Annex 1

Visit to Mauritius 8 March - 1 April 1963: diary notes

Visit to Mauritius 18th March - 1st April 1963.

Diary Notes

19th March. When calling on Mayor of Port Louis, I was asked for early favourable decision on raising status of municipality. I said it was under consideration by Governor and Colonial Office, no doubt in the light of precedents, and that I would try to ensure quick decision, without indicating that this would necessarily be favourable,

21st March. Called on Laventure, Ministry of Local Government and Co-operation, and Russell, Registrar of Co-operation. They are very anxious that Surridge should come for their 50 year celebrations and Mauritius Government will pay passage costs.

Rennie's views on New Hebrides.
To hand our share to French difficult to justify. Missions would be likely to make representations. Consultations with locals surely necessary and this very difficult to do satisfactorily. And would it be fair to inhabitants to deny them a choice later? They would be integrated into a French system which was of small importance in Pacific in comparison with British and English speaking influences of Australia, New Zealand and our territories. They would only learn French language, New Hebrideans probably were more akin to Solomon Islanders than to anyone else and those who had visited Solomons for training were impressed by advance there of locals. They might want ultimately to join up in some way with them. If we withdrew, the French would not let them take advantage of training in Solomons or Fiji (Medical School). Better to let Condominium continue for some time, teaching both languages (we teaching French, the French teaching English) so that an ultimate two-stream choice would be open to them.

The Australians would not want to take over our share but would probably not welcome our handing over to French for missionary, economic and political reasons. Essential to consult them.

French might agree on introduction of elective principle into Advisory Council by indirect elections through local bodies.

Left to develop in present framework, New Hebrides "leaders" should gradually emerge, and meet and talk with people elsewhere and form their own ideas and a "consciousness" should develop,

23rd March. Talk with H.E., Vickers and Bates.

(1) Technical Assistance. Anxious to know fully what forms of T.A. are available for dependent territories. In particular, does D.T.C. provide chaps who are in midway position between their own Advisers who can pay short visits and chaps who they recruit in ordinary way on behalf of Mauritius Government to go on local establishment? In other words do D.T.C. engage chaps on their own account on request of an overseas Government on sort of basis of U.N. and A.I.D. assistance, so that local Government deals only with D.T.C., and pays only local costs? If not British aid will lag behind aid obtainable from other sources. Ministers here are keen as experts and it would be good to be able to show them

/statement

statement of aid available through D.T.C. Governor or Vickers will write.

(2) Oil Islands. Vickers working out answers to questions in my letter to Rennie. No opposition on part of officials to transfer to Seychelles and they accept wisdom of separating issue from Rodrigues which (unlike Dev.) Rennie agrees should continue as part of Mauritius and not be put under Governor's Office. He quite sees objection of R. continuing under H.M.G. after Mauritius is independent. As to attitude of Ministers, he cannot be certain, but he thinks:-

(a) they are unlikely to object to transfer of Oil Islands to Seychelles

(b) they are unlikely to try to link issue with Rodriques

(c) they are likely to be willing to continue to regard R. as a dependency of Mauritius.

Oil Islands are much more distant and have less contact with M. Closer connexion with Seychelles likely to be recognised, particularly as Seychelles Company has 2/3 interest. (N.B. I mentioned this to "Colo" Maingard, whose Company (Rogers) have 1/3 interest. He thought transfer to Seychelles quite sensible.) There seems no desire to "shed" R. Bates says they are rather spoilt, getting more than their fair share : but M. may claim additional aid if they continue to look after it. 20,000 inhabitants, Creole. Question of returning a member to Legislature not a live one but official attitude seems neutral.

(3) Constitution

(a) Proposal in Stage 2 to have a Dep. Minister of Home Affairs for Police is considered objectionable. As a big responsibility, it should go to Chief Minister. A Deputy (who would later take over from C.S.) would be a low calibre chap. Ramgoolam (who would probably like to have this responsibility) is widely respected and it would give greater confidence to other communities. Desvaux (C. of P.) thinks that if control of Police has to pass to a Minister, Premier best.

(b) General

Stage 2 proposals now seem unrealistic. Labour Party likely to win elections and to press for greater changes. Position would then settle itself because new Legislature would not pass resolution requesting introduction of Stage 2 but a much more far-reaching resolution which will necessitate a new constitutional conference.

/Ram

(Ram, talking at Walter's supper party, said that Independence would certainly be one plank in platform : that TT, Uganda and Sierra Leone were becoming or had become dictatorships : that he (Ram) did not care for dictatorships; and that M. would be a model Commonwealth country). Elections unlikely to be before Autumn at earliest and may be deferred until latest moment (6/7/64 is the final date). Stage I will in any case have lasted longer than envisaged in 1961. General impression that other communities (at any rate Franco-Mauritians, perhaps not Creoles) have accepted inevitability of change. Situation will be fluid until time-table for elections is clearer, party manifestos are known and indeed result of elections is known. Little interest in a visit by a Constitutional Commissioner. If Ram wants him, no great difficulty, but if he doesn't better not press him to come. It would be unnecessary for him to deal with method of elections or frequency of elections. Only specific "Stage II loose-ends" are (a) method of nominations (b) form of human rights (c) Ombudsman etc. But if Stage II unrealistic, better for him to come later when future is clearer: possibly in August/ September, 1964, if elections not held before next year. He would not have to write report but would have his views available for conference.

On this programme, next change, though delayed, will be much more radical than Stage 2. This has danger of doing too much in one jump e.g. introducing complete internal S.G. with consequent shock to other communities. It would therefore be wise to consider ways of devolving greater responsibility on Ministers and local bodies and introducing framework for I.S.G. in so far as this can be done without arousing controversy and necessitating Conferences. Examples are creation of Judicial and Legal Service Commission on advisory basis(otherwise it would have to be created and given executive powers in one go) : some form of consultation for police matters (to prepare police, public and Ministers for transfer of control to Ministers after next Conference); removal of Governor's present discretion whether or not to refer appointments to P.S.C. for advice, while still keeping it advisory: gradual transfer to Ministries from C.S.'s office of all matters other than those for residual handling in Governor's office. Some of these

/changes

changes could be made administratively, others (e.g. creation of J. and L.S.C.) would require Orders in Council; but this would not matter provided that changes were in substance uncontroversial.

Secondary advantage of this approach is that Ministers would see in changes an earnest of of willingness by officials to devolve as far as possible in interim period.

(N.B. Much of the provisional conclusions recorded above is radically affected by later discussions recorded below, particularly under 30th March)

27th March. Day of talks with political leaders with H.E.

Independent Forward Bloc.

Bissandoyal, Gangaram and Vanderweld.

All 6 members in Leg. Co. are Hindus but party ran Muslim and Christian candidates unsuccessfully in other constituencies i.e. they claim to be a national party.

Aims at next elections:-

(a) Every Mauritian to have minimum powers of protection under the law.

(b) Industrialisation (Government may say they have this aim but have given wrong priorities e.g. in encouraging enterprises with low labour content.)

(c) Regime of austerity.

(d) More agricultural productivity and less dependence on imported food. (Government has not done much in these directions).

(e) High powered tribunal to enquire into abuses e.g. to stop waste of money and flight of capital.

(f) Coalition Government.

(g) Sound Trade Unionism, not influenced by politics.

Stage I changes have had bad effect. Creation of additional ministerial post has given free hand to Central Office of Information and this has been abused. Other changes, tho' not giving greater constitutional powers, have been misunderstood by public and have created psychological atmosphere of greater powers of Ministers. (triumphant return of Labour Party from 1961 Conference).

Even if Independence comes, Government must include representatives of other parties.

/I.F.B.

I.F.B. could defeat Labour Party but lacks money and control of machinery.

There are 4 sections in politics viz. Labour Party, I.F.B., Parti Mauricien, and Muslims. Main conflict is Labour v. I.F.B. in country and Labour v. P.M. in towns. If the 4 leaders would only agree, everything would be nice. Labour Party is losing support in rural areas.

No objection to Stage 2 but must be accompanied by high powered tribunal. Indifferent as between Tribunal or Ombudsman but whichever is created should be concerned with investigation of complaints, not with discriminatory legislation. They would receive complaints received through a Member of Legislature. If complaint was prima facie justifiable, it would be referred to Judiciary Member(s) should not be Mauritian.

Ra[illegible]ult

Trustram Eve, in recommending 40 constituencies, created a Frankenstein of communalism which cannot be controlled. Mohamed is powerful and represents 75% Muslims: and created conviction in Ramgoolam (who is frightened of elections) that to win he must have support of one minority. As a reaction, coloured community is going "communal". Communal feeling has never run so high. Less marked in Franco-Mauritians many of whom want alliance with coloureds. One of cornerstones of R.'s policy is to extend control of economy from Franco-Mauritians but not to take it away from them, since it depends on them.

R. will contest elections either as single party, or with Bissondoyal on 40 seat basis (i.e. agreeing which seats to run candidates for). This acceptable to B. Possible title of his party is "Democratic Labour Party". If he wins, he will form coalition with B. He will have no truck with Ramgoolam. Ram's intention is to crush minorities e.g. by appointments in Civil Service and to Boards. Evidence of present Government's communal favouritism in housing and in broadcasting time.

R's. manifesto at elections will include:-

(a) Education should be regarded as a capital investment and bias should be changed to technical education.

(b) Encouragement of local investment and attraction of foreign (e.g. South African) investment.

(c) Tourism and game-fishing and encouragement of local-Japanese fishing and processing in Mauritius.

R. would have been "rather against" Stage 2 proposals at the time (1961) : he would now say that they would be a dismal disaster. Resists political control of judiciary and C.S. appointments. The Muslims are dead against Independence and Stage 2. R. is opposed to removal of officials from Ex. Co. and Leg. Co. They are too valuable as whipping boys. There should be no change for at least a year after elections. Then perhaps there could be a constitutional Conference. He will if possible avoid including political advances in his manifesto. His appeal will be to Creoles and "small" Hindus.

