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Disputes over the British Indian Ocean Territory: a survey

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Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago of its inhabitants, opening the way for a US military base on the biggest island, Diego Garcia. The Archipelago was made a British overseas territory, the British Indian Ocean Territory (BIOT). Two main disputes have arisen from these events. One has been between the Chagos Islanders and the British Government over the legality of the former's removal and whether they have a right to return. The other has been between the UK and Mauritius about sovereignty over the BIOT. The UK has said that it will cede sovereignty to Mauritius once the BIOT is no longer required for defence purposes.

Can progress be made towards resolving these disputes? Both have at various points in the past appeared to be all but intractable and several domestic and international legal challenges remain in play. But potential ways forward over the next two years are certainly not beyond the bounds of imagination. The British Government is currently reviewing its policy on resettlement, with supporters of the Chagos Islanders arguing that the outer islands of the Archipelago could be feasible sites for limited resettlement. And while the arrangement with the US over its military use of Diego Garcia looks set to be extended for a further 20 years from 2016, some are asking whether, if the outer islands of the BIOT are not required for defence purposes, they could be ceded to Mauritius as an interim step.

This paper surveys the origins and complex subsequent evolution since 1965 of these separate but inter-related disputes over the Chagos Archipelago. It concludes by exploring the prospects for making progress towards resolving these disputes over the next couple of years.

Jon Lunn

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Summary

Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago, officially known as British Indian Ocean Territory (BIOT), of its inhabitants, opening the way for a US military base on the biggest island, Diego Garcia under a 50-year agreement reached in 1966. The arrangement with the US is due to continue in force for a further 20 years from December 2016 unless either side gives notice to terminate it in the two years before its expiry – that is, from December 2014 onwards.

There have been two main outstanding disputes arising from these events. One has been between the Chagos Islanders (also called Chagossians or Ilois) and the British Government over the legality of the former's removal and whether they have any right to return. The other has been between the UK and Mauritius about sovereignty over the Chagos Archipelago.

Between 1998 and 2008, lawyers for one group of Chagos Islanders pursued the issue of their right to return to the Archipelago through a series of cases in British courts. This endeavour ended in 2008 when the Law Lords found narrowly in favour of the British Government.

However, in 2009 the European Court of Human Rights resumed consideration of a case originally lodged in 2004 but held as pending until the case before the British courts had been concluded. In December 2012 the European Court ruled by a majority that the case was inadmissible on the grounds that the Chagos Islanders had accepted and received compensation from the British Government in 1982, meaning that they could no longer claim to be victims of a violation of the European Convention on Human Rights.

Successive Mauritian governments have maintained a claim to sovereignty over BIOT, arguing that it was illegally separated from Mauritius before the latter gained independence in 1968. The UK has repeatedly rejected these claims, but has undertaken to cede BIOT to Mauritius when the territory is no longer required for defence purposes.

More recently, there has also been criticism of the previous British Government's decision, announced in April 2010, to establish a Marine Protection Area (MPA), in which a full no-take ban on fishing was introduced around BIOT (with the exception of Diego Garcia).

Mauritius has brought a case against the MPA under the *UN Convention on the Law of the Sea*. While the case is not directly about the wider issue of sovereignty, it could provide a means by which it is raised in an international court for the first time. The case is due to be heard by an international tribunal in 2014; its decision will be final and binding. Chagossians in the UK have also challenged the establishment of an MPA in the British courts on the grounds that the public consultation process was inadequate.

Can progress be made towards resolving these disputes? Both have at various points in the past appeared to be all but intractable and significant obstacles remain. But potential ways forward over the next couple of years are certainly not beyond the bounds of imagination.

Prior to the formation of the current Coalition Government, the Liberal Democrats and the Conservatives both said that they would review British policy on resettlement – which has been based on a controversial 2002 study that said it was infeasible – if they won office. The then Shadow Foreign Secretary William Hague said that he wanted to see a "fair settlement". However, on taking office, the Government said that litigation before the European Court would first have to be completed before any action could be taken.

Now that the European Court has ruled that the Chagos Islanders' case was inadmissible, the Government has begun a review. Perhaps the most obvious 'trust-building' measure that

it could take in the short-term would be to announce a new study on the feasibility of resettlement on the outer islands that would involve extensive public consultation and stakeholder engagement. It is conceivable that a decision could be then taken, based on the conclusions of this study, that there will be limited resettlement on some, if not all, of the outer islands of the Chagos Archipelago. Supporters of the Chagossian cause have proposed a number of means through which livelihoods might be sustained on the outer islands, including a scientific research station. However, a small-scale resumption of fishing would probably also be necessary, requiring in due course the repeal of the MPA's 'no-take' ban.

While the British Government has given no public indication to date that it is willing to reconsider its position on the issue of sovereignty, if it decided to adjust its stance it could offer to cede sovereignty of the outer islands to Mauritius while retaining sovereignty over Diego Garcia until 2036 (and probably beyond). Mauritius has said that it has no problem with the US retaining its military base on Diego Garcia. The UK could supplement this offer by proposing a form of co-management of the outer islands until they are handed over to Mauritius. This could include a role in the implementation of an amended MPA. Mauritius might be open to such proposals. Co-management arrangements could also be offered, but without any specific proposals on sovereignty. This would be less attractive to Mauritius, but it might be enough to restart bilateral dialogue between it and the UK, which stalled in 2010.

1 Overview of events between 1965 and 2008

The controversy over the Chagos Islanders (also known as Chagossians or Ilois) began in 1965. Their former home was the Chagos Archipelago in the Indian Ocean, formerly governed as part of the British colony of Mauritius. The Chagos Archipelago is a group of seven atolls comprising 55 individual tropical islands, many of them very small, roughly in the centre of the Indian Ocean. The Archipelago lies about 500 km (300 miles) due south of the Maldives, its nearest neighbour; 1600 km (1000 miles) southwest of India, and half way between Tanzania and Java.[1] The largest island, Diego Garcia, is about 130 miles away from the outer islands of the Archipelago.

In 1965 the UK detached the Chagos Archipelago from the colony of Mauritius to create, by an Order in Council under the Royal Prerogative, a separate colony called the British Indian Ocean Territory (BIOT). The intention was to use the Chagos Archipelago for defence purposes. Mauritius received a £3 million grant in return, and an undertaking was made to return the Archipelago to Mauritius when it was no longer needed for defence purposes. The Order in Council also provided for the appointment of a Commissioner for the Territory. One function conferred on the Commissioner was the power to make laws for the "peace, order and good government" of the Territory.

Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago of its inhabitants. A December 1966 Exchange of Notes provides for the BIOT to be “made available for defence purposes” by both the UK and the US for an initial period of 50 years.[2] The US wanted to build a military base on Diego Garcia, the largest island, and proceeded to do so.[3]

The Exchange of Notes states that the arrangement will remain in force for a further 20 years beyond 2016 unless either side gives notice to terminate it in the two years before its expiry – that is, from December 2014 onwards.[4] That date is approaching. In return for the use of Diego Garcia, the US gave the UK a secret $14 million subsidy on the purchase of the Polaris submarine nuclear deterrent.[5] Supplementary agreements concluded in 1972 and

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1 The map below is taken from the CIA World Factbook

2 *Exchange of Notes constituting an agreement concerning the availability for defense purposes of the British Indian Ocean Territory (with annexes).* London, 30 December 1966, UN Treaty Series, Vol. 603, Reg. No. I-8737

3 HC Deb 10 March 2010 c88WH

4 HC Deb 12 January 2009 c357W. The previous British Government stated that it expected that a decision about post-2016 arrangements would be taken in 2014. See: HC Deb 10 March 2010 c86WH

5 For a fuller account, see: ND Howland ed., *Foreign Relations of the United States, 1964-1968*, Vol. 2 (Government Printing Office: Washington, D.C., 2000) pp83-117

1976 provided for the establishment of, first, a limited US naval communications facility on Diego Garcia, followed by its expansion into a support facility of the US Navy.[6]

In 1971 the Commissioner for the Territory, acting with ministerial approval, enacted an Immigration Ordinance which made it unlawful for a person to enter or remain in BIOT without a permit. This formalised in law the removal of the whole of the existing civilian population of the territory to Mauritius and established a prohibition on their return.

Campaigners claim that many Chagos Islanders were not told at the time of their removal that they were leaving permanently and that their departure was accompanied by serious misinformation and intimidation. Most of the 1,500 Islanders, whose slave ancestors are believed to have been transported to the Archipelago from Madagascar and Mozambique by the French in the late eighteenth century to work on the coconut plantations, ended up in the slums of Mauritius. Following Mauritian independence these Chagossians qualified for Mauritian citizenship. Today, the total number of Chagossians around the world is believed to be around 4,000-5,000, with fewer than 700 of the original Islanders remaining. There is a small community based in Crawley, Sussex.

Compensation arrangements for the Chagos Islanders were offered by Britain in the 1970s and early 1980s. £650,000 was paid to the Government of Mauritius for the benefit of the Chagossians in 1978, in particular to assist their resettlement there. In 1982, following litigation known as the *Ventacassen* case, a settlement between the UK Government, the Government of Mauritius and representatives of the Chagossians was reached, under which a further £4 million was paid by the UK Government into a trust fund for the benefit of the registered Chagossians and land worth £1 million was provided by Mauritius. As far as the British Government was concerned, this represented full and final settlement of any claims that the Chagos Islanders might have had. This view was later challenged unsuccessfully in the British Courts.

In the late 1990s, a group of Chagossians embarked on a legal challenge to the 1971 Ordinance.[7] The Ordinance was ruled unlawful by the High Court in 2000 and effectively granted Chagossians the legal right to return to any of the islands, with the exception of Diego Garcia itself. The British Government accepted the judgment and amended the legislation. However, four years later, the UK Government issued new Orders in Council banning any Islanders from returning. The Orders were the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. The Government drew on a 2002 study that it had commissioned to argue that resettlement was not feasible. A new legal challenge against these Orders was launched and in 2006 and 2007, the High Court and Court of Appeal found in favour of the Islanders. However, in 2008, the Law Lords ruled by a majority of 3:2 in favour of the Government. This defeat led to the reactivation of a case originally lodged in 2004 with the European Court of Human Rights (see sections 2.2 and 2.3 below).

Successive Mauritian governments have maintained a claim to sovereignty over the BIOT, arguing that it was illegally separated from Mauritius before the latter gained independence in 1968 (see section 2.5). Mauritius views the issue as one of 'unfinished decolonisation' and British claims as a violation of UN General Assembly resolutions, most notably 1514 (XV) of December 1960, which called for independence for all colonies, and 2066 (XX) of 16 December 1965, which called on the UK not to take any steps that dismembered Mauritius or

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6 *Exchange of Notes constituting an agreement supplementing the 1966 agreement, concerning a US naval support facility on Diego Garcia, British Indian Ocean Territory and replacing the supplementary agreement of 24 October 1972 (with annexed plan)*. London, 25 February 1976, UN Treaty Series, Vol. 1018, Reg. No. I-8737

7 Appendix 1 provides a fuller account of various legal cases brought by the Chagossians in the British Courts between 1998 and 2008.

violated its territorial integrity in the course of granting it independence. After initially appearing indifferent to the demands of many Chagos Islanders to be allowed to return to the islands, Mauritius has more become supportive of the Islanders' cause.

The UK has repeatedly rejected the position of Mauritius on sovereignty, but – as already noted – it has undertaken to cede BIOT to Mauritius when the territory is no longer required for defence purposes.

2 Developments since 2008

2.1 Reaction to the 2008 House of Lords judgment on the right to return

In 2008 the Law Lords ruled by a majority of 3:2 in favour of the Government. Following the judgment, the then Labour Government's position on the right to return remained unchanged. Minister of State at the FCO Gillian Merron said in a Westminster Hall debate on 23 April 2009, that its "policy will remain that no person has a right of abode in BIOT or the right to enter the Territory unless authorised".[8]

In written evidence to the Foreign Affairs Committee, the then Foreign Secretary, David Miliband, reaffirmed that:

> the Government regrets the way the resettlement of the Chagossians was carried out in the 1960s and 1970s and at the hardship that followed for some of them. We do not seek to justify those actions and do not seek to excuse the conduct of an earlier generation. But the Courts have previously ruled that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation; and British citizenship was granted to a large number of Chagossians under the British Overseas Territories Act 2002. The appeal to the House of Lords was not about what happened in the 1960s and 1970s. It was about decisions taken in the international context of 2004. This required us to take into account issues of defence security of the archipelago and the fact that an independent study had come down heavily against the feasibility of lasting resettlement of the outer islands of BIOT.[9]

However, the Government stated that it accepted that there "continues to be a moral responsibility" towards the Chagos Islanders which "will never go away".[10]

In a letter to the Foreign Affairs Committee in May 2009, Richard Gifford, Legal Representative of the Chagos Refugee Group, said that the most recent statements and exchanges on the issue, including those involving his Group, demonstrated that:

> 1. The only UK Defence Expert who has pronounced on cohabitation between islanders and the US military sees no problem with resettlement on Diego Garcia itself, and, a fortiori, on any of the Outer Islands.
>
> 2. FCO treatment has been condemned by several international bodies, most recently by the EU Parliament, in Plenary Session.
>
> 3. There are three scientific studies which advocate resettlement as a viable option, and only one which believes resettlement to be "costly and precarious". However, this conclusion lacks credibility and was probably merely the reflection of what officials wished to hear.

