTC will best promote UK's conservation aims and credentials in respect of tuna fisheries. For this reason, we recommend that BIOT remains a member of IOTC in order to retain its influence, even if a decision is made to close the FCMZ. Currently BIOT provides valuable inputs to the science and assessments at the IOTC Working Party on Tropical Tunas, and contributes actively and effectively to the management decisions at the Science Committee and the Commission.

We also note that the tuna RFMOs, including IOTC, are exploring the question of allocation of rights to tuna fisheries. BIOT should maintain its offshore tuna fishery and its membership of IOTC in order to ensure it receives an equitable allocation of fishing rights in future. At that point the BIOT Administration would be in a strong position to consider how best to serve conservation of tuna through the use it made of those rights. For tuna stocks, the possibility exists for greater conservation impact than could be achieved through closures.

c. Closures are appropriate for reef fish, effectively resident in the Chagos archipelago

Marine Protected areas have been demonstrated to be an effective conservation and management tool for reef associated fish species and the same would be true for the islands banks and reefs of the Chagos Archipelago. After larval settlement, BIOT reef fish species live their entire lives on the reefs of the Chagos Archipelago. Thus closure of the reefs would protect the entire fish stock as it would not be fished outside the FCMZ like tuna. Since Chagos is considered a stepping stone between reefs in south-east Asia and Africa the wider environmental benefits (through larval drift) could be significant. Full protection of the reefs would also stop any bycatch of sharks, for example.

Since declaration of the BIOT FCMZ licensed 'inshore' fishing on the reefs has only occurred from Mauritian owned or flagged vessels, and in recent years the level of fishing has decreased significantly. Since 2004 no Mauritian *flagged* vessels have fished although one has applied for a licence in 2009. Catches recently have been below a quarter of the level that could be sustained (10.8% in 2007). However, there has also been illegal fishing by vessels from Sri Lanka.

3. Closure of the BIOT FCMZ is likely to lead to an increased risk of illegal, unregulated and unreported (IUU) fishing activity, and therefore the costs of controlling this are likely to be significantly greater than at present.

Following early prosecution of IUU activity by industrial tuna fishing vessels shortly after the declaration of the BIOT FCMZ, and common knowledge that BIOT operates a patrol vessel and applies high fines, there has not been an IUU problem associated with tuna vessels (apart from minor infractions related to terms and conditions of licence). Offered licences to fish legally, it is not currently worth taking the risk of fishing illegally. Furthermore, it is in the interests of licensed vessels to report any illegal activity to the BIOT authorities, thus providing additional surveillance capacity to that of the BPV.

Should the FCMZ be declared a closed area, in the absence of the opportunity to fish legally, the incentive to fish illegally is increased, particularly if the perceived risk of detection is considered to be low. This implies the need for greater and faster patrolling capacity (more patrol vessels to cover the entire zone, faster to match the speed of tuna fishing vessels). Remote vessel monitoring systems apply only to licensed vessels and would not necessarily be helpful in this respect, particularly if not turned on.

Currently the main IUU problem in BIOT is illegal fishing by Sri Lankan vessels, primarily within the shallow island and banks areas of the Chagos Archipelago (the most recent was on 1 July 2009). The declaration of BIOT as a closed area will have no impact on this IUU activity. A BPV will still be required to patrol the 'inshore' areas (and indeed other types of patrolling may be needed to address this IUU threat), and as noted above, greater potential for IUU fishing in the offshore areas would increase the requirements for patrolling.

It has been suggested that should the Ilois return to Chagos they could serve a patrol function. Shore based observations would undoubtedly help with respect to near-shore activity but this would not obviate the need for a patrol vessel, and would serve no surveillance function at all for the offshore fishery.

4. Legal and historical obligations may pose a constraint on declaring the whole FCMZ as a closed area. UNCLOS requires that coastal states make provision for access to its EEZ by foreign fishers; Mauritius has historical agreements to fish inside the BIOT FCMZ.

a. United Nations Conventions on the Law of the Sea (UNCLOS)

Article 56 of UNCLOS sets out the rights, jurisdiction and duties of a coastal state (CS) in its exclusive economic zone. These shall be exercised with due regard to the rights and duties of other states within the provisions of the Convention. Article 300 indicates that CS shall fulfil their obligations in good faith, and shall not exercise their rights in a manner which would constitute an abuse of right.

Under Articles 62, 69, 70 and 71 of UNCLOS, CS must make provision for access to their EEZs by foreign fishers. Article 62 requires the CS to determine its capacity to harvest the living resources in its EEZ, and where the CS does not have the capacity to harvest the entire allowable catch, it is required to grant other States access to the 'surplus allowable catch' through the conclusion of access agreements. Article 62 cites Articles 69 and 70,

which require that certain States (land-locked States - Article 69, and geographically disadvantaged States - Article 70) should be considered in some preferential way to ensure that they have the opportunity to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the EEZs of CS of the same sub-region or region. Article 62 also acknowledges the requirements of developing States in the sub-region or region in harvesting part of the surplus, and the need to minimise 'economic dislocation' in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

UNCLOS applies to the area from the edge of the Territorial Sea to the 200 nm EEZ. The articles of UNCLOS would not apply to the area within the Territorial Sea where sovereignty is exercised. UNCLOS Section 2 defines the limits of the Territorial Sea and in the case of islands situated on atolls or of islands having fringing reefs the baseline is related to the low water line of the reef, up to a limit not exceeding 12 nautical miles (articles 3 and 6).

b. Mauritian historical fishing rights

In addition to UNCLOS article 62 which refers to States whose nationals have habitually fished in the zone, the right of Mauritians to fish in BIOT waters was enshrined in the agreements made between UK and Mauritius in 1965. The 1971 ordinance on fishing also left an exception for certain foreign vessels to fish. This "right to fish" has been put into practice since the declaration of the FCMZ in 1991 as 'free licences' although the BIOT Administration reserves the right to limit the number of licences issued relative to the surplus allowable catch. For the banks (inshore) fishery a limit of six eighty-day licences has been applied. There is documentary evidence of Mauritian fishing in the Chagos archipelago since at least 1977.

c. Recreational fishing in Diego Garcia

Current agreements with the US allow for recreational fishing from Diego Garcia. In a strict no take zone this activity would have to cease.

d. Fishing rights should repatriation of the Ilois occur

Should it be agreed that the Ilois return to the Chagos, their commercial and artisanal fishing rights would need to be considered in the context of a strict no-take zone. It is the reef fish communities that are most vulnerable to exploitation that would likely be fished by any returning population.

5. The economic implications of any closure need to be fully explored.

a. Management and surveillance costs may increase

As already noted, the costs of patrolling to prevent IUU are likely to increase significantly. Management activities will change (e.g. it will no longer be necessary to operate a licensing regime) but will still exist to support other functions related to the administration of a protected area. Continued attendance at IOTC is also recommended. Detailed costs need to be developed.

b. Sustainable cost recovery?

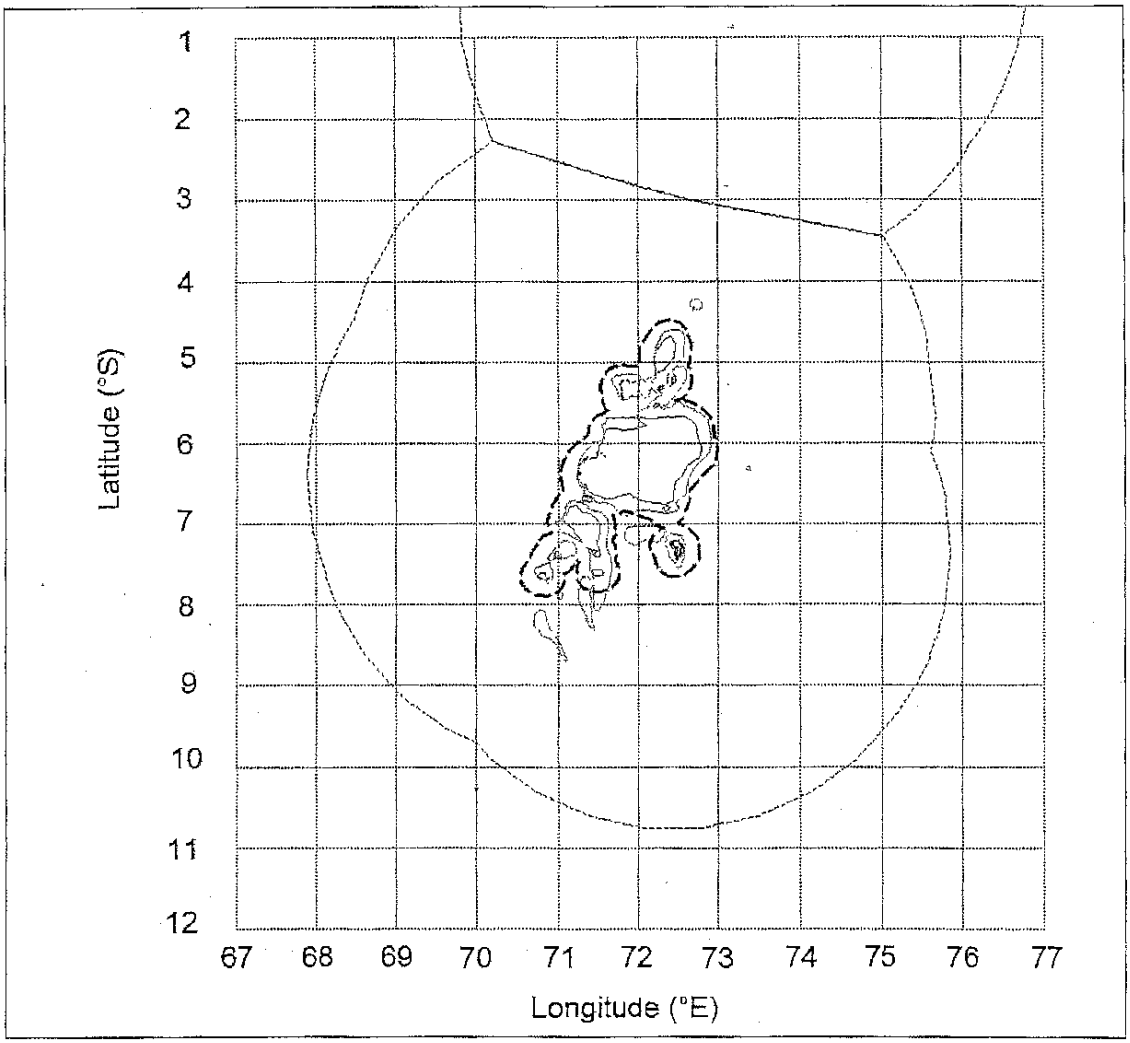
It is understood that part of the Pew proposal relates to providing a level of financial input. We do not know the details, but questions need to be asked relating to the timeframe for financial support and its sustainability. Also how does the proposed contribution relate to the