Ombudsman might not be a bad idea.

/Parti

Parti Mauricien

Koenig, Duval, Devienne and two others.

1961 agreement needs review in light of developments since then. Internal self-government and Independence would be extremely grave steps and country not yet ripe. There would be risk to peace and order and Communal attitudes are increasing. Shudder to think of C.S. ceasing to be head of Civil Service. C.S. should also remain in charge of Police. An official A.G. and Financial Secretary should remain in Leg. Co. and EX. Co. D.P.P. arrangement inadequate.

Stage I changes may appear to be of minor character but have become more significant as communal feelings have hardened. Labour Party have created atmosphere indicating to public that they have greater powers. Ram refers to "My Government". Hence Stage I changes have been interpreted by public as conveying new powers. In creation of Ministry of Information spirit of Secretary of State's despatch has not been observed. A corporation will be no improvement. Thompson group both responsible for management of T.V. and sound radio and financially interested in new printing press to be used exclusively for "Advance", the new paper for the Labour Party and M.C.A.

Stage 2 goes much too far.

Other examples of favouritism of Government are:- appts. in P. and T. Dept. : housing favours rural areas with Indian inhabitants: appointment as Speaker of a defeated candidate from outside House and of Town Clerk for Port Louis without qualifications. Wages Council contains "seeds of bias." Government extending boundaries of Town Councils for political motives.

1957 Parti Mauricien programme still holds good. Main objective should be nation-building.

P.M. wants to change electoral system. Wants reserved seats (e.g. 6 Muslim, ? 15 Gen. population, ? 21 Hindu etc.). 3 constituencies or 1 constituency. The different parties would then each bring 3 lists for electors to choose from i.e. a list of Muslim candidates for Muslim reserved seats etc. Result would be representation in Legislature in proportion to numbers in communities, yet parties would all have, or be forced to adopt, non-communal approach.

Committee of Inquiry into conduct of Duval, P.M. Mayor of Curepipe, should be conducted by Judge or ex-Judge - and hearings should be in public.

P.M. advocates Council of State (to deal with legislation) and would also welcome Ombudsman on Tribunal to deal with complaints re administrative abuses although they did not initiate idea.

Above all, nation-building should precede further political advance.

/Independent

Independent Nominated Members

Laventure and Paturau.

Laventure opposed to Independence. Economic resources insufficient to sustain it. Need for cyclone aid from H.M.G. Control of Police must be reserved.

Paturau. "General Population" more worried than 2 years ago and economy has not progressed. Fear by "Gen. Pop." of Europeans "getting in" with Hindus has accentuated fears of former. European trend in favour of Hindus due to self-interest, not evidence that Labour Party has established confidence.

Laventure. Need for strong opposition. Still prepared to accept Stage 2 but police must remain under control of C.S. Whole of Legislature in all parties will in due course be Hindu.

Paturau. Need for Second Chambers. Pathetically asked whether Independence was really inevitable!

(Laventure asked me later at dinner whether, if Mauritius had to become independent, Rodriques could not be hived off and retained by H.M.G. for strategic use.)

Muslim Committee of Action.

Mohamed, Osman, ~~Ranjan.~~ Ranjam

Stage I O.K. "Good Loser" system has given satisfaction and is a satisfactory substitute for communal rolls. Although M.C.A. formerly advocated communal rolls and reserved seats, content with present 40 elected member system provided combined with nominated members on "good loser" basis and on assumption Governor makes the right appointments.

Also content with Stage 2 provided "good loser" system "put into black and white".

M.C.A. allied to Labour Party. Not necessarily permanent but convenient now.

Independence a very good thing on the whole - it gives a bit more prestige - but doubtful about it in view of experience elsewhere.

Labour Party

Forget, Bijadoor and Chaperon (i.e. a delegation carefully chosen to show that Labour Party is not a Hindu communal party!)

Belief that 2 main parties will develop. M.C.A. will continue with and probably merge with Labour Party. All other groups likely to co-operate and possibly merge with Parti Mauricien. Hence classical balanced two-party system will evolve and no risk of domination.

/No

No objection to Ombudsman, to deal with complaints, not with legislation. But how find the right man?

They gave no clue as to their likely demands but fair deduction that they will want to go beyond Stage 2. I said that introduction of Stage 2 would be straightforward but any going beyond would require a Conference. They agreed.

28th March. Visit to Special (Mobile) Force.

Ministers would like it separate from Police because Police is largely Franco-Mauritian and Creole and because of prestige appeal of "Army". Also, Special Force is lineal successor to British Garrison which was known and accepted here for 150 years. Against this background, any move to put it more "under the police" would run into trouble. It is in any case essentially a military force whose main function is to be called in in aid of civil powers. In fact it has not once had to do this. It is different from a special riot squad of armed police which exists separately (50 men) at Line Barracks, Port Louis. That has been used.

They are conscious of defects of present organisation. There are 246 chaps (200 rifles, 46 "tail"). 100 of these are at H.Q. 100 on reserve and are used on ordinary Police duties in Port Louis and Curepipe areas. Weaknesses are that each man has 4 months at H.Q. being trained, then 4 months in ordinary Police, then 4 months being further trained. Also, if the 100 reserve chaps had to return, it would overstrain Sgts. who would have 18 instead of 9 men each. They are wholly satisfied that arrangements they proposed are the best. In short term, no changes in establishment or organisation but all the 100 at H.Q. will be retained continuously there for 1 year or until Elections, whichever is later. In long term, they will have 150 at H.Q., divided into 2 units of 75(vice 100, divided into 2 units of 50). These will all stay for 3 years continuously (vice present 8 months, broken into 2 lots of 4 months). Reserve of 100 on duty with ordinary Police will be dispensed with. All Police will come (after 6 months initial training) through Special Force for 3 years, therefore no need for special inducement to join S.F. (although in fact it will have big attraction of free rations) : and no worry as to standards since entry into Police is extremly competitive owing to tremendous pressure of school leavers for jobs. From physical and other viewpoints Police can take their pick. Incidental advantage of proposed arrangement of passing all Police through Special Force is that married quarters need not be provided except for Sgts. and above. Greatest advantage, however, is that it offers full career structure for Special Force. After 3 years they pass through to ordinary Police and have career open to them in Police or in senior posts in S.F. If picked men were taken from Police for a career only in S.F., there would be inadequate opportunities.

I have recorded this in detail because they are very worried with Police Advisers' criticisms and are sure they are based on misunderstanding of position of Mauritius which is unique or unusual in having no "military power" and where this role is performed by S.F.

/They

They would greatly welcome visit by I.G. They have not had one for a long time. Not only for S.F. but for Police generally. Probably best time would be soon after elections (which may be held Autumn 1963 or early summer 1964) since no change is proposed in S.F. arrangements before then and it would be good thing to have Police reviewed by I.G. to ensure they are on best possible footing prior to self-government. I gave no commitment but think it would be a good thing and left it that they would write if after consideration they wished to request a visit.

Control of Police. Discussed with Vickers, Desvaux and McCaffery. There is an atmosphere that Police are opposed to Ministers. Glance at names in Staff List will show why. But now recruitment reflects pretty accurately the racial make-up of population.

Walter is determined to get personal control of Police. He has told McCaffery that he (W.) will be in charge and that McC. must watch out. Key aspect of "control" is postings and Walter would insist on interfering fully in this vital aspect. Any C. of P. who resisted would have to go. In order to ensure control for himself, W. will advise Ramgoolam that he ought not as C.M. to be bothered with Police. Best to give it to Ramgoolam both because he is a responsible person and would exercise responsibility in context of Government as a whole and because as C.M. he would be too busy to interfere much. We agreed that it would be a mistake to raise question now of varying Deputy Minister proposal but that things should be deftly steered in direction of Ram taking over e.g.by occasional meetings which he would be invited to attend to discuss important police matters. Variation or Stage 2 proposals could be proposed after elections. If Stage 2 seemed generally acceptable then, variation should not reopen proposals as a whole. If Labour Party pressed for more radical changes then Stage 2 would be in melting pot anyway.

One illustration of communal difficulties here is that whereas central Government is dominated by Labour Party, 3 out of 4 Town Councils are controlled by Parti Mauricien.Government have proposal for legislature to extend township boundaries (? of Port Louis only, or of all 4), allegedly with political motive of bringing more Labour Party voters into electoral area of township(s).

Tour of cyclone housing estates with Mohamed, Minister of Housing, his acting Permanent Secretary Carpenter, Voisey, acting Director of Central Housing Authority in Archibald's absence and others.

The houses are going up and some are finished and occupied. The accommodation is good (4 decent size rooms with outside kitchen and latrine)and the cost absurdly low (£260 a house plus £100 for kitchen/latrine annexe: payment on acquisition basis over 25 years 23 - 26 rupees a month). They seem basically strong and well built tho' naturally lacking in finish.

/Main

Main criticism up to a few days ago was delay in connexion with services by M/Works. People are installed without water, electricity, or made up roads. In some cases water pipes are there but supply has failed. Minor defects, to be remedied, are lack of garden fencing, and rough ground all round. M/Works are severely criticised by M/Housing and by C.H.A. for failure to provide services in time, in spite of simple opportunity and there will be a further long delay. There seems to be a tripartite bad relationship between M/Housing, M/Works and C.H.A. Mohamed (Min. of Housing) and Walter (Min. of Works) apparently hate each other's guts and there is lack of co-operation between Permanent Secretaries (Not Carpenter, who is very nice and easy but he is "acting" as Perm. Sec., Housing). Rennie says C.O. warned Mauritius that creation of an independent Housing Authority instead of placing it under a Ministry would cause difficulties and this has proved to be so. Unfortunately Archibald does not seem to have helped. Said to be "a chap who gets things done" (which is good) but has ridden rough shod over people, does not understand Ministerial system and has behaved tactlessly. He also is prone to shift his ground. Thing seem better between Voisey and Carpenter. Still, the houses are going up and are not unattractive on austerity basis.

