

Decades of Exile into the depth: A case study of the Stolen Kingdom of our Chagossian brothers and the Failure of the British Government to redress their mistake, prejudice and damage caused

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ABSTRACT: *This paper outlines the injustice perpetrated to our Chagossian brothers and their Case of the Chagossian population at the International Court of Justice in view to regain access to their native land of Chagos Archipelago. Stolen Kingdom refers to the sacred motherland of our Chagossian brothers. It is not a favour that our brothers want from the United Kingdom but they ask what they deserve for the harmed done to them and removal of their territory. The current situation of the Chagossians is that the entire population of Chagos Archipelago were forcibly removed from the territory between 1967 and 1973 and prevented from returning to their homeland. There had been various proceedings initiated by Chagossians before United Kingdom courts, the European Court of Human Rights and the Human Rights Committee that recommended that Chagossians should be able to exercise their right to return to their territory. Today Chagossians are dispersed in several countries, including the United Kingdom, Mauritius and Seychelles. Unfortunately by virtue of United Kingdom law and judicial decisions they are not allowed to return to the archipelago. The Chagossians want their land back from and the British out of their land and it is a rightful claim from our brothers since as the International court of Justice have pronounced into their judgement section ¹, where by The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State (United Kingdom v. Albania).*

KEYWORDS: *Chagos Archipelago, British, Human Rights, International Court of Justice*

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I. INTRODUCTION

Geographical location of the Archipelago

The archipelago is about 500 kilometres south of the Maldives, 1,880 kilometres east of the Seychelles, 1,680 kilometres north-east of Rodrigues island, 2,700 kilometres west of the Cocos (Keeling) Islands, and 3,400 kilometres north of Amsterdam Island. The land area of the islands is 56.13 km² (21.7 sq. miles), the largest island, Diego Garcia, having an area of 32.5 km². The total area, including lagoons within atolls, is more than 15 000 km², of which 12 642 km² are accounted by the Great Chagos Bank, the largest acknowledged atoll structure of the world (the completely submerged Saya de Malha Bank is larger, but its status as an atoll is uncertain). The shelf area is 20 607 km², and the Exclusive Economic Zone, which borders the corresponding zone of the Maldivian Islands in the north, has an area of 639 611 km² (including territorial waters). The Chagos group is a combination of different coralline rock structures topping a submarine ridge running southwards across the centre of the Indian Ocean, formed by volcanoes above the Réunion hotspot. Unlike the Maldives, there is no clearly discernible pattern in the atoll arrangement, which makes the whole archipelago look somewhat chaotic. Most of the coralline structures of the Chagos are submerged reefs. The Chagos contain the world's largest coral atoll, The Great Chagos Bank, which supports half the total area of good quality reefs in the Indian Ocean. As a result, the ecosystems of the Chagos have so far proven resilient to climate change and environmental disruptions. The largest individual islands are Diego Garcia (32.5 km²), Eagle (Great Chagos Bank, 3.1 km²), Île Pierre (Peros Banhos, 1.40 km²), Eastern Egmont (Egmont Islands, 2.17 km²), Île du Coin (Peros Banhos, 1.32 km²) and Île Boddam (Salomon Islands, 1.27 km²). In addition to the seven atolls with dry land reaching at least the high-water mark, there are nine reefs and banks, most of which can be considered permanently submerged atoll structures. The number of atolls in the Chagos Archipelago is given as four or five in most sources, plus two island groups and two single islands, mainly because it is not recognised that the Great Chagos Bank is a huge atoll structure (including those two island groups and two single islands), and because Blenheim Reef, which has islets or cays above or just reaching the high-water mark, is not included.