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8 HC Deb 26 November 2008 c1775W; HC Deb 23 April 2009 c181WH

9 Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 53. Supporters of the Chagossians take the position that no judge has said that the compensation paid was fair.

10 HC Deb 10 March 2010 c89WH and 91WH

> 4. The ample resources of the European Development Fund will be available to finance resettlement when the population returns.

Mr Gifford said that "Neither the BIOT Commissioner, nor the Minister of State has attempted to provide any substantive justification for the Policy of Exile, save to use worn-out phrases such as 'We cannot turn the clock back'"[11]

2.2 Back to the European Court of Human Rights

Following the 2008 House of Lords judgment, the Chagos Refugee Group decided to take its case back to the European Court of Human Rights. A case had first been lodged there in 2004 but held pending while the case completed its journey through the British courts.

The case for the complainants

The case for the complainants under the European Convention on Human Rights was summarised by the European Court as follows:

> 32. The applicants complained under Article 3 about the decision-making process leading to the removal from the islands, the removal itself and the manner in which it was carried out, the reception conditions on their arrival in Mauritius and the Seychelles, the prohibition on their return, the refusal to facilitate return once the prohibition had been declared unlawful and the refusal to compensate them for the violations which had occurred.
>
> 33. The applicants complained under Article 8 about the above matters as disclosing violations of their right to respect for private life and home. The original removal was not "in accordance with the law" and the subsequent interferences were either not lawful in that they failed to comply with the Bancoult 1 judgment or to the extent that they were lawful were disproportionate in that they prohibited return. They also alleged that these acts and omissions disclosed continuing unjustifiable interferences with their right to respect for their home.
>
> 34. The applicants alleged that these matters also violated their rights under Article 1 of Protocol No. 1, by both depriving them of their possessions and/or controlling their use and that these interferences were unlawful both as a matter of English and international law.
>
> 35. The applicants complained under Article 6 that the administrative authorities' unilateral and extrajudicial annulment of the effect of the Bancoult 1 judgment has frustrated their right to a final judgment and that the courts' refusal to grant a hearing on their civil right to damages had denied them access to court.
>
> 36. Finally, they complained under Article 13 of the Convention that they had no effective remedy because of the extra-judicial annulment of the Bancoult 1 judgment and the United Kingdom's reliance on the limitation defence – after concealing facts relevant to the applicants' claims – to deprive them of an adjudication of their claim to compensation.[12]

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11 Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 88

12 European Court of Human Rights, Application no. 35622/04, Chagos Islanders against the United Kingdom

A 'friendly settlement' ruled out

The European Court invited the previous British Government to submit written observations on the admissibility and merits of the Islanders' application and to inform the Court of its position concerning the possibility of a "friendly" out-of-court settlement. In his May 2009 letter to the Foreign Affairs Committee, Mr Gifford, representing the Chagos Refugee Group, expressed the hope that the Foreign Secretary would "take seriously the invitation from the European Court of Human rights to offer to Chagossians a "friendly settlement".[13]

The UK Government made its submission to the Court on 31 July 2009. In it, the Government stated that it had decided to contest the case, and not explore the possibility of a "friendly" out-of-court settlement. Explaining the Government's decision to defend itself, the FCO said:

> The Government was invited by the Court to submit written observations on the admissibility and merits of the application to the ECtHR and it did so on 31 July 2009.
>
> UK courts have previously ruled that the ECHR is not applicable in BIOT, that fair compensation has been paid and that the UK has no legal obligation to pay any further compensation.
>
> British citizenship has been granted to a large number of Chagossians under the British Overseas Territories Act 2002 who have a right of abode in the UK.
>
> The highest UK court has also already ruled on the issue of right of abode in BIOT and decided that the BIOT Constitution is lawful.
>
> The Government concluded on the basis of the 2002 independent feasibility study that lasting resettlement would be precarious and, if sponsored by the Government, would entail expensive underwriting by the British taxpayer for an open-ended period.
>
> Full immigration control over the entire territory is necessary to ensure and maintain the availability and effective use of the territory for defence purposes of both the UK and the US, particularly in light of a change of security circumstances since 2000 and our treaty obligations to the US.

On the issue of its response to the proposal for a 'friendly settlement', the FCO said: "Given the Government's assessment as to the admissibility and merits of the case, it had no proposals to make in regard to a friendly settlement."[14]

The Coordinator of the Chagos Islands All Party Parliamentary Group and former High Commissioner to Mauritius (2000-2004), David Snoxell, reacted to the Government's decision in a letter to *The Times* of 5 August 2009 as follows:

> The quest for justice for the Chagossians enters its 11th year with the Foreign and Commonwealth Office's decision, last week, to contest the case in the European Court of Human Rights, instead of seeking a friendly settlement, as suggested by the court. This is a bitter disappointment for the Chagossians. For the fourth time in a decade the FCO has preferred to defend the case, rather than admit that the removal of the Chagossian people was, and still is, a violation of their fundamental human rights.
>
> This, however, is the view of parliamentarians, nine senior judges and the informed public, not to mention the international community. Several parliamentary questions

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13 Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 88

14 Email from FCO Press Office, 20 August 2009

> and an early day motion requested the Government to consult Parliament before replying to the court. By delaying its reply until the recess the FCO appears, once again, to have ignored Parliament. If the European Court decides that it has jurisdiction to hear the case it would be surprising if the judges found that the continued exclusion of the Chagossians from their homeland was not a violation of the European Convention on Human Rights.
>
> The FCO may feel that it has a good case in law and is prepared to spend millions on trying to prove it, but the public perception is that the Chagossians should no longer be the victims of an injustice that deprived them of their birthright. How then can the FCO claim to be acting in the public and taxpayers' interest? The raison d'être for the FCO is above all to find solutions through diplomacy and negotiation. Should not the FCO be applying its well-honed diplomatic skills, common sense and decency in bringing this tragedy to an end?[15]

The Chagos Refugee Group and its supporters regarded their moral and political case as having been strengthened by comments made by then Justice Secretary Jack Straw, who was Foreign Secretary at the time of the 2004 Orders in Council, to BBC Radio 4 in May 2009.[16] Mr Straw said that, in retrospect, the 2004 Orders in Council should have been referred first to the Foreign Affairs Committee and that in failing to do so he had "exchanged legitimacy for speed". David Miliband told the Committee in July 2009 that, in deciding that it was impossible to send the draft Orders in Council to the Committee in advance, Mr Straw had "pointed to the need to preserve complete confidentiality to avoid the risk of any attempt to circumvent the Orders before they came into force."[17]

The Coalition Government took office in May 2010 promising to review policy towards the resettlement of the BIOT once the case before the European Court had been completed. It was reported by the UK Chagos Support Association that the Foreign Secretary, William Hague, had reiterated in a meeting with Chagossian representatives and supporters in June 2011, that the FCO viewed the European Court case as a test of whether the Court has the jurisdiction to rule on the Overseas Territories.[18]

2.3 The European Court rules the case of the Chagos Islanders inadmissible

The European Court ruled on 20 December 2012, deciding the application of the Chagos Islanders was inadmissible. It summarised its decision in a press release as follows:

> In its decision in the case of Chagos Islanders v. the United Kingdom (application no. 35622/04) the European Court of Human Rights has by a majority declared the application inadmissible. The decision is final.
>
> The case concerned the expulsion of the Chagos Islanders from their homes – on the Chagos Islands, a group of islands in the middle of the Indian Ocean which are an Overseas Territory of the United Kingdom – from 1967 to 1973 in order to set up an American military base.
>
> The Court notably found that the heart of the applicants' claims under the European Convention on Human Rights was the callous and shameful treatment which they or their antecedents had suffered during their removal from the Chagos Islands. These claims had, however, been raised in the domestic courts and settled, definitively. In accepting and receiving compensation, the applicants had effectively renounced

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15 "Chagossians, injustice and the Foreign Office", *The Times*, 5 August 2009

16 "What's the Point of the Privy Council?", BBC Radio 4, 12 May 2009

17 Foreign Affairs Committee, Seventh Report of Session 2008-09, *Human Rights Annual Report 2008*, HC 557, Ev 53

18 "Chagos representatives meet foreign secretary", UK Chagos Support Association blog, 1 July 2011

> bringing any further claims to determine whether the expulsion and exclusion from their homes had been unlawful and breached their rights and they therefore could no longer claim to be victims of a violation of the Convention. It was not for the Court, in that event, to undertake the role of a first-instance tribunal of fact and law.[19]

The fact that the decision was based on inadmissibility means that this case has reached the end of the road. The Court has decided that it does not have the competence to "re-decide the merits of the issues examined by the domestic courts."[20] There is no provision for appeal in such circumstances. Nevertheless, because the issues addressed in the decision could come up in new legal proceedings in future, it is worth setting some of them out in some detail.

Specific decisions of the Court

In the full text of its decision, the Court also issued specific decisions on various issues raised by either party to the case, or both. These decisions were organised under the following headings: Victim status; compatibility *ratione loci*; access to court and fair trial issues.

Below is a brief survey of these decisions.

Victim status

The UK Government had claimed that "the applicants can no longer claim to be victims due to the settlement reached in the *Ventacassen* litigation", which was settled in 1982 with a payment of £4 million by the UK and the provision of land worth £1 million by Mauritius and "in exchange for which the islanders agreed to give up their claims."[21] The Court upheld this claim, rejecting counter-arguments that have been made, including the point that not all of the Chagos Islanders involved in the current case had been party to the *Ventacassen* litigation – or if they had, had not signed a waiver form or fully understood or consented to the terms of the compensation arrangements.

The Court argued that those who were part of the *Ventacassen* litigation had "effectively renounced" further remedy, while those that were not had "failed to exhaust domestic remedies", as required under the Convention. The Court also decided that the 2004 Orders in Council imposing a prohibition on the return of all Chagossians, including those as yet unborn in 1982, to the Chagos Islands did not create new grounds for additional compensation, and that the Orders "cannot be said to have amounted to an interference with the applicants' right to respect for their homes." The Court decided that, for all these reasons, there are no grounds for "fresh claims under the Convention" on the basis of victim status.[22]

Compatibility ratione loci

The Court looked at a range of arguments made by the Chagos Islanders in connection with the legal principle of compatibility *ratione loci,* which requires the "alleged violation of the Convention to have taken place within the jurisdiction of the respondent State or in territory effectively controlled by the State."[23]

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19 European Court of Human Rights, "Chagos islanders' case inadmissible because they accepted compensation and waived the right to bring any further claims before the UK national courts", press release ECHR 460 (2012), 20 December 2012

20 European Court of Human Rights, Application no. 35622/04, Chagos Islanders against the United Kingdom, para 65

21 Ibid., paras 77-78

22 Ibid., paras 78-83

23 European Court of Human Rights, "Key case law issues: compatibility *ratione loci* and *ratione personae*", updated 30 July 2006

First, it ruled that, contrary to the claim made by the Chagos Islanders, "at no time was the right of individual petition [under the Convention] extended to BIOT."[24]

Second, it ruled that the fact that many of the applicants now live in the UK did not, as the Chagos Islanders asserted, bring "their complaints within the Court's competence." In doing so, the Court added:

> Similarly, the applicants' contention that BIOT must be regarded as part of metropolitan United Kingdom due to the Government's total control of BIOT cannot be accepted. The constitutional status of BIOT is set out in the domestic courts' judgments; it is an overseas crown territory and not part of the United Kingdom itself, the Crown's legislative and constituent powers being exercised by Order in Council, Letters Patent and Proclamation.[25]

Third, the Court drew on similar reasoning to reject the argument of the Chagos Islanders that the acts about which they were complaining "took place within the territorial jurisdiction of the United Kingdom", responding that they were mostly "acts or regulations implemented by the legislative and administrative authority for BIOT and taking effect purely in BIOT."[26]

Finally, it returned to the question of the Court's jurisdiction by responding to the claim of the Chagos Islanders that "even if the government have never extended the Convention and right of individual petition to BIOT, this does not preclude jurisdiction arising under different grounds." Along the way, it considered but rejected subsidiary arguments deployed to back up the claim.: that this was a case in which "extraterritorial jurisdiction" should apply; that jurisdiction may apply even in overseas territories for which a member state has accepted the Convention; that the Convention should be reinterpreted to prevent a "vacuum in protection" or the continuation of an "objectionable" legacy from the colonial period". However, on the main point, "jurisdiction arising under different grounds", the Court ultimately declared that it was "unnecessary to rule on this particular argument since, in any event, the applicants' complaints fail for the reasons set out" in relation to victim status.[27]

Access to court and fair trial issues

The Court considered and rejected "two principal strands of argument" made by the applicants in this connection – that the 2004 Orders "constituted an act of the executive which deprived the unappealed judgment" of the High Court in 2000 of its "intended effect"; and that the refusal of the British courts to hear the claim of the Chagos Islanders to additional compensation amounted to "an unjustified impediment to their access to court". On the first count, the Court found that the 2000 High Court judgment had contained "no operative elements" and that the House of Lords had ruled in 2008 that the authorities were "under no legal obligation to take any action." On the second count, the Court found that the British courts had "thoroughly examined the applicants' claims".[28]

While involving varying degrees of legal complexity, the decisions discussed above all contributed towards the final verdict of the Court. But the question of whether the Chagos Islanders could still claim to be "victims" clearly comes through as the primary ground on which the decision was based.