anticipated costs of administering the closure, and how do they relate to current and anticipated future levels of licence revenue generated? Can lessons be learned from existing and planned closures promoted by Pew in Hawaii and Australia where it is understood that the costs to government have been considerable? Obtaining detailed information on this would be invaluable.

c. **Indirect costs and impacts?**

If fishing vessels displaced from BIOT move elsewhere in the Indian Ocean and choose to land in Mombasa or Thailand instead of Mauritius this may impact upon both the Mauritian economy and that of UK interests in Mauritius. Under the rules of origin it will be necessary for processing establishments to obtain information on the source of fish landed and so it should be possible to calculate the importance to Mauritius of fish from BIOT.

Figure 1: An example of a closed area defined by the 200m contour around the Great Chagos bank and islands.



Annex 139

Note Verbale dated 16 July 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 29/2009 (1197/28/4)

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

Note No. 29/2009 (1197/28/4)

16 July 2009

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the High Commission of the United Kingdom of Great Britain and Northern Ireland and with reference to the latter's note no. 34/2009 of 15 July 2009 has the honour to inform that the Government of Mauritius is agreeable to the holding of the Second round of talks on the Chagos Archipelago on Tuesday 21st July 2009 at 1200 hours in the Conference Room of the Prime Minister's Office, Treasury Building, Port Louis.

The Ministry of Foreign Affairs, Regional Integration and International Trade has the pleasure to inform that the Mauritius Delegation will be led by Mr Suresh C. Seeballuck, Secretary to Cabinet and Head of the Civil Service. The composition of the Delegation will be communicated in due course.

The Ministry of Foreign Affairs, Regional Integration and International Trade has also the honour to propose the agenda attached to this Note Verbale.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the High Commission of the United Kingdom of Great Britain and Northern Ireland the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE
MAURITIUS

British High Commission
7th Floor
Les Cascades Building
Edith Cavell St
Port Louis

Newton Tower, Sir William Newton Street, Port Louis-
Tel. : (230) 4052500 Fax : (230) 208 8087, (230) 212 6764 Email : mfa@mail.gov.mu

Second round of talks between Mauritius and United Kingdom on the Chagos Archipelago

Tuesday 21st July 2009

Port Louis - Mauritius

Proposed Agenda:

1. Opening statement
2. Follow up on First round of talks held between Mauritius and United Kingdom in London on 14 January 2009
   a. Sovereignty and related issues
   b. Resettlement
3. EEZ Delimitation and Extended Continental Shelf
4. Access to natural resources of the Maritime Zone/Fishing
5. Environmental issues
6. Date and venue of next meeting
7. Approval of agreed minutes
8. Closing remarks.

Annex 140

Note Verbale dated 20 July 2009 from the British High Commission, Port Louis to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. 37/2009

NOTE NO. 37/2009

The High Commission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius and has the honour to thank the Ministry for its note no. 29/2009 (1197/28/4) of 16 July 2009 regarding the agenda and composition of the Mauritian delegation for the second round of talks on the British Indian Ocean Territory.

The High Commission of the United Kingdom of Great Britain and Northern Ireland should like to reaffirm that the United Kingdom has no doubts regarding its sovereignty over the British Indian Ocean Territory. The British High Commission can confirm its agreement with the proposed agenda and venue for the discussion but would suggest, in line with the first round of talks earlier this year, that each side retains their individual record of the meeting and that a mutually acceptable joint communiqué be released afterwards.

The United Kingdom of Great Britain and Northern Ireland avails itself of this opportunity to renew to the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius the assurances of its highest consideration.

BRITISH HIGH COMMISSION
PORT LOUIS

20 JULY 2009

BRITISH HIGH COMMISSION
1
PORT LOUIS

Annex 142

Joint Communiqué, Second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago, 21 July 2009, Port Louis, Mauritius

JOINT COMMUNIQUE

Delegations of the Mauritian and British Governments met in Port Louis on Tuesday 21 July 2009 for the second round of talks on Chagos Archipelago/British Indian Ocean Territory. The Mauritian delegation was led by Mr S. C. Seeballuck, Secretary to Cabinet and Head of the Civil Service. The British delegation was led by Mr Colin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office. The purpose of the meeting was to resume dialogue between Mauritius and the United Kingdom on the Chagos Archipelago/British Indian Ocean Territory.

Both delegations reiterated their respective positions on sovereignty and resettlement as expressed at the first round of talks held in London on 14 January 2009.

The British side provided an update on developments regarding the proceedings before the European Court of Human Rights.

Both delegations were of the view that it would be desirable to have a coordinated submission for an extended continental shelf in the Chagos Archipelago/British Indian Ocean Territory region to the UN Commission on the Limits of the Continental Shelf, in order not to prejudice the interest of Mauritius in that area and to facilitate its consideration by the Commission. It was agreed that a joint technical team would be set up with officials from both sides to look into possibilities and modalities of such a coordinated approach, with a view to informing the next round of talks.

The British delegation proposed that consideration be given to preserving the marine biodiversity in the waters surrounding the Chagos Archipelago/British Indian Ocean Territory by establishing a marine protected area in the region. The Mauritian side welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The UK delegation made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the proceedings at the European Court of Human Rights.

The Mauritian side reiterated the proposal it made in the first round of the talks for the setting up of a mechanism to look into the joint issuing of fishing licences in the region of the Chagos Archipelago/British Indian Ocean Territory. The UK delegation agreed to examine this proposal and stated that such examination would also include consideration of the implications of the proposed marine protected area.

Both sides agreed to meet in London on a date to be mutually agreed upon during the first fortnight of October 2009.

Both Governments agreed that nothing in the conduct or content of the present meeting shall be interpreted as :

(a) a change in the position of Mauritius with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(b) a change in the position of the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(c) recognition of or support for the position of Mauritius or the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(d) no act or activity carried out by Mauritius, United Kingdom or third parties as a consequence and in the implementation of anything agreed to, in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of Mauritius or the United Kingdom regarding sovereignty of the Chagos Archipelago/British Indian Ocean Territory.

Port Louis
Mauritius
21 July 2009

Annex I

Composition of Mauritian Delegation:

(i) Mr S. C. Seeballuck, Secretary to Cabinet and Head of the Civil Service; (Head of Delegation)

(ii) Mr A. P. Neewoor, Secretary for Foreign Affairs

(iii) Mr D. Dabee, Solicitor General

(iv) Mr M. Kundasamy, Mauritius High Commissioner in UK;

(v) Amb. J. Koonjul, Ministry of Foreign Affairs, Regional Integration and International Trade

In attendance:

- Mrs A. Narain, Assistant Parliamentary Counsel, Attorney-General's Office
- Mr M. Munbodh, Principal Fisheries Officer, Ministry of Agro Industry, Food Production and Security (Fisheries Division)
- Mr B. Gokool, First Secretary, Ministry of Foreign Affairs, Regional Integration and International Trade
- Mr A. Pursunon, Principal Assistant Secretary, Prime Minister's Office

Composition of the United Kingdom Delegation:

(i) Mr Colin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office (FCO); (Head of Delegation)

(ii) H.E. Mr John Murton, British High Commissioner in Mauritius;

(iii) Mrs Joanne Yeadon, Head of Section for BIOT; and

(iv) Mrs Katherine Shepherd, FCO Legal Advisor.