Natural Resources of the Archipelago

The main natural resources of the area are coconuts and fish. The licensing of commercial fishing used to provide an annual income of about US\$2 million for the British Indian Ocean Territory authorities. However, licences have not been given since October 2010; the last expired after the creation of the no-take marine reserve¹¹. All economic activity is concentrated on the largest island of Diego Garcia, where joint UK–US military facilities are located. Construction projects and various services needed to support the military installations are done by military and contract employees from the UK, Mauritius, the Philippines, and the US. There are currently no industrial or agricultural activities on the islands. All the water, food and other essentials of daily life are shipped to the island. An independent feasibility study led to the conclusion that resettlement would be "costly and precarious". Another feasibility study, commissioned by organisations supporting resettlement, found that resettlement would be possible at a cost to the British taxpayer of £25 million. If the Chagossians return, they plan to re-establish copra production and fishing, and to begin the commercial development of the islands for tourism. Until October 2010, Skipjack (*Euthynnus pelamis*) and yellowfin tuna (*Thunnus albacares*) were fished for about two months of the year as their year-long migratory route takes them through Chagos waters. While the remoteness of the Chagos offers some protection from extractive activities, legal and illegal fishing have had an impact. There is considerable poaching of turtles and other marine life. Sharks, which play a vital role in balancing the food web of tropical reefs, have suffered sharp declines from illegal fishing for their fins and as bycatch in legal fisheries. Sea cucumbers, which cleanse sand, are poached to feed Asian markets.

II. LITERATURE

History of Chagos Archipelago

On 31 August 1903 the Chagos Archipelago was administratively separated from the Seychelles and attached to Mauritius¹². In November 1965, the UK purchased the entire Chagos Archipelago from the then self-governing colony of Mauritius for £3 million to create the British Indian Ocean Territory (BIOT),¹³ with the intent of ultimately closing the plantations to provide the British territory from which the United States would conduct its military activities in the region. On 30 December 1966, the United States and the United Kingdom executed an agreement through an Exchange of Notes which permit the United States Armed Forces to use any island of the BIOT for defence purposes for 50 years, until December 2016,¹⁴ followed by a 20-year optional extension (to 2036) to which both parties must agree by December 2014. As of 2010, only the atoll of Diego Garcia has been transformed into a military facility. In 1967 the British Government bought the entire assets and real property of the Seychellois Chagos Agalega Company¹⁴ which owned all the islands of the BIOT,¹⁵ for £660,000¹⁶ and administered them as a government enterprise while awaiting US funding of its proposed facilities, with an interim objective of paying for the administrative expenses of the new territory. The plantations, under their previous private ownership and under government administration, proved consistently unprofitable due to the introduction of new oils and lubricants in the international marketplace and the establishment of vast coconut plantations in the East Indies and the Philippines. Between 1967 and 1973, the population was forcibly removed from the islands and moved to Mauritius and the Seychelles to make way for a joint United States–United Kingdom military base on Diego Garcia¹⁷. In March 1971, Seabees, United States naval construction battalions, arrived on Diego Garcia to begin the construction of the Communications Station and an airfield. To satisfy the terms of an agreement between the United Kingdom and the United States for an uninhabited island, the plantation on Diego Garcia was closed in October of that year¹⁸. The plantation workers and their families were initially deported to the plantations on Peros Banhos and Salomon atolls in the group; those who requested were transported to the Seychelles or Mauritius. In 1972, the UK closed the remaining plantations (all being now uneconomic) of the Chagos, and deported the Ilois who would have faced economic hardship to the Seychelles or Mauritius. The independent Mauritian government refused to accept these further displaced islanders without payment and in 1973, the United Kingdom agreed and gave them an additional £650,000 as reparation payments to resettle the people¹⁹. Some in many of their reasonable views were less than ideally rehoused and employed by Mauritius, compared to others. The islands were becoming costly to live in due to industrial moves away from coconut oils and copra fibre markets and the success of larger plantations in the far east. In 2002, Diego Garcia was used twice for US rendition flights²⁰. On 1 April 2010, the British government announced the establishment of the Chagos Marine Protected Area as the world's largest marine reserve. At 640,000 km², it is larger than France or the U.S. state of California. It doubled the total area of environmental no-take zones worldwide²¹.