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[24] European Court of Human Rights, Application no. 35622/04, Chagos Islanders against the United Kingdom, para 62
[25] Ibid., para 64
[26] Ibid., para 65
[27] Ibid., paras 67-76
[28] Ibid., paras 78-83

Reaction to the ruling

Predictably, the outcome of the case met with widely divergent reactions. The European Court's decision was welcomed by William Hague, who said:

> We welcome the end of this legal process, which has taken many years. We have made clear our regret for the wrongs done to the Chagossian people over forty years ago. Nevertheless, it was right for the Government to defend itself against this action.

However, he went on to give the following undertaking:

> Now that this litigation is concluded, the Government will take stock of our policy towards the resettlement of the British Indian Ocean Territory (BIOT), as we have always said we would. There are fundamental difficulties with resettlement in BIOT, but we will be as positive as possible in our engagement with Chagossian groups and all interested parties.[29]

The reaction to the verdict by advocates of the Chagossian cause was one of great disappointment. Roch Evenor, spokesperson for the UK Chagos Support Association said: "We brought this case 15 years ago. All of a sudden everything has been turned upside down. This is a very bad law. We just do not understand how this decision was made."[30] The Association added on its blog:

> The Chagossians and their supporters throughout the world are saddened and shocked that a seven-judge chamber of the European Court of Human Rights has after eight years, by a majority ruling, decided that it does not have jurisdiction to give judgment on the case of the Chagos Islanders and that the case is therefore inadmissible […]
>
> Now that the European Court of Human Rights has decided that it does not have jurisdiction we appeal to the coalition government to stand by their pre-election promises to bring about a just and fair settlement to one of the great tragedies of the twentieth century, perpetrated by the UK on the defenceless – the brutal removal of an entire people from their homeland and their way of life, into a life of exile, poverty and hardship. We expect our Government to reflect the British sense of fair play and to ensure that the same basic human rights apply to Chagossians, who are British, as apply to the people in the UK. As the Foreign Secretary himself has said, "The British public expects its Government to act with moral integrity."[31]

Sean Carey, writing in the *Independent*, asserted:

> Although recent UK governments have expressed "regret" about the past, it is very revealing that no formal apology has been made to the Chagossians. Irrespective of the decision of the Strasbourg court, on moral and ethical grounds, it is time for a change in tone and policy. That should include a debate in Parliament in the New Year, and the Foreign Secretary working in close collaboration with the Chagos All Party Parliamentary Group. William Hague should also take the opportunity to invoke the

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29 "European Court of Human Rights decision on Chagossian case", FCO press release, 20 December 2012

30 "Chagos Islanders forced into exile left 'dumbstruck' by court ruling", *Guardian*, 20 December 2012

31 "European court says it has 'no jurisdiction' on Chagos case", UK Chagos Support Association blog, 20 December 2012. The All Party Parliamentary Group on the Chagos Islands issued a statement echoing these sentiments. "Chagos Islands All-Party Parliamentary Group comments on ECHR ruling", UK Chagos Support Association blog, 25 December 2012

> spirit of William Wilberforce by apologising for the mistakes of previous UK governments and allow the islanders to return to their homeland.[32]

The Foreign Minister of Mauritius, Arvin Boolell, responded to the decision by stating:

> […] we are more and more convinced that the battle for sovereignty is more than ever a political one […] We are going to take the political battle into all international bodies, from the UN to the Southern African Development Community, along with the Non-Aligned Movement.[33]

In the immediate aftermath of the decision, one commentator questioned the arguments made by the European Court on the issue of compensation, noting that several hundred Chagos Islanders were deported to the Seychelles, rather than Mauritius, and were not covered at all by subsequent compensation arrangements.[34] The Minority Rights Group, which has also supported the Chagossian cause, questioned the Court's assertion that the Islanders had had every opportunity to pursue compensation through the British courts and had fully understood the terms of the deals that they had accepted, arguing that many of them had been illiterate, signing with thumbprints, and that key documents had been in English, which most of them did not speak. It also criticised the Court's acceptance of the UK Government's claim that because lawyers had been present at the time to explain what was happening, the Islanders can be considered to have understood that they were signing away their right to return.[35]

There was also some response to the Court's decision by legal commentators. David Hart found the Court's argument that it had no jurisdiction over the BIOT questionable but did not challenge its claim that the Chagos Islanders had accepted a full and final compensation settlement in 1982 and so renounced all further legal claims. He described the fact that the decision had been by a majority as "tantalizing".[36] One respondent to Hart's article controversially suggested that the Court's decision had been guided as much by politics as by law:

> It seems that the government is now beginning to reap the political benefit of maintaining a hostile and defiant attitude toward the Strasbourg court which appears to be falling over itself to ensure its judgments will not serve to further isolate it from the states comprising its membership. Jurisprudence is the handmaiden of realpolitik and I do not hold out much hope for the Islanders in the current political climate.[37]

Nonetheless, the British Government has pledged to undertake a review of its policy towards resettlement; the hopes of many supporters of the Chagossian cause now rest on its outcome.

2.4 Other developments on resettlement

In April 2010, the question of the feasibility of resettlement again came to the fore when one of the experts that had taken part in a 2002 study commissioned by the then British

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32 "William Hague should say sorry to the Chagos Islanders and restore the right of return", *Independent*, 21 December 2012

33 "Chagos: sérieux revers devant la Cour européenne", *Le Mauricien*, 21 December 2012 [our translation]

34 "Chagos Islanders lose the European Court battle but struggle continues", *Think Africa Press*, 20 December 2012

35 "Chagos Islanders lose the European Court battle but struggle continues", *Think Africa Press*, 20 December 2012

36 "Chagossians hit the buffers in Strasbourg – but not over yet", UK Human Rights Blog, 22 December 2012. The current British Government has promoted reform of the European Court and has not seen eye-to-eye with some of its rulings.

37 Ibid

Government, Stephen Akester, stated that his opinion – that some of the outer atolls could be resettled without damaging the eco-system or compromising the security of the US military base on Diego Garcia – had been removed from the final text as a result of political pressure. The FCO said that no copies of earlier drafts of the 2002 study had been retained. Akester also claimed that, although the British Government had said that the cost of resettlement would be prohibitive, he and the other experts involved in the 2002 study were not asked to consider cost.[38]

A complaint was subsequently lodged with the Office of the Parliamentary and Health Service Ombudsman about maladministration in connection with the 2002 feasibility study. However, the complaint was rejected on the grounds that the Ombudsman's jurisdiction is limited to the UK. The All Party Parliamentary Group on the Chagos Islands has asked the Foreign Affairs Committee to consider whether the jurisdiction of the Ombudsman should be extended to the Overseas Territories, including those that are uninhabited.[39]

A complaint was also lodged with the Information Commissioner regarding the concealment of documents in connection with the 2002 feasibility study. The complaint was rejected. However, the decision was appealed. In September 2012, The First Tier Tribunal allowed the appeal in part, ruling that two specific documents written to FCO ministers by officials at the time should be disclosed.[40]

In November 2011, the *New Scientist* reported that a new study by the National Oceanography Centre had raised doubts about claims, based on the 2002 feasibility study, by the British Government that rises in sea-levels will eventually render the Chagos Islands uninhabitable.[41] In October 2012, Dr Paul Kench produced a scientific review of the 2002 Feasibility Study that was critical of its conclusions and the data on which they had been based. Kench's report has not yet been made public.[42]

In September 2010 the Conservative MEP, Charles Tannock, was told by the European Commissioner for development, Andris Piebalgs, that if the UK requested the Commission to explore whether it would be willing to make a financial contribution towards the cost of resettlement under the *Overseas Association Decision 2001/822/EC*, it would be willing to do so.[43]

In September 2011, it was reported that the FCO was negotiating with the US authorities to permit Chagossians an opportunity to apply for civilian jobs at the airbase on Diego Garcia. David Snoxell, the co-ordinator of the All Party Parliamentary Group on the Chagos Islands, said: "These measures have been talked about for years and don't add up to a row of beans."[44]

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38 "Study into return of Chagos islanders was manipulated, consultant claims", *Times*, 22 April 2010

39 Letter to the Chair of the UK Foreign Affairs Select Committee from Jeremy Corbyn MP, Chair of the All Party Parliamentary Group on the Chagos Islands, June 2011; "The Chagos Islands (BIOT) All-Party Parliamentary Group: Co-ordinator's Summary of 28th Meeting", UK Chagos Support Association blog, 16 March 2012

40 The Chagos Refugees Group in Mauritius Chagos Social Committee (Seychelles) v IC, EA/2011/0300, 4 September 2012. There has also been a wider dispute about whether the BIOT is covered by the *Freedom of Information Act* and Environmental Information Regulations. The Information Commissioner issued a Decision Notice on this in November 2012 in which he declared that the BIOT is covered but accepted that the BIOT and the FCO are constitutionally separate. The FCO accepted the Decision but supporters of the Chagossian cause are appealing on the last point. For the full text of the Decision Notice, see Case Ref: FS50413563, 6 November 2012. See also: HC Deb 20 December 2012 c886W.

41 "Chagos Islands in sea level rise controversy", *New Scientist*, 23 November 2011

42 "35th meeting of the Chagos Islands (BIOT) APPG", UK Chagos Support Association blog, 24 April 2013

43 C. Tannock, "Enforced exile", *Parliament Magazine*, 16 May 2011. See also UK Chagos Support Association blog, September 2010

44 "Secret talks to return islanders to Chagos", *Independent*, 5 September 2011

2.5 Mauritius and the sovereignty dispute

Mauritius has argued that the issue of which country has sovereignty should be decided by the International Court of Justice (ICJ) on the grounds that the UK has unlawfully taken the Chagos Archipelago from its rightful owner. Mauritius could seek a legally binding ruling from the ICJ. However, in practice this avenue appears closed. The reason is that the UK would also have to give its consent to involving the ICJ in this way. While unilateral applications to the Court are permitted under the ICJ's "compulsory jurisdiction" provision, and both Mauritius and the UK have accepted this provision, the two countries have also lodged reservations stating that compulsory jurisdiction will not apply to disputes involving Commonwealth member states.[45]

Mauritius also regularly raises its concerns in annual UN General Assembly debates on decolonisation. Some supporters of the Chagossian cause have also called on Mauritius to seek an UNGA resolution that asks the ICJ for an advisory opinion.[46] Under the statute of the ICJ, only the UN is entitled directly to seek advisory opinions. Securing such a resolution, which requires a two-thirds majority, would be a major diplomatic challenge and an advisory opinion would not be – to restate the obvious – legally binding.[47] Furthermore, going down this route would inevitably not improve the already difficult bilateral relationship with the UK that arises from the sovereignty dispute.

In its 2008 Report on the Overseas Territories, the Foreign Affairs Committee concluded that "any resolution to the UK's sovereignty dispute with Mauritius over the British Indian Ocean Territory must take Chagossians' wishes into account."[48] In its Response, the FCO said that "Any discussions about the cession of the Territory would be between the sovereign states concerned ie, UK and Mauritius. However, the views of other interested parties would be welcomed."[49]

A stalled bilateral dialogue

The previous British Government and its Mauritian counterpart agreed during 2008 to establish a bilateral dialogue on issues relating to BIOT. The first meetings within this framework took place at official level in London in January and July 2009.[50] However, the British decision to establish an MPA brought the dialogue to a halt.

In March 2010, the Mauritian Foreign Minister, Arvin Boolell, was quoted as saying in the Mauritian newspaper, *L'Express*:

> Mauritius is not being treated as an equal partner by the UK and the Government believes that the legitimate interests of Mauritius should not be taken lightly. The third round of bilateral talks, scheduled for early 2010, has indeed been called off because

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45 Declarations Recognizing the Jurisdiction of the Court as Compulsory – Mauritius; Declarations Recognizing the Jurisdiction of the Court as Compulsory – UK

46 Under the statute of the ICJ, only the UN is entitled to seek an advisory opinion. States must seek a binding legal ruling.

