

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

In the Matter of Arbitration Between:

THE REPUBLIC OF MAURITIUS,

and

THE UNITED KINGDOM OF GREAT
BRITAIN AND NORTHERN IRELAND

PCA Reference MU-UK

Volume 1

HEARING ON JURISDICTION AND THE MERITS

Tuesday, April 22, 2014

Pera Palace Hotel
Mesrutiyet Cad. No: 52 Tepebasi, Beyoglu
Conference Room Galata II & III
34430, Istanbul-Turkey

The hearing in the above-entitled matter convened at 2:30 p.m. before:

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

1 pooh-pooed. There are common themes that draw a direct link from 1965 to 2010, and you get a
2 sense of a continuum in the *modus operandi* of the United Kingdom; the lack of transparency, and
3 it might be said candour; the use of that well-known technique of presenting Mauritius with a *fait*
4 *accompli* or the United Nations; the offering of sweeteners. And there's a running theme that goes
5 all the way through the documents: the use of fear, frightening Mauritius back in 1965 that it might
6 not get independence, frightening the Tribunal today that it might open the floodgates. Against that
7 background, I'm going to make eight points.

8 **5. My first point, Point 1: the United Kingdom is inviting the Tribunal to ratify a legacy of**
9 **British colonialism**, a remnant of Empire. Now, in these proceedings, the UK for the first time
10 ever, before any international court or Tribunal, has to justify in law the actions that it took in and
11 after 1965, a most unhappy episode. That history infects the tone of the UK pleadings, not least the
12 Rejoinder, you'll have picked up the whiff of the slightly patronizing air, the sense of irritation
13 (that they have been hauled before this Tribunal at all), the use of unfortunate pejoratives to
14 describe our arguments ("spurious" or "idiosyncratic"),² or the thrust of our arguments generally,
15 (the "mantra" of Mauritius).³ But how striking it is that nowhere in the pleadings is there any hint
16 of regret for the events that took place in 1965, nothing, no expression of remorse for the
17 deportation of an entire population, a once thriving and active community of approximately 2000
18 Chagossians. We invite you to keep this context and this legacy, sad legacy, at the forefront of your
19 minds.

20 **6.** This brings me to my second point: the Chagos Archipelago is and has always been an
21 integral part of the territory of Mauritius. The United Kingdom makes the implausible and
22 somewhat convoluted argument that the "detachment" from Mauritius did not contravene
23 international law, including the principle of self-determination, because the islands of the Chagos

² United Kingdom Rejoinder ("UKR"), para. 8.56.

³ See UKR, paras. 2.21 and 5.22.

1 Archipelago “were never part of the territory of Mauritius”.⁴ Miss Macdonald will address this
2 issue in some detail tomorrow morning. It is an approach that we say is both extraordinary and
3 counter-intuitive, it’s been resuscitated and developed for the purposes of this case. Yet the record
4 shows that the United Kingdom spoke about and treated the separation, the excision of the Chagos
5 Archipelago as a “detachment.” That is its word. So, let’s deal with the reality: one does not
6 detach one object from another unless it is a part of that other. Why bother to seek to obtain the
7 purported agreement of the Mauritian Premier back in 1965? Why pay compensation? Why
8 present the United Nations General Assembly with a *fait accompli* if the territory being detached
9 wasn’t even a part of the territory of Mauritius?

10 7. The documents speak very clearly on this point. I can illustrate it – as well as the United
11 Kingdom’s rather curious, semi-detached approach to its own records – by taking you to a Minute,
12 that sent by Colonial Secretary Anthony Greenwood, no relation I say for the record, which was
13 sent to Prime Minister Harold Wilson, on the 5th of November 1965. You’ll see it at Tab 2.1 in
14 your folder. And if you could go straight to page 2. And what you’ll see with these folders as we
15 go, in the bottom right-hand corner of each page, which is copied just to save a few forests double
16 sided, a number in red, we’ve stamped on it Mauritius folder page 2 just for ease of reference, and
17 we’ll have a continuing numbering going all the way through. If you can go to the bottom of page
18 2, right at the bottom, Tab 2.1, Page 2, at the bottom, you’ll see paragraph 5, and you’ll see the last
19 part of paragraph 5. It says: it is “essential that the arrangements for detachment of these islands
20 should be completed as soon as possible.” And then if you go on over to the next page to
21 paragraph 6, you’ll see the following: “From the United Nations’ point of view, the timing is
22 particularly awkward. We are already under attack over Aden and Rhodesia, and whilst it’s
23 possible that the arrangements for detachment will be ignored when they become public, it seems
24 more likely that they will be added to the list of imperialist measures for which we are attacked.

⁴ UKR, Chapter IIB, p. 11.