Annex 144

Information Paper by the Prime Minister of Mauritius, Second Meeting at Senior Officials' Level between Mauritius and UK on the Chagos Archipelago, CAB(2009) 624, 12 August 2009

SEC/4778/3

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CAB(2009)624
12 August 2009

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CABINET

Second Meeting at Senior Officials' Between Mauritius and UK on the Chagos Archipelago

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INFORMATION PAPER BY THE PRIME MINISTER

1. The purpose of this Paper is to inform my colleagues of the outcome of the second round of talks held in Mauritius on 21 July 2009 with the officials of the British Government on the Chagos Archipelago.

Background

2. In the margin of the Commonwealth Summit held in Kampala, Uganda, in November 2007, I raised the Chagos issue with the British Prime Minister and suggested to him that Mauritius and the United Kingdom should start discussions on the issue of Chagos Archipelago, including Diego Garcia, in view of the fact that the Anglo-US lease on the Archipelago is due to expire in 2016. Subsequently, I reiterated my request to the British Prime Minister during our meeting in June 2008 in London.

3. Thereafter, following the judgment of the House of Lords on 22 October 2008 in favour of the UK Government, Mauritius Government proposed that the first meeting at the level of senior officials of Mauritius and the UK be held, as early as possible on dates convenient to both parties.

4. On 14 November 2008, the Foreign and Commonwealth Office agreed to the holding of the first meeting at Senior Officials' level and proposed that this meeting takes place at the Foreign and Commonwealth Office in London during the week beginning 12 January 2009.

5. The first meeting was held on 14 January 2009. The delegation from Mauritius was led by Mr S. C. Seeballuck, Secretary to Cabinet and Head of the Civil Service and included Mr A.P. Neewoor, GOSK, Secretary for Foreign Affairs, Mr Dhiren Dabee, Solicitor General, Mr A. Boolell, Parliamentary Counsel, as well as Mr I. Brownlie, QC, our legal consultant. The delegation of the United Kingdom was led by Mr Colin Roberts, Director of Overseas Territories Directorate and Commissioner for the British Indian Ocean Territory.

6./

6. The first round of talks focussed on the issue of sovereignty, resettlement, fishing rights, environmental concerns and the continental shelf around the Chagos Archipelago. While each side maintained their respective positions on the sovereignty issue, it was agreed to maintain a dialogue and to meet again at a date to be mutually agreed upon.

Second round of talks at Senior Officials' level between Mauritius and the United Kingdom

7. Thus, the second round of talks was held on 21 July 2009 in Mauritius. The Mauritian delegation was led by the Secretary to Cabinet and Head of the Civil Service, while the British delegation was headed by Mr Collin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office. The other members of the Mauritian and the British delegations are listed at Annex I.

8. Both sides agreed on the following agenda:

(i) Sovereignty;
(ii) Resettlement;
(iii) EEZ Delimitation and Extended Continental Shelf;
(iv) Fisheries issues; and
(v) Establishment of Marine Protected Area.

9. The main issues discussed at the meeting are highlighted below:-

(i) **Sovereignty**

Both sides reiterated their respective positions regarding the sovereignty of the Chagos Archipelago. They agreed to engage on the other items of the agenda on the premise that nothing in conduct of the talks shall be interpreted as :

(a) a change in the position of Mauritius with regard to sovereignty over the Chagos Archipelago;

(b) a change in the position of the United Kingdom with regard to sovereignty over the Chagos Archipelago;

(c) recognition of or support for the position of Mauritius or United Kingdom with regard to sovereignty over the Chagos Archipelago; and

(d) no act or activity carried out by Mauritius or the United Kingdom or third parties as a consequence and in implementation of anything agreed to, in the present meeting, or in any similar subsequent meetings, shall constitute a basis for affirming, supporting, or denying the position of Mauritius or the United Kingdom regarding sovereignty over the Chagos Archipelago.

(ii)/

(ii) **Resettlement**

On the issue of resettlement, the Mauritian side maintained its position that all Mauritians should have free access to all the islands of the Chagos Archipelago and that Mauritians of Chagossian origin should have the right for resettlement on the outer islands and this would not be incompatible with the existence of military installations in Diego Garcia. The British side expressed the view that resettlement would not be possible without heavy British funding and also for environmental and security reasons.

The British side provided an update on developments regarding the proceedings relating the Bancoult case in front of the European Court of Human Rights (ECHR) on the resettlement issue. The British side indicated that they had applied for an extension up to 31 July 2009 to submit their explanations to the ECHR.

Both sides agreed to pursue discussions on this matter in the light of the decision of the ECHR.

(iii) **Exclusive Economic Zone (EEZ) Delimitation and Extended Continental Shelf**

(a) **Exclusive Economic Zone**

The Mauritian side pointed out that the Chagos Archipelago generated an overlapping EEZ with the Maldives. Some years back, when the Government of Mauritius took up the matter with Maldives to delimit the EEZ, the Maldives replied that Mauritius should first sort out its sovereignty issue with the United Kingdom before consideration could be given to this matter.

The British side did not seem to be aware of this delimitation issue but undertook to look into the matter and to pursue discussions at the next meeting.

(b) **Extended Continental Shelf**

The British side proposed that Mauritius and the UK should make a joint submission to the United Nations Commission on the Limits of the Continental Shelf (CLCS) for an extended continental shelf around the Chagos Archipelago. The Mauritian side remarked that at the first round of talks, the UK did not show much interest in submitting a claim for an extension of the continental shelf. In the circumstances, Mauritius decided to make a unilateral submission to be within the deadline of 13 May 2009.

After/

After discussions, it was agreed that although we have already made our submission within the deadline of 13 May 2009, there is scope for Mauritius and UK to work together towards a coordinated submission and that a technical committee would be set up with officials from both sides to look into the modalities of this coordinated approach.

(iv) **Fisheries**

At the first meeting in January 2009, the Mauritian side had pointed out the difficulties in the implementation of the Agreement on the British Mauritius Fisheries Commission (BMFC), which subsequently led to the freezing of the Agreement, in particular, the fact that Mauritian vessels were required to take a licence from the British authorities to fish in Chagos waters. At the second round of talks, the Mauritian side reiterated the need for the joint exploitation and management of marine resources in the region and for fishing licences to be issued jointly. The Mauritian side also expressed concern on illegal fishing activities in the Chagos waters and the need to carry out an assessment of the fish stocks in the area.

During discussions at the second round of talks, the Mauritian side reiterated the proposal it made in the first round of talks for the setting up of a mechanism to look into the joint issuing of fishing licences in the region of the Chagos Archipelago.

The British side agreed to examine this proposal and stated that such examination would also include consideration of the implications of the proposed marine protected areas as outlined in paragraph (v) below.

(v) **Establishment of Marine Protected Area**

This item was included at the request of the British side. It explained that the UK Government wished to start dialogue on a proposal made by a British Non-Governmental Organisation to establish a marine protected area in the region of the Chagos Archipelago.

The British side supports the proposal for the following reasons:

(a) the region is still pristine as a result of non-settlement; and should remain one of the very few such rare areas in the world;

(b) the benefits out of fishing activities accrue mostly to developed countries rather than to those of the region; and

(c) the conservation and preservation of the pristine environment outweighs, by far, the benefits derived from fishing activities.

In/

In reply, the Mauritian side while expressing concern that the matter was not a subject of prior discussions with Mauritius, welcomed the proposal, since it concerns the protection of the environment, the moreso that it is in line with the policy of Government to promote sustainable development.

The Mauritius side asked for additional details in respect of the proposed project.

The Mauritian side agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The British side made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the decision at the European Court of Human Rights.

Issue of Joint Communiqué

10. A copy of the Joint Communiqué agreed upon by both sides following the meeting is at Annex II.

Date of next meeting

11. Both sides agreed to meet in London on a date to be mutually agreed upon during the first fortnight of October 2009.

12. I shall keep my colleagues informed of further developments on these issues.

N.R.