47 The BIOT are not on the UN's list of "non-self governing territories" that remain to be decolonised. All sixteen such territories have a permanent local population, however small. The BIOT, for the reasons set out in this paper, currently do not. However, the General Assembly passed resolutions in 1961, 1962 and 1965 which asserted that the decolonisation of Mauritius should take place without any dismembering of its territory or violation of its territorial integrity. Specifically, Resolution 2066 (XX) of 16 December 1965 expressed concern about any step taken by the UK to detach the Chagos Archipelago from the territory of Mauritius and stated that this would be a contravention of Resolution 1514 (XIV) of 14 December 1960, which recognised the right of peoples to self-determination.

48 Foreign Affairs Committee, Seventh Report of Session 2007-08, *Overseas Territories*, HC 147-I, para 419

49 *Response of the Secretary of State to the Seventh Report of the Foreign Affairs Committee, Session 2007-08, Overseas Territories*, Cm 7473, September 2008, para 130

50 HC Deb 24 February 2009 c35-6WA

> Mauritius has expressed its displeasure at the ongoing public consultations on the MPA outside the bilateral framework... Under the guidance of environment protection, the UK is eager to allow eco-imperialism to rule over justice and basic human rights.[51]

The three-party alliance that comprised the Mauritian Government following elections in 2005, led by Prime Minister Navin Ramgoolam, won re-election for another five-year term on 5 May 2010. Mr Ramgoolam held a private meeting with the new British Foreign Secretary, William Hague, in June 2010, during which he was told that UK policy towards the Chagos Islands was under review. Henry Bellingham, the Minister of State in the FCO with responsibility for the issue, met with the Mauritian Foreign Secretary Boolell in the following month. However, as it became clear that the review had been postponed until the conclusion of the case before the European Court of Human Rights, the prospects for the bilateral dialogue dimmed once again.

Following a meeting during the Queen's diamond jubilee celebrations in London in June 2012 between Mr Ramgoolam and Prime Minister David Cameron, at which the two countries signed a memorandum of understanding on piracy, there were media reports that the two leaders had also discussed the Chagos Archipelago and that a breakthrough on sovereignty and other issues might now be in the offing.[52] But in the weeks that followed it appeared that the two sides had divergent ideas about what had come out of the meeting, with Prime Minister Ramgoolam claiming that an understanding had been reached to begin a "positive dialogue on the future use of the Archipelago". Speaking after the meeting, Ramgoolam made it clear that Mauritian sovereignty over the Chagos Archipelago need not mean the end of US use of Diego Garcia as a military base. This provoked some opposition in Mauritius amongst those who oppose the US base there.[53] For its part, the British Government stated that it had made no commitments on sovereignty and, more broadly, that the discussions that took place were only of a general nature.[54] Mauritius alleges that the UK is refusing to discuss the BIOT with it; the British Government responds by saying it remains open to dialogue.

Other initiatives by Mauritius

On 21 December 2010, Mauritius announced that it had lodged a case against the Marine Protection Area that had been established around the islands, with the exception of Diego Garcia, by the British Government (see section 2.6 below).

Mauritius is also submitting a claim to the Indian Ocean seabed around the Chagos Islands to the UN Commission on the Limits of the Continental Shelf. In December 2012, it stated that it expects to complete its submission by June 2013.[55] Given that the UK has already contested a similar claim in the context of the Indian Ocean by the Maldives Government, it can be expected that it will do the same with regard to any claim by Mauritius.[56]

Mauritius has also taken the issue to the African Union (AU). In January 2011, the AU summit of heads of state/government adopted a resolution supporting any action that

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51 "UK Chagos Support Association March update", *Pambazuka News*, Issue 473, 12 March 2010
52 "Wind of change blows over Diego Garcia", *New African*, July 2012.
53 "Diego Garcia – the base, sovereignty and the right of return", *L'Express*, 18 June 2012
54 HL Deb 20 June 2012 c292-3W. Ramgoolam gave his account of the meeting in exchanges in the Mauritian Parliament on 12 June 2012
55 Letter from the Mauritian Ambassador to the UN to the Secretary, Commission on the Limits of the Continental Shelf, 21 December 2012
56 "FO's rapidity in opposing seabed claim amazes Chagos Island exiles", *Guardian*, 28 September 2010

Mauritius might take at the UN General Assembly. Within the General Assembly, Mauritius has also mobilised the support of many members of the Non-Aligned Movement.[57]

Following a 2011 agreement between Mauritius and France for the 'co-management' of Tromelin, an uninhabited island that Mauritius claims is part of its territory, the Mauritius Government has suggested that a similar arrangement might be a desirable step towards resolving the sovereignty dispute over the BIOT between Mauritius and the UK.

2.6 The establishment of a Marine Protection Area

In 2009, the previous British Government began to explore whether to establish a Marine Protection Area (MPA) around the BIOT, with the exception of Diego Garcia. Its official rationale for doing so was environmental protection. However, the Chagos Islanders and Mauritius were quick to express concerns that there might be other motivations at work.

During a consultation period that took place between November 2009 and March 2010, the Government of Mauritius expressed its opposition to the proposal until wider issues of sovereignty and Chagossian resettlement had been addressed. The Mauritian High Commissioner to the UK wrote to the *Sunday Times* on 10 January 2010:

> **Mauritius has rights; LETTERS**
>
> YOUR article "Brown can build his green legacy on coral reefs" (Charles Clover, Comment, December 27) suggests that there are only two obstacles in the way of the establishment of the Marine Protected Area around the Chagos Archipelago, namely "the claim of the Chagossians - coconut farmers descended from Mauritian French [sic] stock, who were shamefully evicted by the military in the 1970s" and "what to do about a tuna fishery that pays the Treasury about £1m a year".
>
> However, there is no mention of the illegal excision of the Chagos Archipelago from Mauritius prior to Mauritius being granted independence by the United Kingdom, an act condemned by the international community on the grounds that it was in breach of international law.
>
> The right of Mauritius to enjoy sovereignty over the archipelago, and the failure of the promoters of the marine project meaningfully to address this issue, are serious omissions. There can be no legitimacy to the project without the issue of sovereignty and resettlement being addressed to the satisfaction of Mauritius.

On 1 April 2010, the British Government announced that it had decided to go ahead and establish an MPA in which commercial fishing would be banned. The then Foreign Secretary, David Miliband, was quoted as follows in an FCO press release:

> "I am today instructing the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area. The MPA will cover some quarter of a million square miles and its establishment will double the global coverage of the world's oceans under protection. Its creation is a major step forward for protecting the oceans, not just around BIOT itself, but also throughout the world. This measure is a further demonstration of how the UK takes its international environmental responsibilities seriously.
>
> The territory offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change, which are core research issues for UK science.

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[57] The Non-Aligned Movement is a group of states that are not aligned formally with or against any major power bloc. In 2012 the movement had 120 members and 17 observer countries, many of them former colonies.

> I have taken the decision to create this marine reserve following a full consultation, and careful consideration of the many issues and interests involved. The response to the consultation was impressive both in terms of quality and quantity. We intend to continue to work closely with all interested stakeholders, both in the UK and internationally, in implementing the MPA.
>
> I would like to emphasise that the creation of the MPA will not change the UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes and it is, of course, without prejudice to the outcome of the current, pending proceedings before the European Court of Human Rights." [...]
>
> [...] The idea of making the British Indian Ocean Territory an MPA has the support of an impressive range of UK and international environmental organisations coming together under the auspices of the "Chagos Environment Network" to help enhance the environmental protection in BIOT. Also, well over 90% of those who responded to the consultation made clear that they supported greater marine protection.
>
> Pollutant levels in Chagos waters and marine life are exceptionally low, mostly below detection levels at 1 part per trillion using the most sensitive instrumentation available, making it an appropriate global reference baseline.
>
> Scientists also advise us that 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 hence to the recovery in marine food supply in sub-Saharan Africa. BIOT waters will continue to be patrolled by the territory's patrol vessel, which will enforce the MPA conditions.[58]

Reaction to the move

The Chagos Refugee Group, the Mauritian Government and British MPs sympathetic to the right to return of the Islanders were amongst those who condemned the decision:

> "Perfidious Albion is dishonest. I am very angry," said Mauritian foreign minister Arvin Boolell.
>
> Olivier Bancoult, chair of the Chagos Refugees Group, the largest collection of exiles, said he was "shocked" that Britain had not shown the islanders even a draft of the proposal.
>
> Speaking from Mauritius, he said: "The British government has shown its true face in the way it does things with no respect for democracy and consideration for others' opinions. We have been taken for a ride." [...]
>
> "Everyone would have been happy with the creation of a marine protection area providing it had made provision for the interests of Chagossians and Mauritius, which it could so easily have done," said David Snoxell, former British high commissioner in Mauritius and chair of the Marine Education Trust.
>
> "The Foreign Office statement completely disregards the Chagossians who are not even mentioned in it. They have been airbrushed out," he said.
>
> Miliband also attracted the ire of the all-party Chagos committee, whose members complained that parliament had been sidelined.

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[58] FCO press release, 1 April 2010. Available at The Official MPA blog

> In a letter to Miliband, chair of the committee Jeremy Corbyn said: "The action of the Foreign Office flies in the face of world opinion in respect of the Chagossians' right to return.
>
> "I am shocked that you did not see fit to honour the undertaking given to parliament that there would be full consultation with islanders and MPs."
>
> The Foreign Office had committed in a debate on Chagos two weeks ago that MPs would be briefed before any final decisions were taken on the marine protected area (MPA).[59]

MPs were particularly angered by the apparent breaking of a pledge made during an earlier Westminster Hall debate on the issue to brief MPs before a decision was taken.[60] This issue was raised as an Urgent Question in both Houses of Parliament in April 2010. Chris Bryant, also then a Minister of State in the FCO, replied to Jeremy Corbyn, who had tabled the Urgent Question in the Commons:

> I apologise to my hon. Friend and to the House, because it became clear to us that, notwithstanding the commitment made to him in the debate, no further information could have come in that would have made any difference to the decision on the protection of the marine environment in the British Indian Ocean Territory.[61]

Controversy over the MPA was fuelled by the publication by Wikileaks later in the year of classified diplomatic cables dated May 2009, in which the BIOT Commissioner, Colin Roberts, was quoted as saying that one of the main reasons for its establishment was that it would make human resettlement impossible. A senior British official was also quoted as referring to the Chagossians as "a few Tarzans and man fridays".[62] The TV personality Ben Fogle, initially a supporter of the MPA but subsequently a patron of the UK Chagos Support Association, later stated: "I was duped into supporting the creation of the marine sanctuary under false pretences."[63]

The establishment of the MPA divided opinion in environmental circles, with some arguing that environmental issues had been manipulated by the British Government and that a certain level of resettlement need not be incompatible with environmental protection. Others remain strongly opposed to any human resettlement.[64] In April 2011, the Chagos Support Group wrote:

> In a report on the Chagos marine reserve one year on, the Pew Environment Group gives an upbeat account. It talks of the initiation of scientific projects and the ban on fishing in Chagos, but overlooks some pretty important points.
>
> When planning the new marine reserve, the (previous) Government could have done it in a way that made resettlement of the islands practicable. It chose not to.
>
> The Pew Environment Group's report says that 275,000 people joined the Chagos Environment Network's call to protect the islands – but doesn't mention that in a petition organised by Avaaz, more than 250,000 called for the Government to "work with the Chagossians" to protect the area – something the Government failed to do. In

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59 "Chagos Islands marine protection plan comes under fire from three sides", *Guardian*, 6 April 2010. Where the article refers to a 'committee', it means the All Party Parliamentary Group on the Chagos Islands.