But during last few days the "battle of the cracks" has broken out. Rey, a Parti Mauricien member of the Legislature, has published photos showing cracks in interior walls of newly built houses on one estate (N.B. There are so far 3 types of houses. 2 are by Longtill (Ltd), a South African firm. Structure identical except that one has corrugated metal roofs, the other concrete slabs. The third is by E.D.C. is rural areas. The cracks have developed in the Longtill houses). There is likely to be a big political row about this, particularly with elections in the offing. On the face of it, the cracks don't look at all good in such new houses, but the technical explanation given me by Voisey sounded reasonably convincing. It was this. Owing to the volcanic nature of the soil and boulders and the way the rain gets under the foundations from the surrounding ground, the soil underneath the houses is liable to upheavals which create upward thrust and places stresses and strains on the walls. This was foreseen as inevitable by the C.H.A. and contractors (indeed cracks are a common feature of earlier buildings and a number of gaps were left in the walls, filled only with a bituminous mixture to allow for splitting (principle of the short circuit). If these grow apart they can easily be refilled. Most cracks have taken place along these cracks - exactly as provided. But movement has been more extensive than foreseen and cracks have appeared in other places. In nearly all cases these have been down vertical lines where concrete blocks are joined by concrete and there is no difficulty about re-concreting. In only one case so far known has cracking occurred across concrete blocks. Even this can be fairly easily treated by grouting. In no case do these cracks, alarming as they may look, amount to structural weaknesses. But Voisey admits that more lines of intentional weakness (bituminous filling) are required and this will be provided in houses yet to be constructed. Contractors had no choice of sites. If they had had option to reject sites, they could have been made liable to make

/good

good damage "on decennial basis" (i.e. any damage occurring within 10 years). But they had to build on sites chosen for them by Government, so there was no guarantee. Finally, houses had to be provided at such an extremely low cost that it is not surprising they are not perfect.

Government are clearly very worried and are likely to call for technical inquiry. Meanwhile it seems likely to be blown up into a political issue. (Recorded at some length in case problem is referred home and because U.K. money is involved and in case a visitor's impressions may be of use!)

Visited opera on 28th March, - "Monsieur Bourgogne" at Theatre de Plaza in (?) Rose Hill. Interesting sociologically. Paris opera House in miniature. Amateur caste entirely "General Population" and audience practically so. Completely French atmosphere, yet none of these are Franco-Mauritians, They are the people who fall between the "gros blancs" and the Asians, who vote Parti Mauricien and who fear being overwhelmed.

29th March. Tour of Port Louis municipality, with Mayor and 2 previous Mayors! They have framed in Town Hall original manuscript letter to Mayor in handwriting of Queen Alexandra thanking them for letter of condolence on death of Edward VII - addressed on envelope "Port Louis, Mauritius, West Indies." (N.B. Inspection showed that envelope (bearing this address) was in a different hand from letter!)

Controversy between Municipalities and Government because latter wants former to extend boundaries. Said to be politically motivated to bring in Indian votes. This may be so, but the only "extension area" I saw should plainly come within municipal boundaries on geographical criterion. Hein (the Mayor) admitted this and that in principle they were not opposed but that for practical reasons (expense of additional services and no additional revenues) process should be staggered by taking in one area at a time.

Ramgoolam told me at lunch that he was in favour of Municipality of Port Louis being granted City status and there was no suggestion that he wanted this deferred until after next elections. So this removes one possible big difficulty. Population about 90,000. It may not be a very big show, but there seems no reason why it should not be promoted.

Government lunch followed by visit to M/Health units Central Prison and Open-air "Rehabilitation Centre" under Ross magnificently impressive (tho' some wormwood & scrubby buildings). Leitch, Perm. Sec., M/Health, Princess Margaret/Victoria hospital. Problem of overcrowding. Maternity cases kept for 24 - 36 hours. Children sleep two to a bed. Problem of nursing standards. Medical standards good on whole, nursing poor. Leitch would like to link local qualification to S.R.N. and make appointments to certain grades conditional on this. But resistance from nurses' trade union.

/Forget,

Forget, Minister of Health, told me form on family planning. Aim of his Ministry is to have 100 clinics (30 already exist, 70 will have to be built), with a doctor in charge of each, at which advice will be fully integrated with antenatal work and other family welfare services. Advice will be limited to rhythm method. Only appliance will be a calendar card. This will cost £1m. a year; There will be a publicity campaign using every possible medium.

Experiment in U.K. among educated people under medical supervision has shown 90% success. In Mauritius there should be 50% success. There will be Advisory Board, with Church leaders on it. R.C. Church would co-operate, tho' it is mistrustful lest this method lead to others. Forget's private hope is that it will! This has not yet been approved by Ex.Co. Finance is a problem. They are hoping for Ford Foundation participation and a F.F. representative has been visiting with Abell Smith. Ram says F.F. participation is doubtful unless rhythm is combined with "the pill" and the R.C. Church would not countenance the latter and F.F. would not play without Church support.

Talk with Sir A. Nairac.

Thinks Stage I has worked well. Considers it inevitable that Labour Party will fight elections and come to London on issue of telescoping whole process, including Independence. He seemed philsophical about inevitability of this and was relieved when I told him that I thought H.M.G. should be able to insist on a decent period of full internal self-government without Independence. N. does not see how Council of Ministers can continue to work with opposition and nominated members on it.

30th March. Talk with HE, Ramgoolam and Bates.

Finance - Development. Pleased that London Market loan is agreed in principle and hope restoration of development programme ceiling can be quickly agreed. They have to lay budget before Leg. Co. in 3 weeks and, as part of the estimates, to present, Development Plan. As they are nearing end of period, estimates for next year (to June 1964) must correspond closely to amounts available.

In connexion with drought re-insurance requirement, Bates is writing to Kirkness or Burr about the shape of their estimates and sincerely hopes that this report in general terms will suffice without submitting draft estimates. Apart from objection in principle to latter, timing does not allow, as estimates must be before Leg. Co. in 3 weeks. Bates thinks his letter will meet request in Burr's letter to him of 1/11/62.

/Political

Political

Ram thinks more use should be made of safeguards already existing e.g. P.A.C., whose chairman is a member of Opposition. But he is not averse to Ombudsman and prefers N. Zealand model.

He repeated his strong preference for a Governor General over a President. The latter tends to dictatorship. I told him that at Independence Conferences U.K. Ministers welcomed a wish for monarchical constitutions but preferred republican forms to be adopted at Independence rather than later if there was a marked desire for them.

I reminded Ram that next Stage for Mauritius fell considerably short of Independence since he had been speaking in terms which implied that Mauritius would sail quickly into "final stage" of Independence after next elections. He affected to be shocked at the time-table as I explained it to him. He showed a complete lack of understanding of 1961 agreement but this may have been put on. He thought that the moment elections had taken place the Stage 2 constitution would be in effect i.e. the new Legislative "Assembly" and "Council of Ministers" would be convened under new constitution. I explained that the Stage 2 constitution could not take effect until an affirmative resolution of the Legislature had been passed and forwarded to H.M.G. by the Chief Minister and an Order in Council had been made. Until then, the present Constitution must remain in force. He professed to find this intolerable. I said that we could have the new constitution all ready drafted so that it could be enacted very quickly after a resolution of the House had been forwarded to London but that there were two difficulties. One was that the Conference communique did not provide complete drafting instructions to the lawyers e.g. Human rights, composition of Council of Ministers and Ombudsman. It might however be possible to get round this. (N.B. There is also the Deputy Minister of Home Affairs which we want to change!) The second point was that we would like to feel that if the lawyers went to all the trouble of drafting in advance, there was no risk of their work being useless because the party winning the elections would want to throw Stage 2 overboard and go at once for something more advanced. Ram said they must have Stage 2 at once (i.e. very quickly after affirmative resolution) and that they would want to discuss with H.M.G. arrangements for "final stage" not long after - perhaps 3 months, 6 months, not more than a year.

It is clear to me that we must get Stage 2 constitution drafted in time for it to be popped in at once, immediately after elections. Any lengthy period after elections under present constitution (if only because of old titles of Leg. Co., Ex. Co., and Chief Minister) would be unworkable. They would feel defrauded if, after having had 2½ years under Stage I, they had to have a further 6 - 9 months under it after the elections while Stage 2 was being prepared. Also, if Stage 2 is introduced quickly, there is a chance that the period for which it operated might be drawn out for longer than Ram would now admit. At least they would not be under the same impatience to have another Conference since they would feel less frustrated and have something to show. Of course there is a risk

/that

that after we had gone to the trouble of drafting an amended constitutions, they would not want it, but this has got to be faced. We are really committed under the 1961 agreement to introducing it immediately after the next elections.

As regards the loose ends:-

Human Rights. I think we are justified in inserting whatever rights we think best within the terms of the communique without further consultation with opposition parties. Ram seems content to leave it to us, tho' we should no doubt tell him which model is being followed.

Composition of Council of Ministers. The provision that the Council will not be a purely Majority Party Government but will include representatives of other Parties is going to be extremely difficult to work but should not cause difficulty in constitutional drafting. The difficulty will come later when the Governor has to make his nominations and if they have to try to work a Council including people like Koenig and Bissondoyal.

Ombudsman. I think we may need to invite de Smith to let us have a further paper with his advice and then send a despatch under para. 12 of 1961 communique. Governor will then need to consult Ex. Co., and probably other opposition leaders. Despatch would have to dispose of Council of State, as Koenig advocates that.

Police Control. We cannot change provision in 1961 communique for Home Affairs Minister and Deputy into provision for Premier to have responsibility for police without consultation with other parties but it may be possible to draft Stage 2 constitution in broad enough terms to enable either arrangement to be followed. Then Governor could steer things in direction of Premier having charge, consulting Party leaders at some stage.