(Ha)

Annex I

Composition of Mauritian Delegation:

(i) Mr S. C. Seeballuck, Secretary to Cabinet and Head of the Civil Service; (Head of Delegation)

(ii) Mr A. P. Neewoor, Secretary for Foreign Affairs

(iii) Mr D. Dabee, Solicitor General

(iv) Mr M. Kundasamy, Mauritius High Commissioner in UK;

(v) Amb. J. Koonjul, Ministry of Foreign Affairs, Regional Integration and International Trade

In attendance:

- Mrs A. Narain, Assistant Parliamentary Counsel, Attorney-General's Office
- Mr M. Munbodh, Principal Fisheries Officer, Ministry of Agro Industry, Food Production and Security (Fisheries Division)
- Mr B. Gokool, First Secretary, Ministry of Foreign Affairs, Regional Integration and International Trade
- Mr A. Pursunon, Principal Assistant Secretary, Prime Minister's Office

Composition of the United Kingdom Delegation:

(i) Mr Colin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office (FCO); (Head of Delegation)

(ii) H.E. Mr John Murton, British High Commissioner in Mauritius;

(iii) Mrs Joanne Yeadon, Head of Section for BIOT; and

(iv) Mrs Katherine Shepherd, FCO Legal Advisor

Annex II

JOINT COMMUNIQUE

Delegations of the Mauritian and British Governments met in Port Louis on Tuesday 21 July 2009 for the second round of talks on Chagos Archipelago/British Indian Ocean Territory. The Mauritian delegation was led by Mr S. C. Seeballuck, Secretary to Cabinet and Head of the Civil Service. The British delegation was led by Mr Colin Roberts, Director of Overseas Territories Department, Foreign and Commonwealth Office. The purpose of the meeting was to resume dialogue between Mauritius and the United Kingdom on the Chagos Archipelago/British Indian Ocean Territory.

Both delegations reiterated their respective positions on sovereignty and resettlement as expressed at the first round of talks held in London on 14 January 2009.

The British side provided an update on developments regarding the proceedings before the European Court of Human Rights.

Both delegations were of the view that it would be desirable to have a coordinated submission for an extended continental shelf in the Chagos Archipelago/British Indian Ocean Territory region to the UN Commission on the Limits of the Continental Shelf, in order not to prejudice the interest of Mauritius in that area and to facilitate its consideration by the Commission. It was agreed that a joint technical team would be set up with officials from both sides to look into possibilities and modalities of such a coordinated approach, with a view to informing the next round of talks.

The British delegation proposed that consideration be given to preserving the marine biodiversity in the waters surrounding the Chagos Archipelago/British Indian Ocean Territory by establishing a marine protected area in the region. The Mauritian side welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The UK delegation made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the proceedings at the European Court of Human Rights.

The Mauritian side reiterated the proposal it made in the first round of the talks for the setting up of a mechanism to look into the joint issuing of fishing licences in the region of the Chagos Archipelago/British Indian Ocean Territory. The UK delegation agreed to examine this proposal and stated that such examination would also include consideration of the implications of the proposed marine protected area.

Both sides agreed to meet in London on a date to be mutually agreed upon during the first fortnight of October 2009.

Both Governments agreed that nothing in the conduct or content of the present meeting shall be interpreted as :

(a) a change in the position of Mauritius with regard to sovereignty over the Chagos Archipelago;

(b) a change in the position of the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(c) recognition of or support for the position of Mauritius or the United Kingdom with regard to sovereignty over the Chagos Archipelago/British Indian Ocean Territory;

(d) no act or activity carried out by Mauritius, United Kingdom or third parties as a consequence and in the implementation of anything agreed to, in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of Mauritius or the United Kingdom regarding sovereignty of the Chagos Archipelago/British Indian Ocean Territory.

Port Louis
Mauritius
21 July 2009

Annex 146

Draft report of workshop held on 5-6 August 2009 at National Oceanography Centre Southampton, "Marine Conservation in British Indian Ocean Territory (BIOT): science issues and opportunities", 7 September 2009

3rd Draft (PW) NOC W'shop

Marine conservation in British Indian Ocean Territory (BIOT): science issues and opportunities

Report of workshop held 5-6 August 2009 at National Oceanography Centre Southampton, supported by the NERC Strategic Ocean Funding Initiative (SOFI). Draft 3

1. Background

The 55 islands of the British Indian Ocean Territory (Chagos Archipelago) have a combined land area of less than 60 sq km – around 15% of the size of the Isle of Wight. However, they are surrounded by an estimated 3,400 sq km of coral reefs, and the potential BIOT Exclusive Economic Zone for management of marine resources is at least 540,000 sq km – more than twice the total UK land area. This marine space includes mid-ocean ridges, trenches and abyssal plains, as well as coral reefs, atolls and banks. Whilst the UK government is already committed to strong environmental protection[1-4] of the Territory and its surrounding marine resources, as if it were a World Heritage site[1], the case for additional safeguards has recently been made[5] by the Chagos Conservation Trust and the Chagos Environmental Network, as discussed at a meeting at the Royal Society on 9 March 2009.

To assess the scientific justification for such action, the UK Foreign and Commonwealth Office (FCO) sought independent advice from the National Oceanography Centre Southampton (NOCS) on environmental considerations relevant to the possible designation of a BIOT Marine Protected Area (MPA, see below). In response, NOCS, in partnership with university co-convenors, obtained NERC SOFI support for a workshop held on 5-6 August in order to i) widen the informal evidence base for such scientific advice, through involvement of relevant experts in the UK research community and elsewhere, and ii) identify knowledge gaps and associated marine science opportunities[6].

Workshop participants were made aware of the unique historical and legal complexities relating to the Territory. Furthermore, it was recognised that many issues relating to MPA establishment and governance for this area were beyond the scope of a two-day meeting considering scientific questions in the context of existing conditions, and arranged at relatively short notice. A full evaluation would instead require wider stakeholder engagement and attention to human dimension issues (that include socio-economic, political, ethical, jurisdictional and defence considerations) at both national and international levels[7].

Annex 1 of this paper provides the workshop programme; Annex 2, the participants list; and Annex 3, references and notes.

2. MPA definition and global context

The workshop adopted the International Union for Conservation of Nature (IUCN) definition of a Protected Area, whether land-based or marine, as "A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values"[8]. This definition is also used by the Convention on Biological Diversity (CBD).

Protected Area designation regulates, but does not necessarily exclude, human use. Six categories are recognised by IUCN, depending on the objectives of protection and the nature of allowable human activities. As follows: strict nature reserve/wilderness area; national park; natural monument or feature; habitat/species management area; protected landscape/seascape; and protected area with sustainable use of natural resources. Although features of the IUCN categories were considered by the workshop; no explicit category-specific recommendations were developed and no assumptions were made with regard to the possibility of future re-settlement of any of the currently uninhabited BIOT islands. It was, however, emphasised that the proposed BIOT MPA would need to include terrestrial habitats and the lower atmosphere, as well as reef systems, the deep sea-floor and the open ocean water column.

In 2006, the CBD estimated[9] that MPAs covered 0.6% of the world ocean (2.2 million sq km), and, on the basis of recent progress, it could take more than 60 years to reach the internationally-agreed target coverage of 10%, initially set for 2012. Since then, MPA coverage has nearly doubled, but without any significant UK contributions: the increase has been almost wholly due to six new designations in the Pacific, by the US (Papahanaumokuakea [Northwestern Hawaiian Islands] Marine National Monument, 2006; Marianas Trench Marine National Monument, Pacific Remote Islands Marine National Monument, and Rose Atoll Marine National Monument, 2009), Kiribati (Phoenix Islands Protected Area, 2008) and Australia (Coral Sea

Conservation Zone; interim status, 2009). Representative Indian Ocean ecosystems remain poorly protected or unprotected; as a result, the US-based Pew Environmental Group currently considers the Chagos Archipelago to be "top of the global list" as the marine area most worthy of MPA status.

3. Scientific (and societal) importance of the BIOT area

Through national legislation (Marine and Coastal Access Bill), European commitments (e.g. EU Marine Strategy Framework Directive, EU Habitats Directive, Natura 2000) and international agreements (e.g. CBD, Ramsar Convention on Wetlands, UN Convention on Law of the Sea, and 2002 World Summit on Sustainable Development), the UK government recognises the importance of MPAs in providing direct and indirect human benefits. Their generic rationale is detailed elsewhere[10]. The workshop therefore focussed on the environmental features of the BIOT area[11] that are either unique or particularly valuable in an MPA context. As follows, and in Tables 1 and 2 below:

- Large size. Many conservation-related benefits of Protected Areas increase non-linearly with size, since smaller areas are much less effective in maintaining viable habitats or populations of threatened species (particularly in the face of global warming, causing major spatial shifts in weather patterns and climatic regimes). Furthermore, the scale of a possible BIOT MPA would be global news, clearly delivering on UK political objectives for environmental protection and sustainability. Thus if all the potential EEZ is included (subject to international agreement, via UNCLOS), the BIOT MPA would be the world's second largest to date, only exceeded by Australia's Coral Sea Conservation Zone – and if all the MPA were a no-take zone, it would more than double the total world marine area with fully protected status.