60 HC Deb 10 March 2010 c90WH

61 HC Deb 6 April 2010 c820

62 "The US Embassy cables: Chagos Islands – Mauritius launches legal action against UK", *Guardian*, 22 December 2010

63 "The secret Falkands that's still in conflict", *Times*, 2 June 2011

64 "Green groups bitterly divided over future of Chagos Islanders", *Guardian*, 21 May 2011

> fact, another 1,500 signed a petition by the Marine Education Trust which specifically argued for the reserve to allow some fishing in some areas, so the ecosystem could be preserved while still allowing the islands to be resettled. That didn't happen.[65]

Since mid 2011, supporters of the Chagossian cause have proposed that that those who wished to return might establish and run an 'eco-village' on the outer islands, acting as environmental guardians of their homeland, and staffing a research station for visiting scientists.[66] Some parliamentarians have noted that the MPA established for South Georgia and the South Sandwich Islands contains a sustainable fishery zone.[67] The British Government has claimed that it is "working closely with interested Chagossian groups and non-governmental organisations" on specific environmental projects in BIOT.[68] In October 2012, Greenpeace announced that it had encountered two illegal Sri Lankan fishing boats inside the MPA and argued that this showed that enforcement measures to prevent commercial fishing were in any case proving inadequate.[69]

There was further criticism from supporters of the Chagossian cause when the Chagos Conservation Trust (CCT) announced in August 2012 that it had completed a MPA new Conservation and Management Plan for the FCO. Critics argued that there had been a lack of consultation and that the Plan should not have been completed while legal cases were outstanding.[70] The CCT said that this was not a final plan, but a "contribution [...] towards it."[71] In September 2012, the Government said that, while it did not intend to hold a formal consultation, it would welcome "constructive comments from all stakeholders" and had started an "environmental educational outreach programme, which has received excellent feedback from those involved". More broadly, it added: "We also wish to have a more positive discussion with Mauritius on BIOT issues, but this remains difficult while Mauritius is bringing legal action against the UK."[72]

Current legal proceedings

In August 2010, lawyers for Olivier Bancoult served judicial review proceedings in the British courts against the FCO seeking to overturn the decision to establish the MPA. The grounds were that the public consultation process had been inadequate, failing to take into account important information on the issue of resettlement. In October 2010 the High Court decided to defer consideration of the application for judicial review until after the European Court of Human Rights had given its judgment. In the light of the delay in reaching that judgment, in 2011 lawyers for Bancoult asked the High Court to reconsider this decision.[73] It did so and the judicial review got under way in July 2012. Lawyers for Bancoult now included as part of their case the statements reported by British officials in the leaked diplomatic cables. In July 2012, the High Court ruled, despite opposition from lawyers for the FCO, that Colin Roberts and another FCO official should be cross-examined by lawyers for Oliver Bancoult about a 2009 US government cable, leaked by Wikileaks, in which Mr Roberts was quoted as

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65 "What the Chagos marine reserve has achieved", UK Chagos Support Association blog, 2 April 2011
66 "Letter from David Snoxell", *Guardian*, 23 May 2011
67 HC Deb 27 March 2012 c240W
68 HC Deb 17 October 2011 c612W
69 "Greenpeace finds illegal fishing vessels, urges UK to enforce Chagos Marine Reserve", Greenpeace International, press release, 24 October 2012. There is currently one patrol vessel in the area. The Government subsequently stated that three Sri Lankan fishing boats had been apprehended and prosecuted during the last year up to 25 March 2013. See: HC Deb 15 April 2013 c12W
70 August 2012 update, UK Chagos Support Group
71 "New Chagos Conservation and Management Plan published", Chagos Conservation Trust, 3 August 2012
72 HC Deb 18 September 2012 c543W
73 "The Chagos Islands (BIOT) All-Party Parliamentary Group: Co-ordinator's Summary of 23rd Meeting", UK, Chagos Support Association, 7 September 2011

asserting that establishing a marine park would defeat the resettlement claims of the Chagossians.[74]

In November 2012, accepting an FCO request for more time to prepare its case, the High Court announced that the next hearing in the judicial review would be held in March 2013.[75] The hearing eventually took place in mid April. Lawyers for the FCO succeeded at the last minute in persuading the High Court that the US government cables should not be admitted as evidence on the grounds that the 1961 *Vienna Convention on Diplomatic Relations* prohibited the use of communications belonging to diplomatic missions.[76] However, the FCO officials were cross-examined. At the time of writing, the ruling of the High Court is awaited. But this may not be the end of this case; whoever loses could well decide to appeal. In recent months, the British Government has also said that it intends to enact legislation "to further implement the marine protected area" soon, subject to the decision of the High Court.[77]

On 21 December 2010, Mauritius announced that it had lodged a case against the MPA under Article 287 of the *UN Convention on the Law of the Sea* (UNCLOS). It argued, amongst other things, that the UK had no powers to declare an MPA because it is not a "coastal state" with regard to the Chagos Islands and cited the leaked US diplomatic cables that appear to indicate that an important motive for establishing an MPA was to render resettlement impossible. At the time the case was lodged, Prime Minister Ramgoolam referred to British policy as "a policy of deceit".[78] The UK position is that the MPA is fully compatible with UNCLOS.[79]

As provided for under UNCLOS, a five person panel of arbitrators has been established to consider the case, with the International Tribunal on the Law of the Sea appointing three arbitrators and Mauritius and the UK one each. Mauritius challenged the UK's appointment of Judge Sir Christopher Greenwood, questioning his independence and impartiality.[80] However, in November 2011, the Permanent Court of Arbitration (PCA) dismissed the challenge by Mauritius.[81] The parties to the case made their submissions during the second half of 2012 and the case was initially expected to be heard in July 2013.[82] However, in its submission, the UK requested the Arbitral Tribunal to declare that it does not have jurisdiction to hear the dispute. In January 2013 the Arbitral Tribunal ruled that consideration of the UK's objections to its jurisdiction would be held at the same time as the full hearing, which is now expected to happen during the first half of 2014.[83] The ruling of the Arbitral Tribunal will be final and without appeal, unless Mauritius and the UK both agree in advance to an appellate procedure.[84]

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74 "Senior government officials to face cross-examination over Wikileaks cable", *Independent*, 25 July 2012. Lawyers for the FCO argued that, as a matter of principle, such a cross-examination should not be triggered by the release of an "improperly leaked document".

75 "32nd meeting of the Chagos Islands/BIOT all party parliamentary group: coordinator's summary", UK Chagos Support Association blog, 6 December 2012

76 "35th meeting of the Chagos Islands (BIOT) APPG", UK Chagos Support Association blog, 24 April 2013

77 HC Deb 20 March 2013 c739W

78 "The US Embassy cables: Chagos Islands – Mauritius launches legal action against UK", *Guardian*, 22 December 2010

79 HC Deb 27 March 2012 c240W

80 The Republic of Mauritius v The United Kingdom of Great Britain and Northern Ireland, Permanent Court of Arbitration

81 Ruling of the Arbitration Panel of the Permanent Court of Arbitration, 30 November 2011

82 "32nd meeting of the Chagos Islands/BIOT all party parliamentary group: coordinator's summary", UK Chagos Support Association blog, 6 December 2012

83 PCA Procedural Oder No 2, 15 January 2013

84 UNCLOS Annex VII, Statute of the International Tribunal for the Law of the Sea, art 11

2.7 The US military base on Diego Garcia: post-2016 arrangements

While there has been some public debate about the future of the US military base on Diego Garcia beyond 2016, the UK and US Governments have not so far been publicly forthcoming about the issue.

Members of the All Party Parliamentary Group on the Chagos Islands had a meeting with the Foreign Secretary, William Hague, in December 2011. At the meeting, members of the Group called on Mr Hague to hold discussions with the US and Mauritius about post-2016 arrangements. Mr Hague was reported as responding that such discussions would have to wait until after the European Court had made its decision.[85]

During the first half of 2012, there were unconfirmed press reports suggesting that the US might be considering giving up its military base on Diego Garcia and instead making use of Australia's Cocos and Keeling Islands, 2,700 kilometres to the east.[86] However, strategic calculations make this unlikely.[87] The US base on Diego Garcia has played an important part in US military operations in the Middle East and Afghanistan since 1990 and evidence suggests it would do so again in future operations. In October 2012, the British Government confirmed that there had been discussions with the US Government over the use of Diego Garcia to support a military build-up in the Gulf in the event of a decision to undertake military action against Iran.[88]

In May 2013, FCO Minister Mark Simmonds was still reiterating the longstanding official position that there had not yet been "substantive discussions" with the US authorities on the future of the US military base on Diego Garcia, indicating that no timetable for such discussions had been agreed.[89] With a decision on its future due from the end of 2014 onwards, this position will have to change before too long.

2.8 Other issues

The dispute concerning British citizenship for Chagossians arose again in the context of the Parliamentary consideration of the *Borders, Citizenship and Immigration Bill*, which was given Royal Assent on 21 July 2009 as the *Borders, Citizenship and Immigration Act 2009*. Tom Brake MP proposed a new clause to the Bill which aimed to amend the *British Overseas Territories Act 2002* so as to confer full British citizenship on the Chagos Islanders, thus enabling them to pass on their status to their children.[90] Responding during Committee stage to the proposal, then Immigration Minister Phil Woolas said that the issue was whether the children of exiled Chagossians would, without the resettlement, have been born in BIOT and so would now be British citizens otherwise than by descent (rather than, as was often the case, British citizens by descent, because they had been born outside the territory). Mr Woolas said that the FCO was in discussion with the Chagos Islanders and their representatives and that the Government was sympathetic to the position of second and later generation Chagossians born in Mauritius or the Seychelles. Even so, he said, to allow British citizens by descent through a connection to BIOT to pass on their citizenship to the

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85 "'With political will and compromise, solutions could be found' – interview with David Snoxell", *L'Express Weekly*, 23 December 2011

86 "US military eyes Cocos Islands as a future Indian Ocean spy base", *Sydney Morning Herald*, 28 March 2012

87 See Appendix 2 for a more detailed discussion of the past and future utility

88 .It was reported that the Attorney-General, Dominic Grieve, had drafted legal advice saying that a pre-emptive strike against Iran could be a breach of international law and that use of the base could leave the UK complicit in such a breach. The UK Government has not commented on this report. "Britain rebuffs US on military aid against Iran", *Guardian*, 26 October 2012. See also an article by Geoffrey Robertson, "No business in the Chagos: The US could use Diego Garcia to bomb Iran", *Guardian*, 9 June 2012

89 HC Deb 15 May 2013 c241W

90 PBC Deb 18 June 2009 c209. See also: See House of Commons Library Research Paper 09/65, *Borders, Citizenship and Immigration Bill [HL]: Committee Stage Report*, 9 July 2009

next generation might provoke representations from other British citizens. For this reason, he said, the policy on transmission of British citizenship by persons who hold that status by descent was strictly applied. The clause was withdrawn.[91] Groups representing Chagossians living in the UK continue to raise concerns about citizenship with the Government.[92]

In February 2012, the All Party Group wrote to Mr Hague proposing that the Chagos Archipelago should be nominated as a UNESCO World Heritage Site.[93] However, there appear to be reservations about the proposal on the part of Mauritius and groups representing Chagossians.[94]

3 Conclusion: are there potential ways forward?

Can progress be made towards resolving the dispute with the Chagos Islanders over the right to return and that with Mauritius over sovereignty during the next couple of years? Both disputes have at various points in the past appeared to be all but intractable. However, while significant obstacles remain to be overcome, potential ways forward are not beyond the bounds of imagination.

Might the British Government offer limited resettlement of the outer islands?

The outer islands are about 130 miles away from Diego Garcia, and its defence role and legal status need not be affected by such a move. While the British Government won an important legal battle at the European Court in December 2012, it has for some time acknowledged that the UK has suffered 'reputational damage' from its long-running dispute with the Chagos Islanders over the right to return. As we have seen, it has acknowledged its regret about some of its past actions and accepted that there is a moral responsibility towards the Chagos Islanders. The All Party Parliamentary Group on the Chagos Islands argues that the US does not require the whole of the BIOT for defence purposes, adding that it has received informal indications that the US is prepared to "review the security implications of a limited return".[95]

However, in the past the British Government has argued that ongoing legal proceedings militate against a compromise; while the European Court case is now completed, there are several domestic and international cases still pending. As things stand, whoever loses the current domestic judicial review of whether due process was followed in establishing the Marine Protection Area (MPA) can be expected to appeal against the verdict. The Mauritian international legal challenge to the MPA under *UN Convention on the Law of the Sea* (UNCLOS) will not be heard until next year.

In addition, the Government could decide that the diplomatic consequences of not taking pro-active remedial action are unlikely to be particularly severe and so opt to offer nothing on resettlement. It might also be wary of alienating a section of the environmental lobby if it agrees even to limited resettlement. And in the current financial climate and with a spending review under way, the cost of such limited resettlement might again be deemed unjustifiable, although both the EU and Mauritius have offered to help fund resettlement. With elections due in 2015, there may also be fears that the review could peter out inconclusively, overtaken by other priorities.

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91 PBC Deb 18 June 2009 c216-219

92 "Chagos representatives meet foreign secretary", UK Chagos Support Association blog, 1 July 2011

93 "MPs call for Chagos to be nominated as World Heritage Site", UK Chagos Support Association blog, 11 February 2012

94 "The Chagos Islands (BIOT) All-Party Parliamentary Group: Co-ordinator's Summary of 28th Meeting", UK Chagos Support Association blog, 16 March 2012

95 As stated most recently by Baroness Whitaker, a member of the All Party Group. HL Deb 15 May 2013 c443

However, the Government will face considerable further criticism if it takes this course, with many measuring such a stance unfavourably against its promise to pursue a fair settlement. A sluggish review that fails to consult with stakeholders during the course of 2013 could lead supporters of the Chagossian cause to further question the Government's good faith. The All Party Group has already begun to express impatience. In April 2013 it said that four months had now passed since it was announced and that so far there had been a lack of consultation.[96]

Perhaps the most obvious 'trust-building' measure that the Government could take in the near-term would be to announce a new study, involving extensive public consultation and stakeholder engagement, on the feasibility of resettlement. The Government has given no public indication so far that it is open to this idea but this could change. It would not necessarily have to disown the 2002 study in order to do this.

Of course, the result of a new study cannot be taken for granted. But It seems likely that, if resettlement of some, if not all, of the outer islands was deemed feasible, it would involve a resumption of fishing, which – however small in scale – would not be compatible with the current ban (known as the 'no-take' provision) in the MPA. It would eventually have to be amended.[97]

For now, the British Government is reiterating that the MPA will remain 'no-take' and says that it will bring forward legislation to further implement the MPA, subject to the impending decision of the High Court. However, the High Court case is about aspects of the consultation that led to the establishment of the MPA, not its terms *per se*. The revision of the MPA by the Government to allow some kind of sustainable fishing would not be legally difficult to do in itself.