On 18 March 2015, the Permanent Court of Arbitration unanimously held that the marine protected area (MPA) which the United Kingdom declared around the Chagos Archipelago in April 2010 violates international law. The Prime Minister of Mauritius, pointed out that it is the first time that the United Kingdom's conduct with regard to the Chagos Archipelago has been considered and condemned by any international court or tribunal^{22 23}. On 20 December 2010 Mauritius initiated proceedings against the United Kingdom under the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the Chagos Archipelago MPA. The

issue of compensation and repatriation of the former inhabitants of several of the archipelago's atolls, exiled since 1973, continues in litigation and as of 23 August 2010 has been submitted to the European Court of Human Rights by a group of former residents ²⁴. Litigation continues as of 2012 regarding the right of return for the displaced islanders and Mauritian sovereignty claims. In addition, advocacy on the Chagossians' behalf continues both in the United States and in Europe. As of 2018, Mauritius has taken the matter to the International Court of Justice for an advisory opinion, against British objections ²⁵. In November 2016, the United Kingdom restated it would not permit Chagossians to return to the islands.

III. DISCUSSION

Unlawful Act by United Kingdom s177-178, P47-48

The decision of the Court was having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State (United Kingdom v. Albania), Merits, Judgment, I.C.J. Reports 1949, p. 23; Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 38, para. 47; see also Article 1 of the Articles on Responsibility of States for Internationally Wrongful Acts). It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius. Accordingly, the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self determination.

IV. CONCLUSION

Controversial point on the case (s117-120, p33-34) Acknowledgment of sum paid

On 4 September 1972, by virtue of an agreement ¹ concluded between Mauritius and the United Kingdom, Mauritius accepted payment of the sum of £650,000 in full and final discharge of the United Kingdom's undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago. On 24 March 1973, the Prime Minister of Mauritius wrote to the British High Commissioner in Port Louis, acknowledging receipt of the sum of £650,000, but emphasizing that the payment did not affect the verbal agreement on minerals, fishing and prospecting rights reached at Lancaster House on 23 September 1965 and was subject to the remaining Lancaster House undertakings, including the return of the islands to Mauritius without compensation if the need for use by the United Kingdom of the islands no longer existed.

In February 1975, a former resident of the Chagos Archipelago, brought an action against the United Kingdom Government claiming damages for intimidation, deprivation of liberty and assault in relation to his removal from the Chagos Archipelago in 1971. In 1982, the claim was stayed by agreement of the parties. On 7 July 1982, an agreement was concluded between the Governments of Mauritius and the United Kingdom, for the payment by the United Kingdom of the sum of £4 million on an ex gratia basis, with no admission of liability on the part of the United Kingdom, "in full and final settlement of all claims whatsoever of the kind referred to in Article 2 of this Agreement against . . . the United Kingdom by or on behalf of the Ilois". According to Recital 2 of the preamble to the Agreement, the term "Ilois" has to be understood as those who went to Mauritius on their departure or removal from the Chagos Archipelago after November 1965. Article 2 provides: "The claims referred to in Article 1 of this Agreement are solely claims by or on behalf of the Ilois arising out of: (a) All acts, matters and things done by or pursuant to the British Indian Ocean Territory Order 1965, including the closure of the plantations in the Chagos Archipelago, the departure or removal of those living or working there, the termination of their contracts, their transfer to and resettlement in Mauritius and their preclusion from returning to the Chagos Archipelago and (b) Any incidents, facts or situations, whether past, present or future, occurring in the course of the events or arising out of the consequences of the events." Article 4 requires Mauritius "to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims". The sum of approximately £4 million paid by the United Kingdom was disbursed to 1,344 islanders between 1983 and 1984. As a condition for collecting the funds, the islanders were required to sign or to place a thumbprint on a form renouncing the right to return to the Chagos Archipelago. The form was a one-page legal document, written in English, without a Creole translation. Only 12 persons refused to sign (Chagos Islanders v. Attorney General and BIOT Commissioner (2003), EWHC 2222, para. 80

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