- Habitat diversity. Whilst most conservation attention has to date focussed on shelf and coastal sea habitats (temperate and tropical), the BIOT area also includes an exceptional diversity of deepwater habitat types. Thus a very wide range of geomorphological and tectonic features are indicated from survey transects and satellite altimetry (sea surface height used as a proxy for bathymetry), with such features including plate separation, sea-floor spreading, sea-mounts and mid-ocean ridges (Chagos-Laccadive Ridge and Central Indian Ridge, the latter likely to support chemosynthetic vent communities); deep trenches, to ~6000m (Chagos Trench and Vema Trench); and abyssal plains (mid-Indian Ocean Basin). Although the deepwater habitats of the BIOT area have not been mapped or investigated in any detail, work elsewhere has shown that: i) deepwater biodiversity is closely linked to physical diversity; ii) there may be marked temporal and spatial variability in community composition and abundances; and iii) species richness can be very high (particularly at the microbial scale; e.g. molecular analyses of deep sea sediment yielding >1000 species of a single class, Actinobacteria, per sample, with >90% being novel taxa)[12].

- Near-pristine conditions. Human impacts on the BIOT area are minimal, and less than any other tropical island groups in the Indian, Pacific or Atlantic Oceans. Fishing is limited and relatively well-regulated (see Section 4 below), and there are currently no significant economic activities on the islands other than those associated with the US military base on Diego Garcia. Direct anthropogenic impacts elsewhere relate to the introduction of non-native terrestrial species (coconut palms and rats, but not on all islands); mooring damage by visiting yachts; low-level poaching for sea cucumbers and reef sharks, with occasional temporary encampments; and some strandline marine litter, originating outside the BIOT area. Sea-water quality is exceptionally high (even in the Diego Garcia lagoon), with pollutant levels mostly below detection limits. The combination of these factors results in the BIOT area supporting around half the total area of 'good quality' coral reefs in the Indian Ocean, on the basis that 17% of that total is estimated to have been effectively lost, 22% is in a critical condition, 32% is threatened by a range of human activities, and only 29% (with BIOT providing 14%) remaining in an apparently natural condition[13]. The health of marine ecosystems in the BIOT area gives them crucial importance as the 'control' for research and management activities elsewhere, where human impacts are very much greater.

- High resilience of Chagos coral reefs. Since the late 1970s, coral reefs worldwide have increasingly suffered mass mortalities from temperature-induced bleaching, due to the breakdown of the symbiotic relationship between corals (animals) and algae (plants), the former relying on the latter for photosynthetically-derived energy. Whilst Chagos surface water temperatures have warmed by ~1°C since the late 19th century, and many reefs there were badly affected by bleaching in 1998, they have recovered more, and faster, than any other known coral reef system[14]. This resilience has been ascribed to the lack of suspended sediment, pollution and other human impacts, providing beneficial consequences both for ecosystem integrity and water clarity. Thus grazing reef-fish limit prevent overgrowth by

macro-algae, whilst high light penetration allows Chagos corals to grow to depths of ~60m where they are less prone to thermal stress (cf lower limits of 20–40m elsewhere in the Indian Ocean). Chagos corals may also benefit from locally-favourable hydrodynamic conditions (intermittent inflows of cooler water, due to vertical movements of the thermocline), and/or genetic factors (prevalence of heat- and light-resistant dinoflagellate clades[15]). Whatever the basis for this resilience – currently subject to research attention, and meriting additional effort – it is of global conservation significance, in the context of recent dire prognoses for the future survival of coral reefs[16-18].

- Role as regional stepping-stone and re-seeding source. A key role for MPAs is their natural export of 'surplus' production and reproductive output, providing other areas with biomass and propagules (juveniles, larvae, seeds and spores) of species important either for commercial exploitation, conservation purposes or more general ecosystem functioning. This replenishment is hard to quantify, yet can be critical to the viability of heavily-harvested populations, particularly if they are also subject to regionally or temporarily variable breeding success. Preliminary studies of connectivity for the BIOT area, based on species similarity coefficients and genetic markers, indicates potentially strong export[19] (and hence scope for population replenishment) to the western Indian Ocean, consistent with ocean current data. In particular: corals and turtles are connected east-west, not north-south, whilst early fish genetics results indicate a high connectivity for species studied to date. Other groups currently being tested (by US, German, Canadian and Taiwanese researchers) include terns and boobies, coconut crabs, and reef invertebrates. High-resolution biophysical modelling (combining life cycle features, dispersal behaviour and ocean hydrodynamics) could also advance our understanding of crucial connectivity issues; for example, as developed for zooplankton in the North Atlantic[20].

Table 1. Specific issues raised by the FCO to assist in assessing the conservation value of the BIOT area.

Question	Priority assessment*	Summary response
Are there areas kept inviolate from human interference so that future comparisons may be possible with localities that have been affected by human activities?	XXXX	Nowhere on Earth is inviolate from human impacts, but the BIOT area is amongst the least affected (with many pollutants lower than in polar regions). Land access is highly controlled and limited to military personnel and support workers, the BIOT administration, and authorised scientists. Most of Diego Garcia is a designated Ramsar site[21]; the Chagos Bank is a proposed Ramsar site; and five reef/island areas are managed as Strict Nature Reserves (all or part of Peros Banhos Atoll, Nelson's Island, Three Brothers and Resurgent Islands, Cow Island and Danger Island). Non-native terrestrial species are problematic on some islands; a recent attempt at eradicating rats from Eagle Island was unsuccessful. All the BIOT area is a Fisheries Conservation Management Zone, with commercial catches regulated by licence and limited to 'surplus production'. However, some illegal fishing (for sea cucumbers, sharks and reef fish) does occur, and the BIOT area is affected by over-fishing elsewhere (e.g. ~90% depletion of sharks throughout the Indian Ocean since 1970s).
Are there representative examples of major marine ecosystems or processes? What is the level of heterogeneity?	XXXX	Very wide range of (tropical) marine habitats and ecosystems. Shallow water and land areas are all reef-based, including the world's largest atoll (Chagos Bank). Reef heterogeneity is high, depending on wave-exposure, shelter and water depth, with different coral assemblages. Some island ecosystems affected by historical use. Deep seafloor ecosystems expected to be highly diverse, based on large-scale geomorphological variety, but have not been surveyed or studied in detail. Water column (planktonic) ecosystems inherently less heterogeneous.
Are there areas with important or unusual assemblages of species, including major colonies of breeding native birds or mammals? Is there type locality or is the planning region the only known habitat of any species?	XXXX	The BIOT area is host to ~60 endangered species on the IUCN Red List[22] (including the world's largest arthropod, the coconut crab); 10 Important Bird Areas recognised by Birdlife International[23], at least 784 species of fish, 280 land plants, 220 corals, 105 macroalgae, 96 insects and 90 birds (24 breeding); and undisturbed and recovering populations of Hawksbill and Green Turtle. Bird breeding populations are amongst the densest in the Indian Ocean (eg 22,000 nests on Nelson Island, that has a total area of only 80 ha). Vegetation includes remnants of Indian Ocean island hardwoods. Marine endemics and type localities include the Chagos Brain Coral *Ctenella chagius* and the Chagos Clownfish *Amphiprion chagosensis* However, there are relatively few other endemics, supporting the case for high connectivity between BIOT and other areas.
Are there areas of particular interest to ongoing or planned scientific research?	XXX	Over 200 publications have arisen from scientific visits to date, that have been limited in number, duration and platform capabilities. Current work focuses on reef resilience and palaeo-climate studies (on 300 yr old corals). Considerable scope for globally-significant work on ocean acidification and climate change.

Nelson Island

		using the BIOT area as mid-ocean 'clean' reference site for observations on atmospheric composition and ocean carbonate chemistry, and testing climate prediction models. Also opportunities for deep sea 'discovery' studies, and for developing understanding of spatial scaling of population connectivity, from field-based and theoretical perspectives.
Are there examples of outstanding geological or geomorphological features?	XXX	Unique or near-unique reef features include: i) Chagos Bank is the world's largest atoll; ii) archipelago has a very high number of drowned and awash atolls yet with good coral growth; iii) Diego Garcia is possibly the most completely enclosed atoll with a sea connection; iv) the calcareous algal ridges are the most developed of the Indian Ocean (these stop atolls from eroding); only long-swell Pacific atolls show the development seen in Chagos; v) there are lagoonal spur and groove systems (only site where this is reported; vi) most lagoon floors are carpeted with corals instead of sand and mud; vii) light penetration to ~60 m in deep lagoons and seaward slopes, linked to exceptionally deep peak coral diversity (20 m); viii) earlier Holocene still-stand cuts and caves clearly visible at 30-45 m depth; ix) location is seismically active, resulting in examples of recent uplifted limestone (raised reef islands) and some down-jolted, now submerged reefs. As noted above, deepwater geology and geomorphology in the BIOT area is also potentially of great interest, but has yet to be subject to detailed scientific study.
Are there areas of outstanding aesthetic and wilderness value?	XXX	Nearly all of it. Most small islands and lagoons are extremely picturesque and idyllic, with several smaller islands in near-pristine condition. The 'bird islands' are exceptionally rich. Reef quality and health is at a level that has not been seen at most other global locations for > 50 years, with water clarity for seaward reefs near its theoretical maximum.
Are there any sites or monuments of recognised historic value?	XX[24]	Known historic sites include the restored old settlement on eastern Diego Garcia. Settlements on other atolls have mostly disintegrated, especially those on Egmont and Eagle which were abandoned in 1950s. Graveyards on Diego Garcia, Peros Banhos and Egmont with some recent restoration. Some pre-settlement wrecks deduced from collections of artefacts, such as Ming pottery, copper and brass naval items from various times over last 400 years. An Australian expedition in November 2009 will look for even older remains or evidence of settlement from very early ocean-faring societies.
What is the general state of Indian Ocean fisheries and reef fish, and is the status of blue water and reef fish in Chagos different?	XXXX	Indian Ocean reef fisheries are mostly grossly over-exploited, with low catch per unit effort. Catch per unit effort of reef fish n the mostly un-exploited BIOT area are ~20 times higher than in East Africa and elsewhere (although that does not mean 20-fold higher harvests could be sustained). Licensed blue water fisheries in BIOT focus on migratory tuna (in BIOT waters for only 10-20% of their lives), with some by-catch.