What might be the responses of Chagossians and their supporters to any proposals to address the other main issue – that is, the sovereignty of the BIOT? While there is unity over the right to return, views on sovereignty appear to vary between the different groups of Chagossians in Mauritius, Seychelles and the UK. Sovereignty proposals would therefore probably be judged primarily by what they offer on the right to return.

Could there be agreement between the UK and Mauritius on sovereignty?

While the obstacles to agreement over Chagossian resettlement remain significant, those standing in the way of an agreement between the UK and Mauritius on sovereignty appear at first sight even more daunting.

While Mauritius supports the Chagossians' right to return, its main preoccupation in the end is achieving sovereignty over the Archipelago. In doing so, it is deploying a range of legal and diplomatic approaches. However, for its part, the British Government is still giving no public indications that it is willing to negotiate on sovereignty.

As discussed earlier in the paper, the option of going to the ICJ to seek a legally binding ruling on sovereignty is not open to Mauritius. For now, Mauritius appears to be focusing its hopes on its current legal challenge to the MPA under Article 287 of the UNCLOS, which is well advanced. Mauritius is seeking a ruling that the UK had no powers to declare an MPA because it is not a "coastal state" with regard to the Chagos Islands.

The decision of the Tribunal established to hear the case in 2014 will be final unless both parties have agreed in advance that there can be an appeal. If the Tribunal decides that it

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96 "35th meeting of the Chagos Islands (BIOT) APPG", UK Chagos Support Association blog, 24 April 2013

97 It has been suggested that the most likely outer island for initial resettlement would be Peros Banhos. D. Snoxell, "The end of the road is reached when the issues are resolved", *Mauritius Times*, 11 January 2013

has jurisdiction and proceeds to address the merits of the case, lawyers for Mauritius will seek to ensure that that their counterparts for the UK are required to defend British actions going back to the 1960s. This would be the first time the UK has had to do this before an international judicial body.

Another complication is the fact that Mauritius has stated that it expects to complete its submission to the UN Commission on the Limits of the Continental Shelf regarding its claim to the Indian Ocean seabed around the Chagos Islands by June 2013. This would set in motion further legal proceedings with a bearing on the sovereignty issue. However, for the moment, it is the case before UNCLOS that is more pressing.

What might the UK do that would persuade Mauritius to withdraw the current legal challenge to the MPA under UNCLOS? An announcement on the part of the UK by the December 2014 deadline that the BIOT is no longer needed for defence purposes and can be ceded to Mauritius after 2016 would certainly be sufficient. A less immediately dramatic but nonetheless significant British offer to Mauritius on sovereignty could involve allowing the UK/US agreement to continue for a further 20 years but pledging that it will not be renewed in 2036, allowing the BIOT to be ceded to Mauritius then.

But there seems no prospect that the UK (or the US) will contemplate either of these options. Diego Garcia is still too important militarily (see Appendix 3). It is important to recall that, while the 1966 Exchange of Notes between the UK and the US does allow for either option, it also states in paragraph 11 that their Governments "contemplate that the islands shall remain available to meet the possible defense needs of the two Governments for an indefinitely long period."[98]

However, another approach – one which it is easier to imagine happening – would be to separate Diego Garcia from the rest of BIOT from 2016 onwards. The British Government could offer to cede sovereignty of the outer islands to Mauritius in the not too distant future while retaining sovereignty over Diego Garcia until 2036 (and probably beyond). Mauritius has sought to address potential US strategic concerns by indicating that it has no problems in principle with the US retaining its military base on Diego Garcia. Given this, Mauritius might well accept an 'interim deal' in which sovereignty over the outer islands is restored but sovereignty over Diego Garcia is deferred for a further period.

The UK could supplement the offer by proposing a form of co-management of the outer islands until they are handed over to Mauritius. This might be similar to that agreed in 2011 by Mauritius and France with regard to the Tromelin Islands. This arrangement could include giving Mauritius a role in the implementation of an amended MPA.

Another variation might be the offer of some form of co-management of the BIOT and the MPA, with the exception of Diego Garcia, but without any specific proposals on sovereignty. By definition, this would be less attractive to Mauritius and thereby unlikely to persuade it to withdraw its current legal challenge under UNCLOS; but it might be enough to restart the bilateral dialogue between it and the UK, which has been stalled since 2010.

There is one further consideration. Mauritius is set to host the 2015 Commonwealth Summit. This could act as an incentive for both governments to seek a deal between now and then. But in the absence of significant progress, campaigners will view the summit as an opportunity to raise the profile of the Chagossian cause and the Mauritian claim to sovereignty over the whole Archipelago.

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[98] *Exchange of Notes constituting an agreement concerning the availability for defense purposes of the British Indian Ocean Territory (with annexes).* London, 30 December 1966, UN Treaty Series, Vol. 603, Reg. No. I-8737

Appendix 1 – Legal challenges in the British courts, 1998-2008

In 1998, the leader of the Mauritius-based Chagos Refugee Group, Louis Olivier Bancoult, brought a claim for judicial review in the British High Court to challenge the legality of the 1971 Ordinance, under which the Chagossian right to return had been effectively prohibited.

In November 2000 the High Court, having dismissed Government arguments that such Ordinance was immune from judicial review because it was made under the Royal Prerogative, ruled that the removal of the Islanders was unlawful and effectively granted them the legal right to return to any of the Islands, with the exception of Diego Garcia itself. Lord Justice Laws said that there had been an "abject legal failure" in the removal of the Islanders. The then Foreign Secretary, Robin Cook, stated that the Government accepted the verdict of the High Court. The Government said that it would not appeal and would explore the feasibility of resettlement. It also indicated that it would uphold its treaty commitments to the US.

However, in 2004 the Government issued new Orders in Council to ban the Islanders from returning. It offered a number of grounds for doing so, including environmental and defence concerns. For example, the Government stated that a 2002 feasibility study had revealed that resettlement would be costly and environmentally unsustainable, with any returnees struggling to eke out a subsistence existence.[99]

The Orders were the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. One critic, Mark Curtis, then of the World Development Movement, argued in the *Guardian* at the time that it was defence concerns that were really to the fore:

> B2 stealth bombers based on Diego Garcia have been used against Iraq following the Blair government's approval in mid-2002 of a US request to base them there. The secret Downing Street memo of July 2002, leaked a few months back, made clear that the US military regarded the Diego Garcia base as "critical" to all Iraq invasion options. Even murkier are the US and Canadian media reports about Diego Garcia being used to hold terrorist suspects beyond the reach of US and international law. The British government has consistently denied that any detainees from Afghanistan or Iraq have been held on Diego Garcia. Yet Amnesty International told a US senate hearing in June it had evidence that the island was one in a network of secret CIA detention facilities, where "detainees are being held arbitrarily, incommunicado and indefinitely without visits by the Red Cross".[100]

The Chagos Refugee Group, still lead by Mr Bancoult, decided to launch a legal challenge against the 2004 Orders in Council. In May 2006 these Orders were ruled unlawful by the High Court.[101] The British Government said that it would appeal.

The appeal began on 5 February 2007. John Howell QC, for the Foreign Secretary, argued before the Court of Appeal that the High Court judges had "erred in law" and "misdirected" themselves when reaching their decision. Mr Howell told the appeal judges: "This appeal raises issues of constitutional law of great importance." He said those issues concerned "the constitutional relationship between this country and British overseas territories". If the approach of the High Court was correct it represented a "revolutionary change in the constitutional law involved, which will affect all British overseas territories". The QC said: "The Divisional Court has asserted a jurisdiction to determine what considerations Her

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99 Chagossians, pointing to other feasibility studies that reached a different conclusion, claimed that they would be able to sustain themselves through coconut oil exports and fishing.

100 "Their right to return", *Guardian*, 8 November 2005

101 [2006] EWHC 1038 (Admin), 11 May 2006

Majesty may take into account and the purposes for which she may so legislate. No court has previously asserted such a jurisdiction so far as I am aware. The Divisional Court has also asserted that Her Majesty may not legislate for such a territory to promote the interests of the UK and in particular its defence and security interests."[102]

While the case was before the Court of Appeal, the then President of Mauritius, Sir Anerood Jugnauth, expressed strong criticism of the stance being taken by the UK Government.

> The President of Mauritius said on Wednesday his country would be prepared to quit the Commonwealth in its row with Britain over the forced expulsion of the people of the Chagos Islands.
>
> In an interview on BBC radio, Anerood Jugnauth said he sympathised with the islanders expelled by Britain from the Chagos archipelago in the 1960s and 1970s who have been fighting for decades to be able to return home.
>
> "I think ultimately we will have to go to court ... to the International Court of Justice," Jugnauth said.
>
> Asked whether he would be prepared to pay the price of leaving the Commonwealth to pursue the legal battle, the president said: "I believe that yes".[103]

On 23 May 2007 the Court of Appeal also found in favour of the Chagos Islanders. It said that the use of Orders in Council to prevent the Islanders from returning was unlawful and an abuse of power. The Court of Appeal declined to give the Government permission to take the case to the House of Lords.[104] However, it said that it could not prevent the Government from petitioning the Law Lords directly. The Court of Appeal also said that, if it did appeal, the Government should be liable for all the legal costs associated with the case, regardless of the outcome.[105] On 25 June 2007 the Government duly went ahead and petitioned the Law Lords to uphold the 2004 Orders in Council.

The Law Lords narrowly ruled in the Government's favour by three-to-two on 22 October 2008.[106] An article in the *Guardian* provided a useful review both of the judgment and of some of the reaction to it. Below are some extracts:

> Lord Hoffmann ruled the government was entitled to legislate for a colony in the security interests of the United Kingdom. The US state department had argued that the islands might be useful to terrorists.
>
> Lord Hoffmann said: "Some of these scenarios might be regarded as fanciful speculations, but in the current state of uncertainty the government is entitled to take the concerns of its ally into account." He rejected the argument by the Chagossians' lawyers that the government did not have the power to remove their right of abode in what is now known as the British Indian Ocean Territory (BIOT). "The law gives it and the law may take it away," he said.
>
> Lord Rodger and Lord Carswell agreed. Lord Bingham and Lord Mance dissented.
>
> [...] The foreign secretary, David Miliband, welcomed today's judgment as a vindication of the government's decision to appeal. "We do not seek to excuse the conduct of an

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102 "Court to decide on families' right to return to Diego Garcia", *Independent*, 7 February 2007

103 "Mauritius says may leave Commonwealth in Chagos row", *Reuters*, 7 March 2007. Sir Anerood Jugnauth remained president until his resignation in early 2012.

104 [2007] EWCA Civ 498, 23 May 2007

105 "UK Government broke law over Chagos exiles", *Times Online*, 23 May 2007

106 [2008] UKHL 61

> earlier generation. Our appeal to the House of Lords was not about what happened in the 1960s and 1970s. It was about decisions taken in the international context of 2004.
>
> "This required us to take into account issues of defence [and] security of the archipelago and the fact that an independent study had come down heavily against the feasibility of lasting resettlement of the outer islands of BIOT."
>
> In his dissenting judgment, Lord Bingham declared as void and unlawful a 2004 order to declare, without the authority of parliament, that no person had the right of abode in the Chagos islands.
>
> The power to legislate without going to parliament was "an anachronistic survival", he said. "The duty of protection cannot ordinarily be discharged by removing and excluding the citizen from his homeland."
>
> Lord Mance said factors relied on as justifying the order were based on a "remote and unlikely risk" of large-scale resettlement of the outer Chagos islands.
>
> Richard Gifford, who represented the Chagossians, said: "It has been the misfortune of the Chagos islanders that their passionate desire to return to their homeland has been caught up in the power politics of foreign policy for the past 40 years. Sadly, their struggle to regain their paradise lost has been dismissed on legal grounds, but the political possibilities remain open for parliament the British public and the international community to continue to support."
>
> The law lords were told during the hearing in July that Diego Garcia was regarded by the US since the 9/11 terrorist attacks as a "defence facility of the highest importance ... a linchpin for the UK's allies".[107]

The legal process in the UK regarding this particular case had finally been exhausted. The 2004 Orders in Council remained in force.

The issue of whether the amount of compensation given to the Chagos Islanders following their removal was adequate and should be considered definitive was also a matter of legal dispute in British courts during this period. The High Court found in 2003 that the 1982 agreement was indeed a “full and final settlement” of all claims. This judgment was upheld by the Court of Appeal in July 2004.[108] The Chagos Refugee Group and its supporters expressed their disappointment at the 2004 judgment, claiming that the level of compensation had been small and that they had seen relatively little of the money that was notionally allocated to them by way of compensation.