On assumptions that Labour Party wins elections with easy majority on platform which enables it to claim early advance to Independence, and that assessment of situation after elections is that we should aim at Independence in fairly near future, there seem to be two broad alternative courses:-

Course A. Carry on under existing constitution after elections but have early Conference to consider next step as result of which it might be possible to compromise on Stage of full internal self-government to be followed later by independence. Overriding objection to this would appear to be frustration of working existing constitution for more than a very short period after elections. It certainly would not work for any considerably period unless next stage was seen to be independence.

Course B. Introduce Stage 2 constitution immediately after elections and be prepared to have Conference fairly soon thereafter (altho' it is possible that, having got Stage 2, Labour Government might not be in a terrific hurry to have a Conference, what with budget programmes etc.). Fact that Stage 2 was in operation

/might

might make it more difficult to resist independence resulting from Conference: and this would be open to objection that there ought to be a period of full internal self-government during which Council was a Majority Party Government under Premier, Service Commissions were executive, and Ministers had control of Police, before country took strain of independence. Otherwise double change in one leap would be too much. Best of both worlds would be attained if Stage 2 constitution is introduced immediately after next elections, there is a Conference fairly soon thereafter (say between 6 and 12 months) at which Labour Party will press for independence and others will oppose, result is compromise under which there will be a further stage of full internal self-government to be introduced (say) 6 months after Conference but Independence is agreed in principle and it is agreed that there will be a further conference (? within, say, 2 years) to determine a date and final arrangements.

6. There seems to be no real interest in ideas of integration or "closer association" with E.A. or U.K. Opposition parties would of course vaguely like continuing connexion with U.K. but pressure of Labour Party for full independence likely to carry day. Connexion with E.A. talked of in economic terms, but not political.

Annex 2

Letter from D.J. Kirkness,
10 May 1965

FAC.93/892/01 [redacted] 10th May, 1965.

You know of the proposals to detach certain islands from Mauritius and Seychelles for use for defence purposes. You are aware also that it is our view that willing acceptance in the two Colonies is essential to our object, and that in order to secure this it will be necessary to compensate the two Governments for their loss of territory. The likely form and scale of compensation were suggested in Mauritius telegram Personal No.75, which has been circulated.

Z4/31/4

2. I am writing now about the attribution to Votes of any expenditure of this kind. We think Ministers should be enabled to see the full financial effects quite clearly when they come to decide on the proposals as a whole. We have all along resisted the suggestion that expenditure on compensation should be met from Colonial Office Votes, or O.D.M. Votes covering expenditure on dependent territories, because we think that this would tend to mask the true cost of obtaining defence facilities by suggesting that compensation is a separate transaction necessary to meet some Colonial Office interest. There is in fact no Colonial Office interest in detaching these islands. If they were not wanted for defence purposes, we should have no reason for proposing either their detachment or these payments to Mauritius and Seychelles, which will be quite outside the normal pattern of our aid. Compensation will be part of the price of obtaining defence facilities which the United Kingdom needs, and it would be wrong, and would set an undesirable precedent, to treat it otherwise.

3. Insofar as it is possible to distinguish departmental interests within the policies of H.M.G. as a whole (and this distinction is of course implicit in the Vote system) the interest here is clearly a Ministry of Defence one. We therefore remain firmly opposed to meeting any part of the costs from Colonial Office or O.D.M. Votes, and hope it can now be accepted that the cost of compensation should be met from Defence Votes.

4. I am copying this letter to Wright, Ministry of Defence, Peck, Foreign Office, Champion, C.R.O., and Burt, O.D.M.

(D.J. Kirkness)

K.L. Sharp, Esq.,
Treasury.

Annex 3

Memorandum from the Commander-in-Chief Mideast to the Ministry of Defence,
7 June 1965

0708252 June

From: C in C Mideast

Date: 7.6.65.

Recd: 1045Z

To: MOD UK

Info: C in C SASA Flag and Rear J
HMS MAURITIUS
Governor Mauritius

W A R N I N G

NO UNCLASSIFIED REPLY OR REFERENCE

PRIORITY

TLL

MIDCOS 87/07 Jun.

Ref: TLL/212109Z/COSMID 6

For CDS.

1. I have just completed a short visit to Mauritius where I had discussions with the Governor, Premier, Commissioner of Pol: Government Officials and CO HMS MAURITIUS.

2. The atmosphere appears calm and confidence has been re-store a large measure. However, there remains an underlying fear of further threats to security during cane cutting at the end of the month when Pangas are in daily use and this fear will increase as the time for constitutional talks approaches. Undoubtedly the arrival and presence of the Coldstream Company has had a marked effect on the situation.

3. The Premier of Mauritius was most grateful for the prompt arrival of the company and is most anxious that it should remain until after the constitutional talks. The Governor and I felt that a company should remain in the island until say December, but that a review of this requirement should be made in September/Octob in the light of the situation prevailing as the result of the constitutional talks.

4. There will be no problem over accommodating the Company unt the end of the year, but if it is required after December its presence in HMS MAURITIUS leave camp during the local hot weather will affect the Naval families amenities and other accommodation should be found. Various alternatives are under consideration this will have to be resolved in September/October when the commitment is reviewed.

5. The Premier and his ministers now understand the gravity of t situation and appreciate that calls for assistance are speedily met. I believe that serious consideration should be given to waiving charges for our assistance so that the present co-operative atmosphere can continue.

6. I visited the COMCEN HMS MAURITIUS and the transmitting site at Bigara. I did not see the receiving site at Tombeau Bay, though I understand that the security problem is similar to that of Bigara.

7/.....

7. There is no doubt that the equipment in Bigara and the COMCEN is very vulnerable to either direct attack or sabotage though this risk will be reduced when projected works services are completed in about eight months time. However, so long as no fence is allowed, apparently for technical radio reasons, the security is severely prejudiced.

8. The CO HMS MAURITIUS is understandably most anxious about the security of this important strategic communications complex I share his view that the number of guards available is insufficient for normal basic security requirements such as gate sentries and sentries on presently vulunerable points. This would appear to be essentially a single service problem in that the complement of HMS MAURITIUS is apparently insufficient to enable the CO the deploy personnel to provide the normal security which could be expected in a service establishment of this sort.

9. The solution would seem to lie in one of the following:

(a) Increasing the present Admiralty constabulary, recruited from local sources and employing expatriate supervisory grades.
(b) Increasing the Naval complement of HMS MAURITIUS to enable guards to be mounted.
(c) Providing a RM detachment as suggested in the reference.
(d) Deploying 30 men from the present company on a rotational basis to HMS MAURITIUS to carry out occasional patrols in the area of the transmitting and receiving sites and the COMCEN.

10. As there is no evidence of any direct threat against HMS MAURITIUS there is no justification for a RM detachment on static guards duties which, for highly trained servicemen, is both bad for morale and wasteful of man power.

11. The correct solution would appear to be (a) above. However the CO HMS MAURITIUS has the gravest doubts of the reliability of the present type of Mauritian Admiralty constable. This is due to the low rate of pay offered which equates to low grade domestic staff and which if of the order as the Mairitian police would attract a better type of man. Therefore the low rate of pay would seem to be the main obstacle to improving the calibre of the force.

12. I understand that shortage of Naval manpower would preclude increa the complement of HMS MAURITIUS to provide the solution at (b).

13. I have already commented on the provision of a RM detachment and for similar reasons I do not wish the company of Coldstream Guards to undertake static guard duties which would be to the detriment of their primary duty in the island which is to maintain a British Military presence with consequent deterrent effect of would be agitators.

14. However I consider that whilst the island is quiet the provision of GKP men from the company on temporary detachment to HMS MAURITIUS on a rotational basis for periodic Mobile patrols would enhance the security pending a permanent solution and completion of essential works services. I have therefore authorised the Coy to provide these periodic patrols. They will be withdrawn in the event of racial tension requiring their deployment for IS purposes and in this event CO HMS MAURITIUS could provide Naval guards

pending....

pending reinforcements from my Command.

15. This assistance must not prejudice the increase in strength and pay of the Admiralty Constabulary, which should be dealt with as a matter of urgency.

16. The milo I have provided will improve the Liaison between HMS MAURITIUS and the special Brany thus permitting the CO to make early assesment of the possibility of a threat to the W/T sites.

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Mr. Laskey Cabinet Office
JIR Cabinet Office
Room 9, Foreign Office (6)
Maj. Gen. Mc Neill CRO (3)
CRLO
Mr. R.M. Blaikley, Colonial Office (6)
BDS Washington (by bag) (4)

Annex 4

Note on the Background to the Constitutional Conference, complied by the Reference Division, Central Office of Information, 20 August 1965

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August 20th, 1965.
COI/EV

BACKGROUND TO THE MAURITIUS CONSTITUTIONAL CONFERENCE

Status after Internal Self-Government to be Determined: Difference Between Political Parties: Population Problem: The Dependencies.

A conference to settle the next stage of constitutional advance for the colony of Mauritius, and to determine its ultimate constitutional status, will open in London on 7 September. All the parties represented in the Mauritius legislature have been invited to send representatives.

The Colony

Britain's link with Mauritius, an island in the Indian Ocean some 20 degrees south of the equator and 550 miles east of the Malagasy Republic, dates from 1810, when the island was captured from France during the Napoleonic wars. Along with its dependencies (which at that time included Seychelles, now a separate colony), it was formally ceded to Britain in 1814 by the Treaty of Paris.

The island has an area of about 720 square miles and a multi-racial population of 722,000. Two-thirds of the people are Indo-Mauritians (immigrants from the Indian subcontinent and their descendants); there is a Chinese community of about 23,000; and the rest, known as the general population, comprises people of European (mainly French), African and mixed origin. With the mixture of races goes a great variety of languages and religious beliefs.

The Present Constitution

A constitution which came into force in March 1964 embodied changes agreed at a constitutional conference in London in 1961 and implemented in two successive stages. It gives the colony a substantial measure of internal autonomy.