Salomon

*XXXX, very high global/regional importance; XXX, high global/regional importance; XX, moderate regional importance; X, low importance.

Table 2. Preliminary assessment of relative economic values (use and non-use) for the environmental goods and services[25, 26] provided by the BIOT area, excluding mineral resources [from Slide 4 of presentation prepared for the workshop by Pippa Gravestock]. Darker shading = higher value.

	USE VALUES		NON-USE VALUES		
	Direct use	Indirect use	Option value	Bequest value	Existence value
Tourism					
Fisheries					
Shoreline protection					
Research					
Scientific baseline					
Aesthetic land/seascapes					
Support for Indian Ocean fisheries					
Cornerstone of Indian Ocean reef recovery					
Model for Indian Ocean reef restoration					
Spiritual and cultural values					
Iconic					
Pristine					
Biodiverse(ity)					
Unique					

X ?

The analyses given in Tables 1 and 2 indicate that non-use values of BIOT natural resources are generally higher than use values. Preliminary monetary values were also included in Gravestock's presentation. Global studies done on the economic benefits of coral reefs estimate their value to range between $100,000 - $600,000 per sq km per year. That range compares with current BIOT protection costs of ~$5 per sq km per year. There was not, however, the opportunity at the workshop for detailed discussions of the economic valuations.

4. Fishery issues

As already noted, fisheries in the BIOT area are both protected and exploited to some degree. MRAG Ltd (formerly Marine Resources Assessment Group) is currently contracted to the BIOT Administration for the provision of relevant services and advice, primarily relating to fishery management within the 200 nm BIOT Fisheries Conservation Management Zone (FCMZ) declared in 1998[2].

The expectation for an MPA is that it becomes a no-take zone for fishing, either immediately or phased-in, on the basis that the protected area thereby assists in achieving stock recovery, and/or maximising longterm yields over a larger area. No-take zones should also eliminate any by-catch problems, that might threaten endangered, non-target species[27]. However, many large-scale MPAs are not fully no-take; some are zoned, whilst in others e.g. the Kiribati MPA, artisanal fishing is still permitted. The situation for the BIOT area is complicated by: i) modest recreational fishing activity in Diego Garcia and from visiting yachts ii) Mauritian/ Chagossian historical fishing rights, at present regulated through free licences (with the numbers of licences based on assessments of surplus allowable catch); iii) the migrations of the currently commercially-fished species (yellowfin, skipjack and bigeye tuna), that might only spend 1-2 months per year in the BIOT area; and iii) arrangements for the basin-wide, international management of tuna stocks by the Indian Ocean Tuna Commission (IOTC), of which the BIOT ~~Administration~~ is a member.

MRAG representatives at the workshop questioned whether full formal closure of all BIOT fisheries would achieve the desired conservation benefits, providing a paper[28] that argued that:

- The most likely outcome of tuna fishery closure would be a displacement of the fishing fleets to the edge of the BIOT area; total fishing effort (and tuna catches) might therefore remain much the same, the only difference being that the BIOT Administration would no longer receive licence income.
- If all the BIOT area were a no-take zone, the BIOT Administration would probably lose its membership of, and conservation influence within, the IOTC
- Furthermore, illegal fishing in the BIOT area might increase, since licensed fishing vessels currently assist in the policing (and exclusion from the FCMZ) of unlicensed ones. Such an increase would have cost implications for management and surveillance, no longer covered by licence fees.
- The above factors make it preferable to fully or partly continue the commercial fishery, by zoning the BIOT MPA, or by limiting its size to less than the current FCMZ.

Whilst acknowledging the complexities of the above issues, other workshop participants were not fully persuaded by these arguments. Coupled modelling of fishing fleet behaviour and tuna population dynamics under different zoning scenarios was suggested as an approach that might assist in quantifying key interactions, together with an analysis of the effects of the current 'closure' of Somali waters (due to risk of piracy). An interim measure for the BIOT area could include a more comprehensive research and observer programme for the licensed tuna fisheries, to increase the database on tuna spawning, juvenile catches and bycatches, and sensitivity of individual and population movements to climate change[29] and other environmental variables. If the tuna fishery in the BIOT area were to continue, on the basis of MPA-zoning, then such research activities could, in MRAG's view, contribute to longterm population conservation whilst also identifying any areas of aggregation of protected, endangered or threatened species that might benefit from targeted time-area closures.

Ultimately the decision on the extent of the open ocean no-take zone within a BIOT MPA will be a political one. There is undoubted attractiveness in the simplicity – and greater presentational impact – of a large, no-take MPA; for either a scaled-down version or a zoned one, more subtle justifications would be needed, with the risk that the latter options might appear to be no different from business-as-usual.

The issue of Mauritian/Chagossian fishing rights was also considered to be a political one, that could only be resolved by negotiation and international agreement.

5. Threats, risks and uncertainties

The workshop discussion groups identified a number of events, activities and possible developments that, depending on their location, timescale, severity and combination, might either strengthen the case for MPA establishment or jeopardise its future success. These could be grouped under three general headings – environmental changes, human activities, and policy-science interaction issues – as below. This list does not claim to be comprehensive; for additional details on several of these topics, see the Chagos Conservation Management Plan (2003)[4].

Environmental changes

- Direct climate change impacts. In addition to a likely increase of ~ 2°C in sea surface temperatures over the next 20-30 years (with serious implications for the frequency of coral bleaching[16, 17]), significant changes in storm activity, rainfall, and ocean circulation are now near-inevitable[30]. All these aspects of climate change will impact the integrity and ecosystem functioning of coral reef ecosystems not just in the Indian Ocean but globally, increasing the societal and scientific value of near-pristine reefs that have shown greatest resilience to date, and that are therefore mostly to survive in future.

- Ocean acidification. Closely linked to climate change, increases in dissolved CO_2 cause decreases in pH and aragonite saturation – with potentially serious implications for coral calcification[31]. Thus ~50% reduction in coral growth rates are predicted[32] if atmospheric CO_2 levels reach 450 ppm (considered the 'safe' target in international climate negotiations; levels are currently ~385 ppm). Ocean acidification may already be affecting the rate of post-bleaching recovery, and is highly likely to hasten the demise of coral reefs subject to other stressors.

- Sea level rise. Closely linked to climate change (but also affected by local vertical land/seafloor movements), relative sea level at Diego Garcia has increased by ~5 mm per year since 1985, around twice the global average for absolute sea level change. If future increases are not fully matched by the upward growth of reef flats – considered unlikely on the basis of historical evidence – the consequence will be increased shoreline wave energy, erosion of island rims and much greater flooding risk, particularly during extreme weather events. Since the maximum elevation of most islands in the northern Chagos Archipelago is only 1-2 m, these are at risk of becoming submerged or 'drowned' atolls within a century on the basis of business-as-usual climate change scenarios.

- Introduced species. Current (land-based) problems for invasive non-native animals and plants are relatively well known, and the need for control measures recognised. Marine introductions have not been a problem to date, but continued care, e.g. re ballast water discharge in Diego Garcia lagoon, is necessary.

Human activities

- Illegal fishing. Current levels of illegal near-shore and reef fishing are a concern, and any increases could require a step-wise increase in protection and enforcement effort, in the form of an additional fishery protection vessel (that could also be available for research). Underlying factors include the increase in the small-vessel fishing fleets of Sri Lanka and other nearby nations, in part due to post-tsunami aid; the rapid growth of populations all around the Indian Ocean; and the declining condition of coral reefs elsewhere, with severe over-exploitation of their fisheries.

- Visitors. Anchor-damage from visiting yachts was highlighted as a concern in the 2003 Management Plan, and remedial action has since been taken. Scientists are also occasional visitors, and great care must be taken they do not themselves cause environmental damage. The workshop considered that the development of commercial tourism would risk ecological damage and disturbance, and was pragmatically unlikely because of current defence activities; the very limited land available for infrastructure (~16 sq km, excluding Diego Garcia); and constraints on freshwater supply and waste disposal. Nevertheless, it would be important goal for a BIOT MPA to provide virtual visits online (via Google Earth, and websites of IUCN, Marine Education Trust and others). Such access should involve underwater and land-based webcams and opportunities for 'citizen science' engagement in research and educational projects.