As described earlier, in 2002 some Chagossians gained British citizenship under the *British Overseas Territories Act*. Later that year, two groups of Chagossians arrived in the UK from Mauritius, settling in Crawley. However, they were initially refused welfare benefits on the grounds that they were not “habitually resident” in the UK. While the members of these groups subsequently found work and housing, representatives nonetheless sought judicial review to establish the entitlement of Chagossians to welfare benefits immediately upon arrival in the UK, arguing that the application of the “habitual residence” test was, given their unlawful displacement and/or the provisions of the *Race Relations Act 1976*, irrational and discriminatory.[109] However, the High Court rejected these arguments in 2006, a verdict that was subsequently upheld by the Court of Appeal in 2007.

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[107] “Chagos Islanders lose battle to return”, *Guardian*, 22 October 2008
[108] HL Deb 22 May 2006 c81WA
[109] [2007] EWCA Civ 1086, 2 November 2007

Appendix 2 – The US military base on Diego Garcia

Facilities and past use

Originally the US military presence was limited to a communications centre on Diego Garcia. In 1972, however, construction of a naval support facility was begun, apparently in response to the expansion of the Soviet maritime presence in the Indian Ocean. This plan was expanded in 1974, and again following Soviet military intervention in Afghanistan in December 1979.

During the 1980s the US Government undertook a further $500m programme of expansion and improvement of the naval support facility which was to include a space-tracking station. In August 1987, the US Navy also began to use Diego Garcia as a facility for minesweeping helicopters taking part in operations in the Persian Gulf.

Following Iraq's invasion of Kuwait in August 1990, Diego Garcia was used as a base for US B-52 bomber aircraft during the 1991 Persian Gulf War and again during Operation *Desert Fox* in December 1998 when Saudi Arabia did not permit the US to launch attacks from their soil. B-1 and B-52 bombers based at Diego Garcia have accounted for the majority of sorties conducted in support of Operation *Enduring Freedom* in Afghanistan; while Diego Garcia was also used during the 2003 Iraq conflict when the US stationed its B-2 bombers outside the continental US for the first ever time.

Australian forces have also on occasion used Diego Garcia for operations in Afghanistan. Between February and May 2002, for example, four FA-18 Super Hornet aircraft were deployed to the island in order to conduct air combat patrol duties as part of Operation *Enduring Freedom*.

In 2008 the then British Government confirmed that the military base on Diego Garcia had been used by the US for two rendition flights.[110] There are claims that it has been used for others. Allegations have also been made that US naval vessels stationed there may have been used for the interrogation – perhaps involving torture or ill-treatment – of terrorist suspects.[111]

The US is required to seek prior approval from the British Government for any operations that they wish to undertake from Diego Garcia.

US military facilities on Diego Garcia are used jointly by the Navy and the Air Force and now comprise a key logistics, transport, signals intelligence and communications base.[112] As outlined above Diego Garcia is also a designated bomber forward operating location. Specifically, Diego Garcia provides operational and logistic support to US operational forces forward deployed in the Indian Ocean and Persian Gulf.

Facilities include a communications centre, a runway with a length of 3,650m, anchorage, refuelling and various ancillary services. Units deployed include:

Island Commands: [113]

- US Navy Support Facility.

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[110] HC Deb 21 February 2008 c547-8

[111] "US accused of holding terror suspects on prison ships", *The Guardian,* 2 June 2008

[112] Security, customs and policing of the island is however provided by Royal Navy and Royal Marines personnel. At March 2013, there were 41 UK military personnel stationed on Diego Garcia. HC Deb 23 April 2013 c810W

[113] Information is taken largely from the US Navy website

Tenant Commands:

- Naval Computer and Telecommunications Station Far East Detachment – manages, operates and maintains telecommunications systems and facilities for the Navy and Defense Information Systems Agency. It provides telecommunications support to fleet, joint and allied forces in the Indian Ocean theatre.

- Afloat Prepositioning Ship Squadron Four and Maritime Preposition Squadron Two – part of the Military Sealift Command and an essential element of the US military's readiness strategy. The intention is to preposition military equipment and supplies aboard ships located in key ocean areas to ensure rapid availability during a conflict, a humanitarian operation or other contingency.

- Military Sealift Command Office – provides logistical support to the ships forward deployed to Diego Garcia.

- Naval Media Centre – Diego Garcia's American Forces Network outlet.

- Detachment 1, 630th Air Mobility Support Squadron (Army Materiel Command) – provides passenger and cargo air movement supporting Diego Garcia and Indian Ocean operations.

- Naval Facilities Engineering Command Far East Detachment – provides facility solutions and services on Diego Garcia.

- Navy Personnel Support Detachment.

- Detachment 2, 18th Space Surveillance Squadron - Since the mid-80s facilities have also included a space surveillance complex. That complex includes a Ground Based Electro Optical Deep Space Surveillance (GEODDS) telescope which is controlled by powerful computers at Edwards Air Force Base in California. The 18th Space Surveillance Squadron administers the GEODDS network from Edwards, which also includes telescopes in Hawaii and New Mexico. The telescopes track more than 500 satellites daily for Air Force Space Command and North American Space Command.

- Detachment 22nd Space Operations Squadron – One of nine remote tracking stations comprising the Air Force Satellite Control Network.

- 13th Pacific Air Forces Detachment 1, 36 Mission Support Group – primarily responsible for maintaining the facilities and logistics required to sustain operations in southwest Asia under Central Command and Pacific Command.

In total the US has approximately 1,700 military personnel on the island, including 261 personnel from US Strategic Command.

Future utility

The Obama administration has repeatedly highlighted the growing strategic importance of the Asia-Pacific region in the 21st century and its intention to rebalance US military forces accordingly over the coming years as operations in Afghanistan draw down.[114] As such many observers have suggested that the military utility of Diego Garcia will steadily decline and

[114] See *Sustaining US Global Leadership: priorities for 21st Century Defense*, January 2012.

that the re-deployment of US forces further eastwards, post-2016, is increasingly a possibility.[115]

While the re-deployment of US military forces towards various locations in the Asia-Pacific region is almost certainly guaranteed over the next decade, it is questionable whether it would come at the expense of the US military presence in Diego Garcia.

Such a shift in the US global military footprint assumes that, strategically, the Middle East and the Horn of Africa will become significantly less important in the future and that there will a drastic change in the attitude of the US towards countries such as Iran and the influence of extremist groups such as al Qaeda and the traditional spheres of influence in which they have previously operated. It also assumes guaranteed basing and overflight rights in the Asia-Pacific, thereby negating the need for a forward operating hub such as Diego Garcia.

Indeed, in its 2012 document on military priorities for the 21st century the US has made clear that it will continue to maintain "a global presence emphasizing the Asia-Pacific and the Middle East". With respect to the latter, the document confirms that "the United States will continue to place a premium on U.S. and allied military presence in – and support of – partner nations in and around this region". It also acknowledges that "al Qaida and its affiliates remain active in Pakistan, Afghanistan, Yemen, Somalia, and elsewhere. More broadly, violent extremists will continue to threaten U.S. interests, allies, partners, and the homeland. The primary loci of these threats are South Asia and the Middle East".[116]

Diego Garcia remains one of the closest US bases to the Persian Gulf[117] and is one which can be used with minimal restriction.[118] If in future the US were to undertake military operations against Iran, Diego Garcia would be one of the nearest bases. Without it the US would be reliant upon partners in the Middle East for basing and overflight rights which would not necessarily be guaranteed in the event of a crisis. Saudi Arabia, for example, refused permission for the US to launch air attacks on Iraq in 1998 (Operation *Desert Fox*) from Saudi soil.[119]

The same is also true for allies and partners in the Asia Pacific region. Despite recent moves to forward deploy some assets in Australia, the basing and overflight rights required to support a major military presence in the region in the future are not guaranteed. The retention of Diego Garcia would, therefore, allow the US to maintain "over the horizon" assets which, as an article in *Asian Security* in 2010 highlighted, would enable the US "to pursue its regional interests [in the Asia Pacific] with a less provocative and less visible presence".

The article also noted:

> The United States has continued to invest in Diego Garcia under the logic that if one cannot predict which area of interest will require military forces, one should concentrate on the center. In this way, quasi-sovereign access to Diego Garcia remains critical to

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115 In early 2012 the US also deployed a contingent of US marines to an Australian naval base near Darwin. That contingent is expected to total 2,500 personnel by 2016. A number of articles also appeared in the media in March 2012 suggesting that the Pentagon was considering the Cocos Islands, off the north west coast of Australian, as a potential replacement for Diego Garcia (see "US eyes Cocos Islands as a future Indian Ocean spy base", *Sydney Morning Herald,* 28 March 2012

116 *Sustaining US Global Leadership: priorities for 21st Century Defense*, January 2012

117 US air forces are also based at Al Udeid in Qatar.

118 The US is required to seek prior approval from the British Government for any operations that they wish to undertake from Diego Garcia.

119 See also Erickson, Ladwig and Mikolay, "Diego Garcia and the United States' Emerging Indian Ocean Strategy", *Asian Security,* Vol.6, No.3, 2010, p225 for a discussion about US-Qatari relations in the event of escalating tensions between the US and Iran.

> continued US operations in the region. What the island lacks in proximity to critical zones, it makes up for in political reliability.[120]

It is also worth noting that the military utility of Diego Garcia does not rely solely on its designation as a forward support location. Other US military assets on the island include key signals intelligence and communications assets and an extensive space surveillance complex, thereby justifying a continued military presence there.

[120] Erickson, Ladwig and Mikolay, "Diego Garcia and the United States' Emerging Indian Ocean Strategy", *Asian Security,* Vol.6, No.3, 2010, pp214-37

Appendix 3 – Selected statements by the current British Government

In the run-up to the British General Election held on 6 May 2010, both the Conservatives and the Liberal Democrats made statements regarding the situation of the Chagos Islanders. According to a website run by supporters of the cause of the Islanders:

> Unsurprisingly, former Tory leader William Hague was one of the first people to be appointed to the cabinet, taking over from David Miliband at the Foreign and Commonwealth Office. This is positive news, as Mr Hague is on record as saying:
>
> I can assure you that if elected to serve as the next British government we will work to ensure a fair settlement of this long-standing dispute.
>
> In this same letter, Mr Hague also referenced his deputy, Keith Simpson, who has made two parliamentary speeches on the Chagossians' right of return in recent months, declaring:
>
> "There is a great deal of sympathy from those on both sides of the house for the plight of the Chagossians, and their interests must be placed at the heart of any decision made about their homeland."
>
> "…there should at the very least be a timetable for the return of those people to the outer islands. The Foreign Office should recognise that the House of Commons feels very strongly on that" […]
>
> For the Liberal Democrats, Nick Clegg's office has previously written to state:
>
> "Nick and the Liberal Democrats believe that the Government has a moral responsibility to allow these people to at last return home."
>
> This is a strong and unequivocal statement from the UK's new Deputy Prime Minister, perhaps the second most powerful man in the country, and adds to the reams of pledges of support that other senior Liberal Democrats such as Jo Swinson have given.[121]

With the formation of a coalition government composed of these two parties, such statements appeared to take on considerable significance and raised hopes on the Chagossian side. However, by the end of the summer of 2010 it was looking increasingly likely that there was going to be no fundamental change in British official policy. Speaking before the Foreign Affairs Committee on 8 September 2010, William Hague said:

> ***Mr Hague:*** On the question of the Chagos Islands—this question could of course take up several hours, which we clearly don't have—I am looking at this in great detail. It is one of those long-standing, frustrating issues—a great parliamentary cause. I feel that it is necessary, if I am going to be absolutely confident of our policy on the British Indian Ocean Territory, that I have looked into it personally, in detail. I was holding a meeting in the Foreign Office earlier this week about this. I have to say that, when you go into it in detail, it is quite hard to hold out the prospect of a fundamental change of policy, so I do not want to raise any hopes of that. Of course, on the question of human rights there is a European Court of Human Rights case going on at the moment, so it would be wrong of me to get into the details of that now. But it is important to recognise that we have a treaty with the United States. Yes, it was entered into by a previous Government, a Labour Government, but it nevertheless was entered into. That lasts for 50 years, renewable for 20 years.