The government is vested in a Governor, with a Council of Ministers presided over by the Governor, or in his absence by the Premier, and a Legislative Assembly. The Premier, appointed by the Governor, is the person who, in the Governor's opinion, is the most likely to command the support of a majority of members of the legislature.

The Assembly contains 40 elected members, elected by adult suffrage from single-member constituencies, up to 15 nominated* members (there are at present 12), and one ex officio member, the Chief Secretary. The Council of Ministers consists of the Premier, the Chief Secretary, and between 10 and 13 ministers appointed by the Governor on the advice of the Premier from the members of the Legislative Assembly.

External affairs, defence and internal security remain the responsibility of the Governor, in consultation with the Premier. The constitution provides for the safeguarding of human rights and fundamental freedoms and for the redress of infringements of these rights and freedoms on the courts,

/ Sheet 2 .....

Following the 1963 general election, the Mauritius Labour Party has had a majority in the Assembly, and its leader, Sir Seewoosagur Ramgoolam, is Premier. His Government is, however, a coalition, composed of members of all the political parties represented in the Assembly.

Constitutional Future

At the 1961 constitutional conference it was agreed that after the changes then decided upon had been into force, and provided that all went well, it would be desirable for Mauritius to be able to move towards full internal self-government.

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

The question of the ultimate status of Mauritius, and the timing of accession to it, will be the main matter to be considered at the 1965 conference. It is hoped that the conference will also work out detailed proposals for an internal self-government constitution, and in this it will have the help of recommendations made by Professor S.A. de Smith, appointed Constitutional Commissioner in 1961, whose report was published in Mauritius in January 1965.

The Political Problem

Although Mauritius has a history of exceptionally harmonious relations between the various communities, the development of political parties has been largely on a communal basis, and with the approach of self-government differences of view about the colony's future have emerged and have tended to harden along communal lines.

The present constitution represents a compromise between the views of the various parties. At the 1961 conference the dominant Mauritius Labour Party, which draws its support largely from the Hindu element in the population and is pressing for independence within the Commonwealth, accepted the two-stage plan with certain reservations, as being in the best interests of Mauritius as a whole.

The Parti Mauricien, representing in the main the Creole middle classes and the Franco-Mauritian land-owning classes, did not accept it. Most of the minority parties were fearful of independence without constitutional and legal safeguards for the various communities.

Inter-communal tension increased during the early months of 1965, and in the course of May Day celebrations some violent clashes took place. On 14th May the Governor proclaimed a state of emergency and, in response to his request, a small British military force was sent to the island as a precautionary measure. Maintenance of law and order remained, however, in the hands of the police. No further incidents were reported, and the state of emergency was ended on 1 August.

Economic Background

Mauritius has virtually a one-crop economy: sugar covers about 90 per cent of the total area under cultivation, employs a third of the labour force and, together with by-products, accounts for over 95 per cent of the island's exports.

/ Sheet 3 .....

The relative prosperity which Mauritius enjoys is due almost entirely to increasing production of sugar and guaranteed prices under the Commonwealth Sugar Agreement, which runs until 1971. Gross national income in 1963 was Rs. 920 million (£69 million), giving an income per head of around £90, which is considerably higher than in most African and Asian countries.

Other crops grown for local consumption or for export include tea, tobacco, aloe fibre, maize, vegetables and fruit. There is no mineral production and manufacturing industry is still at an early stage, though further development based on imported raw materials is being encouraged by the Government. The island is beginning to develop a tourist industry.

The Population Problem

The central economic and social problem in Mauritius is growth of population. With an average of about 1,000 people to the square mile, the island is already one of the most densely populated agricultural areas in the world, and a continuing high birth rate and falling death rate are resulting in an increase of some 30 per thousand annually.

Although it is expected that the sugar industry will expand further over the next few years, it seems unlikely that it can absorb a greatly increased labour force - already there is seasonal unemployment and underemployment - and other forms of employment will have to be found.

The rapid increase in population also lays heavy burdens on the social services. Expenditure on public assistance (including family allowances and old age pensions) in 1964 amounted to about £2 million, or more than 12 per cent of the Colony's total revenue.

The Government is trying to meet the problem in a number of ways: for example, by encouraging the diversification of crops and the promotion of industry to provide new forms of employment. The Government is prepared to give generous financial and other assistance to a programme of family planning, and advice as to how the efforts of voluntary agencies might be co-ordinated has been sought.

Development and British Aid

Mauritius has financed the greater part of its development from its own resources. The British Government has, however, made a number of grants and loans and has contributed towards reconstruction after the devasting cyclone which occured in 1960. In all, Britain is contributing about one-third of the total cost (estimated at £30 million) of the current 1960-66 development programme.

The Dependencies

Mauritius has a number of small dependencies in the Indian Ocean. Rodrigues, 350 miles to the east, with an area of 40 square miles, has a population of approximately 19,000, mainly fishermen and small farmers. The island is administered by a Magistrate and Civil Commissioner from Mauritius, advised by an Island Advisory Council.

Of the other dependencies: Chagos Archipelago, 1180 miles to the north-east, consists of five groups of coral islands, the biggest of which, Diego Garcia, was of strategic importance during the second world war; Agalega, 580 miles to the north, consists of two small islands connected by a narrow sandbank, and is the main source of copra for the edible oil industry of Mauritius; and the Cargados Carajos archipelago, 250 miles to the north, usually referred to by the name of the principal islet, St. Brandon, is a fishing station leased to a Mauritius company.

/ Sheet 4 .....

The total land area of the lesser dependencies is $47\frac{1}{4}$ square miles and the population about 2,000, most of whom are Seychellois and Mauritians engaged as labourers on copra estates on short-term contracts.

Compiled by the Reference Division,
Central Office of Information,
LONDON.

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Annex 5

Note of a meeting with the Secretary of State at 10 a.m. on 3 September 1965

Note of a Meeting with the Secretary of State
at 10 a.m. on 3rd September 1965

Present:

The Secretary of State for the Colonies
Lord Taylor
Sir Seewoosagur Ramgoolam
Mr. A. J. Fairclough

Sir Seewoosagur Ramgoolam paid a courtesy call on the Secretary of State in the course of which the following points of interest were mentioned:-

(i) Sir Seewoosagur Ramgoolam said that the Parties had found a lot of things on which they agreed - except on the independence issue. The Parti Mauricien were still against independence although they had dropped integration; they might mention it at the Conference but would not press it. The I.F.B. supported independence. As regards the M.C.A., Mr. Mohamed was vacillating as the Parti Mauricien had offered the "bribe" of a separate communal electoral roll.

(ii) The Secretary of State said that it seemed to him things were more fluid than when he visited Mauritius in April. Sir Seewoosagur agreed and said that he thought it should be possible to reach some agreement at the Conference.

(iii) On the question of how long the Conference might take, which Sir Seewoosagur raised, the Secretary of State said that he had no firm view - it depended upon how conciliatory the Labour Party and the Parti Mauricien were prepared to be. Sir Seewoosagur commented that on the last occasion the constitutional discussions had lasted 12 days and had been brought to a conclusion then by Mr. Macleod imposing a solution. /Sir Seewoosagur appeared to imply that a solution imposed by the Secretary of State might be necessary on this occasion also./

(iv) The Secretary of State agreed that it was unfortunate that discussions on the UK/US defence proposals came at the same time as the Conference; he said that it would be necessary to discuss these separately and in parallel and not let them get mixed up with the Conference. Sir Seewoosagur Ramgoolam agreed.

(v) On the question of a separate Muslim electoral roll, Sir Seewoosagur Ramgoolam said that he felt this must be resisted. He added that it would benefit him politically to agree to it but it was against his Socialist principles and would fragment the country. It should be avoided.

(A. J. Fairclough)
6th September 1965

Annex 6

Mauritius – Defence Matters: record of a meeting in the Secretary of State's room in the Colonial Office at 10.30 a.m. on Monday 13 September 1965

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MAURITIUS - DEFENCE MATTERS

RECORD OF A MEETING IN THE SECRETARY OF STATE'S ROOM IN THE COLONIAL OFFICE AT 10.30 a.m. ON MONDAY, 13TH SEPTEMBER

Present:

THE SECRETARY OF STATE
LORD TAYLOR (from 11.0 a.m
SIR JOHN RENNIE
MR. A.N. GALSWORTHY
MR. TRAFFORD SMITH
MR. FAIRCLOUGH
MR. STACPOOLE
MR. NOAKES

SIR S. RAMGOOLAM
MR. KOENIG
MR. MOHAMMED
MR. BISSOONDOYAL
MR. PATURAU

THE SECRETARY OF STATE explained that the purpose of the meeting was to discuss the proposals for defence facilities in the Chagos archipelago which had been put to the Council of Ministers in Mauritius by the Governor. He had been anxious to hold this discussion outside the conference so as to avoid the two subjects becoming confused. He was grateful to Mauritius Ministers for suggesting that the opportunity of their presence in London for the conference should be used to discuss this proposal further. Since receiving their initial comments the British Government had discussed the matter further with the United States Government and there were difficulties about the terms which the Mauritius Government had proposed:

(i) The United States Government were not prepared to consider a lease but required a firm assurance of permanency; the Secretary of State himself feared lest a lease might become a divisive factor in Mauritius politics.

(ii) With regard to compensation, the United States

/Government's

Government's reaction to the proposals about facilitating importation of sugar by the United States from Mauritius, and the immigration of Mauritians into the United States had not been receptive. Representations had been made to the United States Government, but there was little hope of securing a favourable response on these two points. The only proposal on which the British Government could react positively was the suggestion that Mauritius should receive a substantial lump sum payment by way of compensation.

The Secretary of State invited Ministers to comment on this explanation of the position, adding that he was anxious to report to his colleagues on their general attitude to the proposal within a few days.