- Sound pollution. Underwater seismic surveys and defence-related underwater sound operations are potentially damaging to marine mammals such as whales and dolphins. Such activities would need to be either excluded from, or strictly regulated within, a BIOT MPA.

- Oil pollution, marine litter. No marine oil-spill incidents to date. Most UK legal measures to minimise the incidence of oil pollution and assign liability for clean-up costs already apply to BIOT. Marine litter (flotsam/jetsam, mostly plastic debris originating outside the BIOT area) is a shoreline problem on northern islands; its periodic removal is desirable to maintain beach quality for nesting turtles.

- Seabed mineral extraction. Although not currently of economic importance, deep sea mineral exploitation may occur in future as land-based ore reserves become depleted and metal prices rise. The Central Indian Ocean abyssal plain is rich in ferromanganese nodules[33] and deposits of polymetalic sulphides and cobalt-rich ferromanganese crusts may occur in the mid-ocean ridge features within the BIOT area[34]. An ISA licence for polymetallic nodule exploration[35] was issued to India in 2002 for an area of 150,000 sq km outside national jurisdiction to the south-east of the Chagos Archipelago. The environmental impacts of commercial-scale seabed mineral extraction have yet to be determined.

- Bioprospecting. The high genetic diversity of coral reef ecosystems makes them attractive targets for biotechnological and pharmacological applications[36]. However, bulk harvesting is generally not required; instead small samples are used for initial screening, with subsequent laboratory-based molecular characterisation and production scale-up of any novel bioactives. The high cost of drug safety testing, together with patenting problems for natural products, has limited commercial development to date.

Science-policy interactions

- Political uncertainties. The senior FCO representative at the workshop stated the UK government position with regard to Chagossian re-settlement, US military use, and Mauritian sovereignty claims for the Chagos Archipelago: on all of these issues, no changes to existing arrangements were envisaged in the immediate future. Nevertheless, in view of the current involvement of the European Court of Human Rights, the non-FCO workshop attendees considered that more detailed planning for an MPA could not preclude re-settlement scenarios, and/or the return of all or some of the islands to Mauritian jurisdiction. Acknowledgement of such possibilities was important to avoid the (mis)perception that the motives for MPA designation might be geopolitical, rather than for the purpose of conserving a global-scale heritage for the wider public good.

- Sustainability of human settlement. The co-existence of the US military base and the Ramsar conservation site on Diego Garcia shows that relatively high numbers of people and environmental protection of a coral atoll are not incompatible. However, almost all food and other material requirements of that population depend on high cost, long-distance imports, that would be more difficult to sustain on other Chagos islands. The workshop did not, however, attempt to quantify either island-specific nor total (non-military) human carrying capacities of the islands that would be compatible with MPA-level ecosystem protection.

- Financial commitment. MPA designation, establishment and maintenance are not cost-free activities: a longterm financial commitment is needed for their success[37]. Protection costs for the BIOT area are currently modest (estimated by Gravestock to be ~$5 per sq km per year), at the low end of a global analysis[38] of MPA costs that had a median of $775 per sq km per year. Whilst larger areas can be expected to have lower costs when expressed on a per area basis, site-specific factors keeping costs low for a BIOT MPA include the very low visitor numbers (reducing infrastructure and maintenance costs) and the negligible opportunity costs (income that might otherwise be available from alternative uses).

- Stakeholder support. As already noted, wide stakeholder support would be crucial for the success of a BIOT MPA, where stakeholders are defined as all groups involved in achieving project objectives – not just in terms of permission or financial support, but also those who are directly or indirectly affected, and with the ability to influence public opinion.

6. Science needs and opportunities

A recent online review[39] identifies a very wide range of environmental science topics (mostly coral-reef related) considered to be of high importance for the Chagos Archipelago, grouped under 16 headings: Stepping stone in the Indian Ocean; ocean warming effects; coral mortality from warming; coral recovery and trajectories; fore- and hindcasting of coral population trajectories; lagoon responses; fish responses to climate change in Chagos; acclimation by zooanthellae clades; water, exchange, clarity and sand budgets; reef geomorphology from remote sensing; estimates of fish diversity from remote sensing; pollution and water quality; invasive and introduced species; bird life; exploitation and poaching; and geochemistry and climate teleconnections.

The workshop had neither the time nor the expertise to consider all of these in detail. Nevertheless, it did re-group some key knowledge gaps, including deepwater considerations but not socio-economic issues, in the context of both wider understanding (hypothesis-testing research opportunities, that might be of interest to NERC, the Royal Society or NSF) and MPA management (more operationally-focussed requirements, for support by BIOT Administration/FCO, DfID, Defra or NGOs), as summarised in Table 3 below.

Table 3. Summary of some environmental science needs and opportunities for the BIOT area

	Knowledge gap	Context of wider understanding	Context of MPA management
1. Survey-based research and mapping	Deep sea bathymetry in MPA area	Geomorphological evolution of West Indian Ocean basin; plate tectonics and other seafloor processes	Basic mapping and knowledge of habitat diversity; requirement for EEZ recognition under UNCLOS, ande MPA boundary definition
	Deep sea biodiversity in MPA area	Development of biodiversity rules re ubiquity/endemism, trophic structuring, and upper ocean - lower ocean connectivities; potential for novel discoveries	Inventories of species' presence and abundances within the MPA area; reference for future changes
	Detailed mapping of island vegetation and soil structure	Comparison of natural and human-influenced tropical island ecosystems; improved calibration/validation of satellite-based data	Baseline information for monitoring and stability/ erosion assessments
2. Monitoring environmental change	Atmospheric and marine chemistry observations in the mid-Indian Ocean	Dynamics of air-sea exchange processes in remote region; testing and development of global models of climate change and Earth system biogeochemistry (including ocean acidification)	Basic parameters for detecting site pollution and anthropogenic impacts
	Measurements of key coral reef parameters (for corals, reef fish invertebrates, turtles and birds) as indicators of ecosystem health	Distinguishing responses to local, regional and global environmental change; quantifying factors determining ecosystem resilience; reference data for studies elsewhere	Information on MPA status and management effectiveness (protection, restoration or remedial action)
	Open ocean plankton studies and abundance estimates for top predators (blue water fish and sea mammals)	Regional studies of ocean productivity, linkage to ocean circulation changes; development of ecosystem approach to marine resource management	Information on MPA status and management effectiveness
	Physical oceanography measurements over range of spatial scales, including sea-level changes	Improved models of reef and lagoon currents and circulations within wider context; impacts of extreme events and future climate change	Identification of coastal erosion risks
3. Large-scale or generic science questions	Palaeo-climate studies using coral cores (century-scale)	Understanding responses of reef system to past changes	Quantifying natural variability and referencing future changes
	Biological connectivity of BIOT area to wider region (via genetics, tagging and modelling, and including open-ocean fisheries)	Theoretical basis for ecosystem scaling and delivery of goods and services; optimising design and effectiveness of protected areas	Quantifying benefits of MPA for food security in wider Indian Ocean; maintained engagement with Indian Ocean Tuna Commission
	Factors determining recovery from coral bleaching and wider ecosystem resilience	Improved understanding of species interactions, non-linear ecosystem changes, emergent properties of intact systems and functional redundancy	Information on MPA status and management effectiveness; 'best practice' approaches for application elsewhere

NERC support could either be through individual, responsive-mode research grant proposals; consortium bids, assessed on scientific merit and involving a multi-institute research team; or a large-scale Research Programme, addressing NERC strategic priorities and initiated through theme leaders' Theme Action Plans. The workshop noted that grant bids were highly competitive, and that Research Programme development and approval was likely to be a lengthy and uncertain process. Nevertheless, multi-sector linkages (involving marine, terrestrial, geological and atmospheric research communities) could enhance the likelihood of success, with co-support arrangements also being potentially advantageous, e.g. research proposal development via the multi-agency Living with Environmental Change (LWEC) programme[40].