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[121] UK Chagos Support Association blog, 12 May 2010

> The outer islands of the Chagos Archipelago are really what is under discussion—whether people could return to those. There was a feasibility study in 2002 that concluded that it wasn't really feasible. It is important to recognise that those are atolls. Very little of that land is more than 1 metre above sea level. It is hundreds of miles—I think they are knocking on for 1,000 miles—from any other settlements, so making settlements viable in such a place, particularly given the possible pressures of climate change on sea levels, is a very daunting prospect. An initial detailed look on my part has really brought that sobering realisation to me that, however much it is nice to have an almost romanticised idea that it would be possible for islanders to return to where they were removed from decades ago, in practical terms that is a really difficult proposition. However, we continue to look at this policy. I am continuing to examine it in detail, as is, again, the responsible Minister, Henry Bellingham. But in the light of what I have seen so far, we will be maintaining the position that we have taken on proceedings in the European Court.[122]

Henry Bellingham made this statement in October 2010:

> The Government has looked into policy on the British Indian Ocean Territory and have decided to defend the claims for resettlement and compensation which the Chagos Islanders have brought to the European Court of Human Rights in Strasbourg […] However, we do want to keep channels of communication open to the Chagossian communities and explore new ideas for the their engagement with the Territory, short of resettlement. We plan to continue our support for Islanders wishing to visit to tend family graves, engage in heritage conservation and contribute to environmental work, including the implementation of the Marine Protected Area.[123]

In December 2010, the Minister of State in the FCO, Lord Howell of Guildford, said in the Lords:

> My right honourable friend the Foreign Secretary has said that we continue to examine this policy in detail, and that is what we will do, but the fundamental position that we take was, I think, taken exactly by the previous Administration as well and is based on some very difficult but hard realities about both our needs for defence and the rights of those concerned.[124]

Lord Howell concluded with remarks on the issue of compensation, acknowledging that a ruling in favour of the Chagos Islanders by the European Court of Human Rights would have "a really vast implication in terms of resources."[125]

In a debate on the Overseas Territories in the Lords in March 2011, Lord Luce called on the Government:

> To develop a strategy involving discussions with the US and Mauritius that could lead to compromise proposals which could be incorporated into the exchange of letters between the US and Britain, which is subject to renewal in 2016 […] It seems that the Americans will say that they need to retain Diego Garcia for the foreseeable future. If that is necessary, so be it. However, it should be possible to work out, for the outer isles that are a long way from Diego Garcia, co-management arrangements between Britain and Mauritius for the marine protection area, and to arrange for the Mauritians

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122 Evidence of William Hague to the Foreign Affairs Committee, 8 September 2010, Q10

123 HC Deb 13 October 2010 c353W. In April 2011, a group of 12 Chagossians visited the Islands on an FCO-organised visit – the fifth such visit up to that time.

124 HL Deb 14 December 2010 c520-1

125 Ibid

> to work with the Chagossians on the outer islands on conservation matters to do with the marine protection area.[126]

Lord Howell replied:

> We are looking at ways of mitigating the impact of our policy on the Chagossians through continuing to enable them to visit the territory and engage in humanitarian, cultural and environmental activities […] We want to involve the Chagossian communities in implementation of the marine protected area – although there is a certain difficulty, obviously, as the Chagossians are seeking annulment of the area in the UK courts – and we are seeking practical ways in which we can continue to help the Chagossian communities in Mauritius, Seychelles and this country.[127]

On 30 March 2012, the Government issued a press release on the second anniversary of the establishment of the MPA:

> April 1st marks the second anniversary of the creation of the world's largest 'no-take' Marine Protected Area (MPA) in the British Indian Ocean Territory. [...]
>
> The MPA is growing in stature in the scientific world, and has recently attracted a significant grant from the Darwin Institute which will go towards funding scientific expeditions for the next 2 years. An independent Science Advisory Group (SAG) has been set up to devise a strategy and define the priorities for research in the MPA. The MPA has caused excitement amongst scientists worldwide. [...]
>
> Our work on the MPA is without prejudice to the outcome of the proceedings pending before the European Court of Human Rights, and this has held us back in some areas. But we are drafting a management plan for the MPA and are optimistic that in future we can involve more of our neighbours in developing what is an asset for the whole world.[128]

Following talks between Mr Ramgoolam and David Cameron in London on 8 June 2012, Lord Howell of Guildford answered the following parliamentary question from Lord Avebury:

> **Lord Avebury**: To ask Her Majesty's Government whether any talks agreed by the United Kingdom Prime Minister and the Prime Minister of Mauritius at their meeting on 8 June will cover the return of the Chagossian people, the restoration of Mauritian sovereignty over the Chagos Islands, and the ability of Mauritius to participate in the 2014 negotiations concerning the 1966 agreement between the United Kingdom and the United States, which expires in 2016.
>
> **The Minister of State, Foreign and Commonwealth Office (Lord Howell of Guildford):** The meeting held on 8 June was to sign a Memorandum of Understanding on Piracy. The British Indian Ocean Territory (BIOT) was raised but there was no detailed discussion of the return of the Chagossians, though the Mauritian Prime Minister stated that he thought that the islanders' way of life was sustainable on the islands. There was no commitment to talks with Mauritius on the sovereignty of BIOT, over which the UK has no doubts: the islands have been British since 1814. Nor was there a commitment to involve Mauritius in any extension of the 1966 Exchange of Notes.[129]

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126 HL Deb 10 March 2011 c1777
127 Ibid., c1795
128 "World's largest 'no take' marine protected area celebrates 2nd anniversary", FCO press release, 30 March 2012
129 HL Deb 20 June 2012 c292-3W

There have been numerous parliamentary exchanges about the BIOT since the beginning of 2013, most of them prompted by the Government announcement in December 2012 that it would review its policy on resettlement. Below are the full texts of some of these exchanges.

Asked by ***Baroness Whitaker***

To ask Her Majesty's Government, further to the Foreign Secretary's undertaking on 20 December 2012 to "be as positive as possible in our engagement with Chagossian groups", and the ruling of the European Court of Human Rights on 20 December 2012, whether they will make provision for the individual fishing rights of the Chagossians and of Mauritius in the British Indian Ocean Territory marine protected area.[HL5752]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): We have no plans to alter the "no-take" status of the British Indian Ocean Territory, marine protected area. This is, of course, subject to the outcome of current ongoing domestic litigation and international arbitral proceedings.[130]

Asked by ***Lord Avebury***

To ask Her Majesty's Government, further to the remarks by the Foreign Secretary on 20 December 2012, what are the fundamental difficulties they envisage with resettlement in the Chagos Islands; and when they will appoint a date for meeting the Chagos Islands (BIOT) All-Party Parliamentary Group so that the views of that group can be taken into account in their stocktaking of their policy on resettlement.[HL6058]

The Senior Minister of State, Department for Communities and Local Government & Foreign and Commonwealth Office (Baroness Warsi): The fundamental difficulties are numerous. Any long-term settlement would be precarious and very costly. The outer islands, which have been uninhabited for 40 years, are low-lying and lack all basic facilities and infrastructure. The cost of infrastructure and public services could become a heavy ongoing contingent liability for the UK taxpayer. There are also defence considerations.

As the Secretary of State for Foreign and Commonwealth Affairs, my right honourable friend the Member for Richmond (Yorks) (Mr Hague), said in his letter of 24 February to the chairman of the All-Party Parliamentary Group, he would be happy to meet the group later in the year when the Government has made progress with the review.[131]

Andrew George: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to the answer of 5 March 2013, *Official Report,* column 904W, on Chagos Islands, whether his taking stock process will include material evidence from the 2002 Flexibility Study into the practicalities of voluntary repatriation of Chagossians. [149446]

Mark Simmonds: Evidence from the 2002 Feasibility Study will be considered as part of the review of our policy towards the British Indian Ocean Territory.

Andrew George: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to the answer to the hon. Member for Islington North, of 6 March 2013,

130 HL Deb 11 March 2013 cWA7
131 HL Deb 20 March 2013 cWA152-3

Official Report, column 1018W, on Chagos Islands, if he will complete the taking stock of his policy towards resettlement before the end of 2013. [149465]

Mark Simmonds: Ministers want to consider British Indian Ocean Territory policy options carefully, given the complexity of the issues. Our review of policy will be thorough. We do not have a timetable for the conclusion of the review and will inform Parliament as soon as we are in a position to do so.

Andrew George: To ask the Secretary of State for Foreign and Commonwealth Affairs pursuant to the answer of 12 March 2013, *Official Report*, column 168W, on British Indian Ocean Territory, if, as part of his agreement with interested stakeholders, he will consult those exiled Chagossians who are interested in the opportunity of voluntary repatriation in respect of the *(a)* costs to them, *(b)* benefits to the UK in having a presence on the islands and *(c)* any other consequences of pursuing such a policy. [149500]

Mark Simmonds: Ministers and officials continue to engage with Chagossians as part of our review of policy. This will include the costs, benefits and other consequences of any kind of resettlement.

Andrew George: To ask the Secretary of State for Foreign and Commonwealth Affairs if he will make an assessment of Professor Paul Kench's 5 October 2012 review of his Department's 2002 feasibility study into the practical consequences of a policy of voluntary repatriation of Chagossians to the Chagos Islands. [149501]

Mark Simmonds: As part of our review of our policy on the British Indian Ocean Territory, we will consider all relevant contributions, submissions and views, as appropriate.[132]

Finally, Baroness Whitaker made a contribution during the debate on the Queen's Speech in the Lords on 15 May 2013. Below are extracts:

Baroness Whitaker: [...] The gracious Speech promises to,

"ensure the security, good governance and development of the Overseas Territories".—[*Official Report*, 8/4/13; col. 3.]

This is sorely needed for the Chagos Islands, the inhabitants of which were exiled from their homeland by the British Government in the late 1960s and early 1970s. I am indebted to our former high commissioner to Mauritius, Mr David Snoxell, for his advice.

It is not as if anyone now thinks this exile was an example of good governance. On 23 April 2009 the then shadow Foreign Minister, Keith Simpson, said:

"There is no doubt that there is a moral imperative",

and that,

"I suspect … the all-party view",

is that,

"the rights of the Chagossian people should be recognised, and that there should at the very least be a timetable for the return of those people at least to the outer islands".—[*Official Report*, Commons, 23/4/09; col. 176WH.]

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[132] HC Deb 25 March 2013 905-6W

In a letter to a member of the public on 23 March 2010 the shortly to be Foreign Secretary William Hague said:

"I can assure you that if elected to serve as the next British government we will work to ensure a fair settlement of this long-standing dispute".

[...] Now, fewer than 700 of the original islanders remain. The United States base on Diego Garcia is 140 miles away from the outer islands, to which some would like to return. When the Government of the United States were asked by our Foreign Office publicly to affirm, as was reported in a WikiLeaks cable from the United States embassy in London, that they required the whole of the British Indian Ocean Territory for defence purposes, they did not do so. The State Department has indicated informally to a member of the Chagos Islands (British Indian Ocean Territory) All-Party Parliamentary Group, of which I also am a member, that if asked it will review the security implications of a limited return. Our Law Lords described official letters that claimed that there was a defence risk as "fanciful" and "highly imaginative".

In 2014 the agreement with the United States will come up for renewal. I suggest that this gives an excellent opportunity for exploring whether a small number of Chagossian people could return to the outer islands. It would seem to have no security or defence implications for the base on Diego Garcia. I am assured that many will not want to return, but all want their right to do so restored, and some will want only to visit their homeland and come away.

Would this be a burden to the British taxpayer? The Foreign Office set up a feasibility study in 2001, which claimed that resettlement was not feasible and anyway was very expensive. The infeasibility argument has been discredited by one of its own consultants and by others, most recently in a report by Professor Paul Kench of Auckland University. As for the cost, it would be idle to pretend that justice would not carry some. However, the United Kingdom would not have to bear the whole burden of restoring the tiny infrastructure. The European Union high representative has confirmed to Charles Tannock MEP that funds are available. The UNDP may have capacity and it would surely be right for the United States, Mauritius and the Commonwealth to do their bit.

What of the marine protected area, with its full no-take ban on fishing—except, as it happens, around the waters of Diego Garcia, where recreational fishing can be practised—which was hastily declared by David Miliband, as Foreign Secretary, just before the last election? It is unlike most other MPAs, for instance around the Galapagos Islands, where the people who live there help to maintain it.

There is worldwide support for a marine protected area that takes account of the interests of the Chagossians and Mauritius. However, it should have been properly conceived, with a defined role for inhabitants. As it stands, there is only one vessel to patrol the ban over 640,000 square kilometres, and I have seen photographs of very recent substantial illegal fishing operating within the MPA.

The MPA was proclaimed without taking account of the views of the Chagossians, who applied for judicial review in the high court, or of Mauritius, which has brought a case under the Permanent Court of Arbitration for breach of the Convention on the Law of the Sea. There is much work to be done to make the MPA what it ought to be so that everyone can wholeheartedly support it.

In the time available I have simply tried to pinpoint the chief aspects of a manifest and agreed injustice of a fundamental kind. This hardly matches the human rights standards of the Commonwealth charter, which we signed only last March. However, it is very good news that the Foreign Secretary has shown indications of a positive

> attitude to righting these wrongs in his statement following the end of the human rights case in Strasbourg, and that he is reviewing the policy on resettlement. I hope that the Minister can say how the Government will now proceed and when Parliament will be consulted about the review of that policy.[133]

Lord Astor of Hever replied for the Government:

> The noble Baroness, Lady Whitaker, asked why the Chagos islanders could not return. We regret what happened in the late 1960s and 1970s. The responsibility for decisions taken then has been acknowledged by successive Governments. However, the reasons for not allowing resettlement, namely feasibility and defence security, are clear and compelling. The Government will continue to look at the issues involved and engage with all those with an interest.[134]

[133] HL Deb 15 May 2013 c442-4
[134] Ibid., c520