In answer to an enquiry from MR. MOHAMMED, it was explained that if the islands were detached from Mauritius, Britain would take direct responsibility for their administration. The United States Government would construct communications and support facilities on the islands and Britain and the United States would use the facilities jointly. Only the Chagos Archipelago would be affected - Agalega was not concerned. THE SECRETARY OF STATE emphasised that the existence of these facilities would be a general stabilising influence in the area. He also emphasised the link between the existence of such facilities and Britain's ability to give Mauritius defence help.

MR. BISSOONDOYAL said that, without committing himself on the major issue, he would like to know how large a sum by way of compensation Mauritius could expect.

THE SECRETARY OF STATE replied that it would be difficult to quantify compensation at that stage. There would be two elements: compensation to landowners and the costs of resettling the displaced population of the Islands on the one hand, which were calculable; and the proposed payment to the Mauritius Government for capital

/development

development which would have to be negotiated. He mentioned £1,000,000 as an indication of the order of sum which might be considered.

MR. MOHAMED said that Mauritius wanted help of a continuing nature in such matters as providing a favourable market for sugar exports and an outlet for surplus population. It would be useful for Mauritius to have British and United States forces available in the area. It was very unfortunate that all the requests they had made had been rejected. Nevertheless, they would agree with pleasure to the establishment of a base, bearing in mind their desire for British intervention in case of a need for help against external aggression or internal disorder, provided that the compensation took the form of assistance of a continuing nature. Members of the BRITISH DELEGATION pointed out that capital assistance for development purposes, if properly used, should have a continuing beneficial effect on the economy of Mauritius.

MR. GALSWORTHY then explained the difficulties which stood in the way of securing a large quota, such as the Mauritius Government desired, in United States sugar imports at a preferential price. These quotas were awarded not by the U.S. administration but by Congress, and the administration advised strongly that the way to get an optimum quota for the Commonwealth as a whole was to rely on the "past performance" formula. If the Commonwealth, or individual members of the Commonwealth, were to abandon this formula and press for specially favourable treatment, the door would be opened to general lobbying in which the South American states would be sure to do better than the Commonwealth, or even squeeze the Commonwealth out altogether. By pressing unilaterally for a larger quota Mauritius might thus easily prejudice the interests of the Commonwealth as a whole. The prospect was that, under present arrangements, Mauritius would obtain a quota of 12,000 tons a year for 5 years.

/MR. PATURAU

MR. FATURAU said that this contrasted unfavourably with Fiji's quota of 45,000 tons and a much larger quota for Australia. Mauritius could supply 60,000 tons. He thought that Mauritius should withhold its cooperation over the bases proposal until the United States Government made a better offer, and MR. MOHAMMED endorsed this.

SIR S. RAMGOOLAM enquired about the possibility of a general trade agreement between Mauritius and the United States covering such commodities as wheat and rice. Other Mauritian delegates pointed out that the United States was disposing of surplus wheat at low prices and suggested that an agreement between the two countries, covering commodities of which each had a surplus for disposal, should be practicable.

MR. GALSWORTHY said that in connection with the United States surplus wheat exported under Public Law 480 the Commonwealth had agreed some years ago not to arrange consignments unless it could be shown that they were additional to normal supplies. The purpose of this was to avoid disrupting normal trade arrangements. This concept of "additionality" as a basis for deals under Public Law 480 had been accepted for some time, both by the Commonwealth and by the United States.

Such deals were normally not give-away arrangements but were paid for - but in local currency.

Everyone was opposed to commodity barter agreements since they were restrictive and tended to limit trade opportunities. An arrangement whereby sugar from Mauritius was bought by the United States on condition that Mauritius bought rice and wheat from the United States was to be an objectionable barter agreement of this kind.

MR. MOHAMMED made the point that what Mauritius was seeking to do would not disrupt Commonwealth trade. At present Mauritius imported flour from, e.g. France and West Germany; she would like to take flour instead from the United States; and obtain an export

/benefit

benefit thereby. The United States was seeking to obtain something (i.e. the Chagos Archipelago) which belonged to Mauritius; Mauritius was naturally trying to bargain for something that would be of benefit to her. Speaking frankly, compensation by way of capital aid was not really what Mauritius needed; what she needed was trade, and in particular openings for sugar exports, which would continue long term.

MR. GALSWORTHY made two points in relation to the suggested replacement of wheat imports from other sources by United States wheat -

(i) if German wheat was shut out the prospects of German economic aid would be dim;

(ii) if Candadian wheat (which he said Mauritius bought occasionally) were shut out, Canada might not continue to be so willing to import Mauritius sugar, which at present she did under the Commonwealth Sugar Agreement.

THE SECRETARY OF STATE suggested that Mauritius ministers might wish to consider all these points which had been made very carefully, since they would obviously not wish to pursue any arrangements which might have adverse consequences for Mauritius. It might be possible to arrange for someone from the United States Embassy to meet the Mauritius ministers to explain the working of Public Law 480 arrangements and to see if something could be worked out which would be of assistance to Mauritius.

SIR JOHN RENNIE made the point that Mauritius has an interest from the point of view of sugar exports, which coincides with the general Commonwealth view over commodity barter agreements - their interest was that no market should be closed to Mauritius sugar by any such agreements.

There was then some general discussion on points arising in connection with the proposed detachment of the Chagos Archipelago; important points made were:-

/(1)

(i) If the Islands were detached, they would remain British; they would not become American territory; the Americans would provide and own the facilities constructed on the Islands, of which we would have joint use; but the territory would remain British;

(ii) The availability to Britain of defence facilities in Chagos and in the Seychelles Islands could, with Aden due to become independent and with other changes in the area, be of very great importance to Mauritius herself from the point of view of bringing assistance to Mauritius, if it were ever needed;

(iii) Compensation payments made in connection with detachment would be over and above ordinary development aid;

(iv) The present administration costs of Chagos were minimal. Mauritius provided teachers, nurses, drugs and magistrates on a limited scale, but the Company (which was Seychelles registered and did not benefit Mauritius directly as copra was now exported through Seychelles) made payments for these services.

MR. MOHAMMED said that he recognised that Mauritius must in her own interests make facilities available. He stressed, however, the importance of securing some benefit in exchange; Mauritius ministers were prepared if necessary to go to the United States and bargain on the matter. MR. PATURAU also said that he recognised the necessity for defence facilities of this sort and felt that Mauritius should agree; they could not remain in a void in the Indian Ocean; but Mauritius must get something out of it. To him it seemed incomprehensible that Fiji should get a 45,000 ton sugar quota under the United States legislation whilst Mauritius got only 12,000 tons.

In further discussion about United States sugar quotas, MR. GALSWORTHY again stressed that these were determined not by the

/United States

United States administration, but by Congress. In 1962 the administration had asked for a 100,000 tons quota for Mauritius; for unknown reasons Congress had cut it out altogether. As regards the latest United States proposals, legislation had already been published with the proposed quotas included, within a specified overall total. If Mauritius were now to get an increase in its quota, it would have to be at the expense of someone else, and this would be publicly apparent; there was no real possibility of this happening.

THE SECRETARY OF STATE reiterated his suggestion that British ministers might meet someone from the United States Embassy - he hoped within two or three days.

THE SECRETARY OF STATE, summing up the discussion, undertook to seek to arrange for an appropriate official of the United States Embassy to meet Mauritius ministers, he hoped within the next few days. He expressed the hope that the Ministers would, meanwhile, give further thought to the formulation of their compensation requests and to their general attitude to the proposals. He recognised that MR. BISSOONDOYAL had reserved his position to resume discussions between Mauritius Ministers and himself in the near future.

Annex 7

Note of a Meeting held at the Embassy of the U.S.A., London, at 11.30 a.m. on Wednesday 15 September 1965

Enter 2 soon

CONFIDENTIAL

Note of a Meeting held at the Embassy of the U.S.A., London, at 11.30 a.m. on Wednesday, 15th September, 1965

Present:-

U.S. Embassy

Mr. Armstrong	Minister - Economics
Mr. Coote	
Mr. Ingersoll	
Mr. P. Barringer	

Mauritius Delegation

Dr. the Hon. Sir S. Ramgoolam	Premier & Minister of Finance
The Hon. A.R. Mohamed	Minister of Social Security
The Hon. S. Bissoondoyal	Minister of Local Government & Civil Defence
The Hon. Jules Koenig	Attorney-General
The Hon. M. Paturau	Minister of Industry, Commerce, & External Communications
Mr. F.L. Simpson	Secretary to the Mauritius Delegation to the Constitutional Conference

- - - - - - - - - - - -

Dr. the Hon. Sir Seewoosagur Ramgoolam referred to defence proposals affecting Mauritius and its Dependencies. Mauritius belonged to the free world and was very willing to co-operate in the defence of the free world.

2. Mr. Armstrong said he was not qualified to speak on the communications proposals, which were a matter for the British Government, but he could discuss two questions which, he understood, were of close interest to Mauritius Ministers - namely, sugar and immigration. In respect of both of these matters legislation was at a critical stage in the U.S.

Sugar

3. There was a limitation, by means of quotas, for both domestic continental producers, both of cane and beet, and for off-shore producers (Hawaii, Puerto Rico, Virgin Islands). There was also a limitation by quota of foreign imports by country of origin.

4. It was necessary to bear in mind the separation between the Legislature and the Executive in the U.S. There was a constant struggle between the two Branches. There was currently a Bill before

/Congress ....

Congress which embodied a recommendation by the Executive of a quota of 15,000 metric tons for each of the next five years for Mauritius sugar. He could not, however, say what the Bill would look like when it emerged from Congress. The Executive would do its best to have the quota for Mauritius maintained, but could not guarantee that it would be.

5. In 1963 the U.S.A. bought 58,000 tons of sugar from Mauritius, and was prepared to take more, but Mauritius was not in a position to supply. The U.S. was facing a prospective domestic shortage of sugar owing to the destruction wrought by hurricanes in Louisiana, but the world crop was generally expected to be large. He thought that in the general context the quota proposed for Mauritius was fair and reasonable.