8. Conclusions and recommendations

i) There is sufficient scientific information to make a very convincing case for designating all the potential BIOT Exclusive Economic Zone as a Marine Protected Area, to include strengthened conservation of its land area.

ii) The justification for MPA designation is primarily based on the size, biodiversity, near-pristine nature and health of the Chagos coral reefs, that are likely to make a significant contribution to the wider biological productivity and food security of the Indian Ocean. The potential BIOT MPA would also include a wide diversity of unstudied deepwater habitats.

iii) Such a designation would safeguard around half the high quality coral reefs in the Indian Ocean whilst substantially increasing the global total coverage of MPAs. It would provide either the world's second largest single MPA to date, or the largest fully-protected area.

iv) Whilst the expectation is that the current commercial tuna fishery within the proposed MPA would be phased out, this issue would benefit from additional research attention to avoid unintended consequences.

v) Climate change, ocean acidification and sea-level rise jeopardise the longterm sustainability of the proposed MPA. They also increase its value, since coral reef areas elsewhere (that are mostly reduced in diversity and productivity) seem likely to be more vulnerable to such impacts.

vi) To safeguard the current condition of the coral reefs, human activities need to continue to be carefully regulated. Novel approaches to wider sharing of the benefits and beauty of the MPA would need to be developed, primarily through 'virtual tourism'.

vii) Several important knowledge gaps have been identified, with implications both for BIOT MPA management and for advancing our wider understanding of ecosystem functioning, connectivity, and the sustained delivery of environmental goods and services.

viii) Detailed planning of the practicalities of MPA designation would require increased attention to *inter alia* site boundary issues, possible zoning, and socio-economic considerations, with wider engagement and consultations involving other UK government departments (e.g. Defra/JNCC, DECC and DfID); neighbouring nations (e.g. Mauritius, Seychelles, Maldives and Sri Lanka); NGOs with interests; and other key stakeholder groups (including Chagossian representatives).

Annex 1. Workshop programme

Wednesday 5 August

10.30 *Coffee and registration*

10.45 Welcome, scene setting and current progress

- Context of meeting, broad outline (Lindsay Parson)
- UK government perspective of Chagos/BIOT MPA (Joanne Yeadon)[41]
- Chagos protection as of now (Charles Sheppard)
- Chagos – shallow water ecosystems and issues (John Turner)
- Chagos – mid- and deepwater ecosystems and issues (David Billett)

12.00 Discussion

12.30 *Lunch*

13.30 Short presentations/contributions with discussion, including:

- Fisheries management in the Chagos FCMZ (Chris Mees)
- Marine conservation: the Pew perspective (Jay Nelson)
- The economic value of the British Indian Ocean Territory (Pippa Gravestock; presentation given by Charles Sheppard)
- Marine conservation: the IUCN perspective (Dan Laffoley)
- Issues relating to MPA development and design (Francesca Marubini)
- Marine conservation in SE Asia (Heather Koldeway)
- MPA development in Southern Ocean (Susie Grant)
- Shallow marine benthic biodiversity: tropical-temperate comparisons (Andrew Mackie)

16.30 Scientific review; key issues

17.30 *Close*

19.30 *Workshop dinner: The Olive Tree*

Thursday 6 August

09.00 Short presentations/contributions with discussion, continued

- Deepwater bathymetry and habitat mapping (Colin Jacobs)

09.15 Working Groups on science justification for BIOT MPA : benefits, threats and research issues

12.00 Reports from Working Groups (Rapporteurs: David Billett, Phil Williamson)

12.30 *Lunch*

13.30 Concluding discussions

15.30 *Close of meeting.*

Annex 2. Workshop participants

The following individuals attended:

David Billett	National Oceanography Centre Southampton
Alan Evans	National Oceanography Centre Southampton
Susie Grant	British Antarctic Survey
Simon Harding	Institute of Zoology
Peter Hunter	National Oceanography Centre Southampton
Colin Jacobs	National Oceanography Centre Southampton
Douglas Kerr	Foreign & Commonwealth Office
Heather Koldewey	Institute of Zoology
Dan Laffoley	International Union for Conservation of Nature / Natural England
Andrew Mackie	National Museum of Wales
Francesca Marubini	Joint Nature Conservancy Council / Univ of Aberdeen
Chris Mees	MRAG Ltd
Jay Nelson	Pew Environment Group: Ocean Legacy Program
Iain Orr	Independent observer
Scott Parnell	Foreign & Commonwealth Office
Lindsay Parson	National Oceanography Centre Southampton
John Pearce	MRAG Ltd
Katharine Shepherd	Foreign & Commonwealth Office
Charles Sheppard	Univ of Warwick / Chagos Conservation Trust
John Turner	Univ of Bangor
Keith Wiggs	BIOT Administration
Phil Williamson	Univ of East Anglia / NERC
Ian Wright	National Oceanography Centre Southampton
Joanne Yeadon	Foreign & Commonwealth Office

Others invited to attend but unable to do so included NERC Theme Leaders (Biodiversity and SUNR) and representatives from Plymouth Marine Laboratory, Scottish Association for Marine Science, Univ of Exeter, Univ of Newcastle, Defra, Royal Society, Linnean Society and UNEP Coral Reef Unit. Lynda Rodwell (Univ of Plymouth) and Mark Spalding (The Nature Conservancy) declined to participate on the basis of perceived deficiencies in stakeholder representation.

Comments and other written submissions were provided both before and after the workshop by Pippa Gravestock (Univ of York), Sidney Holt (ex FAO), Peter Sand (ex-UNEP lawyer, Univ of Munich) and David Snoxell (Coordinator of Chagos All Party Parliamentary Group), also on behalf of the Chagos Refugee Group (Olivier Bancoult) and the Mauritius Marine Conservation Society (Philippe la Hausse de Lalouvière and Jacqueline Sauzier). Most of these inputs were either circulated to all workshop participants or made available at the meeting.

Annex 3. References and notes

1. BIOT Administration/FCO (1997) *The British Indian Ocean Territory Conservation Policy 1997.*
2. BIOT Administration/FCO (1998) *The Fisheries (Conservation and Management) Ordinance 1998.*
3. Huckle AE (2004) Proclamation No 1 of 17 September 2003 establishing the Environment (Protection and Preservation) Zone for the British Indian Ocean Territory. *Law of the Sea Bulletin* 54, 99.
4. Sheppard CRC & M Spalding (2003) *Chagos Conservation Management Plan.* Online at www.zianet.com/tedmorris/dg/chagos_conservation_management_plan2003.pdf. Includes references to other BIOT-relevant legal provisions.
5. Chagos Conservation Trust (2009) *The Chagos Archipelago: its nature and the future.*
6. Relevant research relates directly to priority challenges in two NERC themes (Biodiversity, and Sustainable Use of Natural Resources) and indirectly to all other five NERC themes and the inter-agency Living with Environmental Change (LWEC). NERC Strategy at www.nerc.ac.uk/about/strategy.
7. A formal governmental consultation exercise would be ~~necessary~~ desirable before MPA status could be designated for the BIOT area.
8. N Dudley (ed) (2009) *Guidelines for Applying Protected Area Management Categories,* IUCN. Online at http://data.iucn.org/dbtw-wpd/edocs/PAPS-016.pdf
9. CBD (2006) *Summary report of the current status of the global marine protected area network, and of progress monitoring capabilities.* UNEP/CBD/COP/8/INF/.4
10. For example, Durban Accord, arising from the 2003 World Parks Congress; http://cmsdata.iucn.org/downloads/durbanaccorden.pdf
11. The "BIOT area" is used in this document as the potential Marine Protected Area for the Territory, corresponding to the existing BIOT Fisheries Conservation Management Zone (1998), the BIOT Environment (Protection and Preservation) Zone (2003/2004) and the minimum potential Exclusive Economic Zone for the Territory, with their limits being 200 nautical miles from coastal baselines except where median lines apply. Such an area (of ~544,000 sq km) includes all land areas, internal waters and the territorial sea currently defined on the basis of 3 nm limits. It is possible that a UK claim will be made to extend the BIOT EEZ (by ~180,000 sq km) to include additional continental shelf areas under Article 76 of UNCLOS. No assumption is made here as to whether such an EEZ extension should also be part of the MPA.
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17. Carpenter KE & 38 others (2008) One-third of reef-building corals face extinction from climate change and local impacts. *Science*, 321, 560-3.
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22. www.iucnredlist.org
23. www.birdlife.org/action/science/sites
24. Views of Mauritian government and Chagossian representatives also necessary on this issue, for their assessment of historical and cultural values.
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26. Van Beukering PJH, L Brander, E Tompkins & E McKenzie (2007) *Valuing the environment in small islands - an environmental economics toolkit.* JNCC, Peterborough.
27. In 2000/01 and 2001/02, sharks comprised 7-9% by weight of the tuna longline fishery in the FCMZ (with total declared catch weight of ~2000 tonnes per day). Turtles and birds are not significantly impacted by longline fishing in the BIOT area.
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29. Maury O & P Lehodey *(2005) Climate impacts on oceanic top predators.* GLOBEC Report 18. Online at www.globec.org/structure/regional/cliotop/cliotop_science_plan.pdf
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40. LWEC aims include whole-system assessments and risk-based predictions of environmental change and its effects on ecosystem services, health (human, plant and animal), infrastructure and economies; also integrated analyses of potential social, economic and environmental costs, benefits and impacts of different mitigation and adaptation responses. LWEC partners include NERC, ESRC, Defra, DfID, DECC, Met Office, Natural England and around 15 others. Details at www.lwec.org.uk
41. Apart from this initial short presentation, stating the current UK government position, FCO participants had an observer role at the meeting.

No!

Need to

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