6. Dr. the Hon. Sir Seewoosagur Ramgoolam asked how quotas were worked out.

7. Mr. Armstrong said that this was a highly scientific exercise. Estimates were made of prospective domestic production and of how much sugar should be imported. Domestic production was barely economic. When Cuba went communist and the U.S. ceased to buy Cubas sugar, there had been heavy pressure to increase domestic production and to reduce the total volume of imports. This had been successfully resisted and approximately the same balance had been maintained as between domestic production and imports. Thus Cuban sugar had been replaced by imports from friendly sources, but it was impossible to make everyone happy.

8. The Executive would prefer more flexibility in legislation, but Congress insisted on fixed country quotas. Thus if there was a shortfall in supply by one country, the balance could not be distributed to others. The Executive had endeavoured to work out an equitable distribution of quotas. The underlying fact, however, was that the general market position was soft. This affected all producers, but especially, of course, those whose economy was mainly dependent upon sugar production. He understood that Mauritius was an efficient producer, and was largely taken care of through the Commonwealth Sugar Agreement.

9. Mr. Koenig pointed out that Mauritius had a "negotiated price" quota for only 380,000 tons as compared with production expected to be about 680,000 tons this year. The balance of her sugar had to be sold at the prevailing world market price. This meant that the average price worked out at only about £31 per ton, compared with average production costs of £30 per ton.

10. Mr. Paturau observed that in 1962 the House Agriculture Committee recommended a quota of 110,000 tons for Mauritius, but

/the ....

the Bill was modified by the Senate and the final proposal accomodated all foreign supplies except Mauritius and Argentina.

11. Subsequently, in the course of discussion of the Honey Bee Bill, Argentina obtained a quota and Mauritius was left as the only foreign supplier excluded from the provision of the Sugar Act.

12. In spite of this, Mauritius took the first opportunity to supply sugar to the U.S. in an endeavour to show its goodwill and ability to supply. In the second half of 1962 Mauritius shipped 13,000 tons of global quota to the U.S. and in the second half of 1963 another 67,000 tons were shipped at a time when the U.S. was most in need of sugar and when the price which Mauritius could have obtained in the world market was higher than the one which it obtained on the U.S. market.

13. Late in 1963, the U.S. Department of Agriculture invited application for global quota sugar for 1964 - Mauritius had then no uncommitted sugar left over from the 1963 crop. It informed the U.S.D.A. that it could supply 60,000 tons in the second half of 1964, but this application was not entertained.

14. The formula adopted for the determination of quota for the period 1966/71 gives double weighting to 1964 and therefore unjustly penalises Mauritius and does not take into account that it is a second half of the year producer. Whatever the formula adopted, we feel there is some difficulty to understand how the Agricultural Committee could recommend a quota of 110,000 tons for Mauritius in 1962 and change this to 15,000 tons in 1965.

15. Mr. Armstrong said that these comments demonstrated the complexity of the matter. The people in the Executive Branch who were responsible for dealing with this subject were known to him personally as very fair-minded, but there were many pressures and there had been disorder in the world sugar market after Cuba went Communist.

16. Dr. the Hon. Sir Seewoosagur Ramgoolam said that there were certain factors which deserved consideration. Mauritius was a very special place. Mauritius was almost wholly dependent upon sugar. The Mauritius Government were fully aware of the need to diversify the economy and were doing their best to facilitate such diversification. But they were conscious of the fact that diversification would take a long time. In the meanwhile Mauritius was experiencing a population explosion, and the economic resources of Mauritius could not sustain its rapidly increasing population. Mauritius had been left out in 1962. Mauritius was part of the free world, and wished to remain so. But if living standards declined, pressures from outside would be liable to have an increasing effect locally.

/17 . . .

17. Mauritius was not so interested in receiving some sort of lump sum compensation for providing defence facilities, but in finding a market for its sugar, in return for which rice and wheat could be purchased. It was in the interests of the free world to help Mauritius. Mauritius was a very stable country, the most stable in her part of the world. Recent disturbances were not important. The best way of helping to maintain stability in Mauritius was by trade.

18. Mr. Armstrong took note, but could not comment. Sugar was the only commodity tied up in the U.S. by a quota system.

Immigration

19. Dr. the Hon. Sir Seewoosagur Ramgoolam referred to the visit recently paid by the Minister of Housing to Tananarive, where he had had discussions with the U.S. Ambassador.

20. Mr. Armstrong explained that new legislation was proposed which would move away from the country quota system to one allowing the criteria of blood relationship to U.S. citizens and of economic usefulness to be applied.

21. At present Mauritius had a sub-quota of 100 per annum within the U.K. quota. Under the new legislation she would have a quota of 650 per annum for three years, and thereafter 200 per annum. If independent, Mauritius would not have a fixed quota, but individuals would compete within an overall annual quota of 170,000. From 1954 to 1963 a total of 65 immigrant visas had been granted to Mauritians, for 1964 the figure was 15, and this year - so far - only one. There were long waiting lists for a number of countries.

Sugar

22. Mr. Paturau thought that Mauritius had done her best to make her case known in Washington. The Mauritius Chamber of Agriculture had retained the services of a lobbyist there.

23. In reply to Mr. Armstrong, Mr. Paturau said that he did not know the name of the lobbyist but it could be ascertained from Mr. Sauzier, London Representative of the Mauritius Chamber of Agriculture.

24. Mr. Ingersoll said that, apart from the question of the higher U.S. price, a satisfactory international sugar agreement would be of greater advantage to Mauritius than a U.S. import quota.

25. Mr. Paturau drew attention to the fact that Mauritius had been a sugar producer for 300 years. Mauritius could not change from sugar production. The experience of years had shown that, in the conditions of Mauritius, sugar was the most suitable crop. It was rather hard that other countries which were newcomers to sugar production, and which were not so heavily dependent as Mauritius upon sugar, should be able to obtain bigger quotas.

/26. ....

26. Mr. Armstrong said that the Executive had proposed to the Legislature the figure of 15,000 tons and could hardly now ask for a different figure. The Executive would, however, like to secure greater flexibility in the administration of quotas.

27. Mr. Koenig asked if the defence factor would have no bearing on the situation.

28. Mr. Armstrong replied that this could not be said so far as the Executive were concerned, but the Legislature gave the Executive no latitude in this matter. Other sugar producers could, of course, also advance good arguments in their own favour.

29. Mr. Koenig drew attention to the reported relative significance of Mauritius and the Seychelles in the defence context.

30. Mr. Armstrong said that the legislative process was already so far advanced that it was difficult to introduce a new factor.

31. Mr. Ingersoll added that it was essential that the new U.S. Legislation should be finalised before the International Sugar Conference which was about to start.

32. Mr. Koenig enquired about the future.

33. Mr. Armstrong said this would depend upon the legislation which was enacted and the success of the international conference.

34. Mr. Armstrong concluded that he would report fully to Washington and that there would be a response, but, on enquiry by Mr. Koenig, he added that he could not say how long it would be before the response arrived.

35. Mr. Paturau asked whether the matter of rice and wheat would be mentioned in Mr. Armstrong's report.

36. Mr. Armstrong said that the U.S. did not normally engage in bilateral trading; rice and wheat were the subject of commercial transactions. But he would certainly report what had been said.

London,
16th September, 1965

Annex 8

Records relating to meetings on 23 September 1965

RECORD OF A MEETING HELD AT LANCASTER HOUSE

AT 2.30 P.M. ON THURSDAY 23RD SEPTEMBER

MAURITIUS DEFENCE MATTERS

Present:- The Secretary of State (in the Chair)

Lord Taylor	Sir S. Ramgoolam
Sir Hilton Poynton	Mr. S. Bissoondoyal
Sir John Rennie	Mr. J. M. Paturau
Mr. P. R. Noakes	Mr. A. R. Mohamed
Mr. J. Stacpoole	

THE SECRETARY OF STATE expressed his apologies for the unavoidable postponements and delays which some delegations at the Constitutional Conference had met with earlier in the day. He explained that he was required to inform his colleagues of the outcome of his talks with Mauritius ministers about the detachment of the Chagos Archipelago at 4 p.m. that afternoon and was therefore anxious that a decision should be reached at the present meeting.

He expressed his anxiety that Mauritius should agree to the establishment of the proposed facilities, which besides their usefulness for the defence of the free world, would be valuable to Mauritius itself by ensuring a British presence in the area. On the other hand it appeared that the Chagos site was not indispensable and there was therefore a risk that Mauritius might lose this opportunity. In the previous discussions he had found himself caught between two fires: the demands which the Mauritius Government had made, mainly for economic concessions by the United States, and the evidence that the United States was unable to concede these demands. He had throughout done his best to ensure that whatever arrangements would agree should secure the maximum benefit for Mauritius. He was prepared to recommend to his colleagues if Mauritius agreed to the detachment of the Chagos Archipelago:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) that if Mauritius became independent, there should be an understanding that the two governments would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) that the British Government should use its good offices with the United States Government in support of Mauritius requests for concessions over the supply of wheat and other commodities;

(iv) that compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and others affected in the Chagos Islands.

This was the furthest the British Government could go. They were anxious to settle this matter by agreement but the other British ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council.

SIR S. RAMGOOLAM replied that the Mauritius Government were anxious to help and to play their part in guaranteeing the defence of the free world. He asked whether the Archipelago could not be leased. (THE SECRETARY OF STATE said that this was not acceptable). MR. BISSOONDOYAL enquired whether the Islands would revert to Mauritius if the need for

he was prepared to recommend this to his colleagues.

MR. PATURAU said that he recognised the value and importance of an Anglo-Mauritian defence agreement, and the advantage for Mauritius if the facilities were established in the Chagos Islands, but he considered the proposed concessions a poor bargain for Mauritius.

MR. BISSOONDOYAL asked whether there could be an assurance that supplies and manpower from Mauritius would be used so far as possible. THE SECRETARY OF STATE said that the United States Government would be responsible for construction work and their normal practice was to use American manpower but he felt sure the British Government would do their best to persuade the American Government to use labour and materials from Mauritius.

SIR S. RAMGOOLAM asked the reason for Mr. Koenig's absence from the meeting and MR. BISSOONDOYAL asked whether the reason was a political one, saying that if so this might affect the position.

MR. MOHAMED made an energetic protest against repeated postponements of the Secretary of State's proposed meeting with the M.C.A., which he regarded as a slight to his party.

THE SECRETARY OF STATE repeated the apology with which he had opened the meeting, explaining that it was often necessary in such conferences to concentrate attention on a delegation which was experiencing acute difficulties, while he himself had been obliged to devote much time to a crisis in another part of the world.

MR. MOHAMED then handed the Secretary of State a recent private letter from Mauritius which disclosed that extensive misrepresentations about the course of the Conference had been published in a Parti Mauricien newspaper. THE SECRETARY OF STATE commented that such misrepresentations should be disregarded, and that MR. MOHAMED had put forward the case for his community with great skill and patience.

MR. MOHAMED said that his party was ready to leave the bases question to the discretion of H.M.G. and to accept anything which was for the good of Mauritius. Mauritius needed a guarantee that defence help would be available nearby in case of need.

At SIR S. RAMGOOLAM'S request the Secretary of State repeated the outline he had given at a previous meeting of the development aid which would be available to Mauritius between 1966-1968, viz. a C.D. & W. allocation totalling £2.4 million (including carryover) thus meaning that £800,000 a year would be available by way of grants in addition Mauritius would have access to Exchequer loans, which might be expected to be of the order of £1m. a year, on the conditions previously explained. He pointed out that Diego Garcia was not an economic asset to Mauritius and that the proposed compensation of £3m. would be an important contribution to Mauritian development. There was no chance of raising this figure.

SIR S. RAMGOOLAM said that there was a gap of some £4m. per year between the development expenditure which his government considered necessary in order to enable the Mauritian economy to "take off" and the resources in sight, and enquired whether it was possible to provide them with additional assistance over a 10 year period to bridge this gap.

THE SECRETARY OF STATE mentioned the possibility of arranging for say £2m. of the proposed compensation to be paid in 10 instalments annually of £200,000.

/SIR S. RAMGOOLAM

SIR S. RAMGOOLAM enquired about the economic settlement with Malta on independence and was informed that these arrangements had been negotiated in the context of a special situation for which there was no parallel in Mauritius.

SIR H. POYNTON pointed out that if Mauritius did not become independent within three years, the Colonial Office would normally consider making a supplementary allocation of C.D. & W. grant money to cover the remainder of the life of the current C.D. & W. Act, i.e. the period up to 1970. He added that if Mauritius became independent, they would normally receive the unspent balance of their C.D. & W. allocation in a different form and it would be open to them after the three year period to seek further assistance such as Britain was providing for a number of independent Commonwealth countries.

SIR S. RAMGOOLAM said that he was prepared to agree in principle to be helpful over the proposals which H.M.G. had put forward but he remained concerned about the availability of capital for development in Mauritius and hoped that the British Government would be able to help him in this respect.

MR. BISSOONDOYAL said that while it would have been easier to reach conclusions if it had been possible to obtain unanimity among the party leaders, his party was prepared to support the stand which the Premier was taking. They attached great importance to British assistance being available in the event of a serious emergency in Mauritius.

MR. PATURAU asked that his disagreement should be noted. The sum offered as compensation was too small and would provide only temporary help for Mauritius economic needs. Sums as large as £25m. had been mentioned in the British press and Mauritius needed a substantial contribution to close the gap of £4-5m. in the development budget. He added that since the decision was not unanimous, he foresaw serious political trouble over it in Mauritius.

THE SECRETARY OF STATE referred to his earlier suggestion that payment of the monetary compensation should be spread over a period of years.

SIR S. RAMGOOLAM said that he was hoping to come to London for economic discussions in October. The Mauritius Government's proposals for development expenditure had not yet been finalised, but it was already clear that there would be a very substantial gap on the revenue side.

SIR H. POYNTON said that the total sum available for C.D. & W. assistance to the dependent territories was a fixed one and it would not be possible to increase the allocation for one territory without proportionately reducing that of another.

Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr. Ramgoolam, Mr. Bissoondoyal and Mr. Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

/(iii)

(iii) compensation totalling up to £m. [illegible] Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government should use its good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

(vi) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius.

vii to Foreign Minister, enclosed.

SIR S. RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

THE SECRETARY OF STATE pointed out that he had to leave almost immediately to convey the decision to his own colleagues and LORD TAYLOR urged the Mauritian Ministers not to risk losing the substantial sum offered and the important assurance of a friendly military presence nearby.

SIR S. RAMGOOLAM said that Mr. Paturau had urged him to make a further effort to secure a larger sum by way of compensation, but the Secretary of State said there was no hope of this.

SIR J. KENNIE said that while he had hoped that Mauritius would be able to obtain trading concessions in these negotiations, this was now ruled out. It was in the interest of Mauritius to take the opportunity offered to ensure a friendly military presence in the area. What was important about the compensation was the use to which the lump sum was put.

SIR S. RAMGOOLAM mentioned particular development projects, such as a dam and a land settlement scheme, and expressed the hope that Britain would make additional help available in an independence settlement.

SIR H. POYNTON said that the Mauritius Government should not lose sight of the possibility of securing aid for such purposes from the World Bank, the I.D.A. and from friendly governments. While Mauritius remained a colony such powers as Western Germany regarded Mauritius economic problems as a British responsibility but there was the hope that after independence aid would be available from these sources. When Sir S. Ramgoolam suggested that he had said that grants could be extended for up to 10 years, Sir H. Poynton pointed out that he had only indicated that when the period for which the next allocation had been made expired, it would be open to the Mauritius Government to seek further assistance, from Britain, even though Mauritius had meanwhile become independent. It would not be possible to reach any understanding at present beyond saying that independence did not preclude the possibility of negotiating an extension of Commonwealth aid.

At this point the SECRETARY OF STATE left for 10, Downing Street, after receiving authority from Sir S. Ramgoolam and Mr. Bissoondoyal to report their acceptance in principle of the proposals outlined above subject to the subsequent negotiation of details. Mr. Mohamed gave the same assurance, saying that he spoke also for his colleague Mr. Osman. Mr. Paturau said he was unable to concur.

Annex 9

Telegram from Foreign and Commonwealth Relations Office to Certain Missions,
7 October 1965

30/74/101

[redacted]

By Bag

FROM FOREIGN OFFICE AND COMMONWEALTH RELATIONS OFFICE TO CERTAIN MISSIONS

No. Guidance 101 FO/CRO/WH DISTRIBUTION
7 October, 1965

CONFIDENTIAL

MAURITIUS CONSTITUTIONAL CONFERENCE

For general background to the Conference, which took place 7-24 September, see Factel No. 455 of 13 August.

2. The main objects of the Conference were: to decide whether full independence or some form of special association with Britain should be the ultimate goal towards which Mauritius should move; to settle the timing of the transition to this goal and to decide what (if any) prior population consultation should be stipulated; and to secure the maximum possible measure of agreement between the Mauritian political parties on the provisions of the new Constitution.

3. The report of the Conference is to be issued shortly as a White Paper. Its main points are as follows:-

(a) Ultimate status

At the end of the Conference the Colonial Secretary announced that the British Government considered it right that Mauritius should move towards full independence. All the parties represented had expressed anxiety that Mauritius should remain within the Commonwealth. This is, of course, as they were told, a matter for the Commonwealth as a whole, but the Colonial Secretary assured them of the British Government's readiness (subject to the usual proviso that there should be a confirmatory resolution passed by the new legislature) to transmit their request to other Commonwealth Governments.

(b) Timing and procedure

We expect that Mauritius will become independent by the end of 1966. Since the Conference failed to agree upon the provisions of the new electoral system, the Colonial Secretary will appoint a Commission to make recommendations on the new system and on [redacted] boundaries with a view to safe-guarding the interests of all communities.

/Once the

[redacted]

Once the Commission has reported, the Colonial Secretary will decide upon the new electoral system; a General Election will be held; and a new Government formed. Independence would follow after a period of six months full internal self-government if (as we expect) the new assembly passes by a simple majority a resolution in favour of independence.

(c) Safeguards

The new Constitution will incorporate substantial safeguards for minority interests, including a chapter on human rights, the appointment of an Ombudsman, and the reservation of certain key appointments to the Governor-General (who in some cases will be required to consult both the Prime Minister and the Leader of the Opposition).

(d) Amendment of the Constitution

The Constitutional provisions covering the safeguards for the minorities, the independence of the judiciary and certain other matters are to be specially entrenched; their amendment will require the support of at least three quarters of all the members of the Legislative Assembly. Amendment of other parts of the Constitution will require the support of two-thirds of the membership.

(e) Defence and Security

We envisage the negotiation of a Defence Agreement to take effect on independence. This would provide for joint consultation in the event of an external threat to either country or an any request for assistance from Mauritius in the event of a threat to the island; internal security, together with special assistance from Britain for the Mauritius Security Forces. We for our part would continue to enjoy our existing defence facilities on the island. See also Guidance No. 394 of 1 October.

(f) Governor-General

The first Governor-general will be appointed from outside Mauritius; the nominee will be agreed between the two governments.

/4. The Conference

[redacted]

4. The Conference was difficult because the two main parties took up rigid and incompatible positions on basic issues. The majority Mauritius Labour Party refused to consider any status short of independence or to admit that any further popular consultation was necessary. The Parti Mauricien on the other hand, who advocate special association with Britain, insisted that no change of status could be decided upon without a referendum. When this demand was rejected, they withdrew from the Conference before the final session.

5. In deciding that Mauritius should move towards the ultimate goal of independence, Her Majesty's Government were moved by the following main considerations. In the first place continued association with Britain in any form likely to be acceptable to Britain and to the United Nations must leave Mauritius free to move to independence of her own volition; this would mean that agitation for independence would continue with all the uncertainty this would bring. Moreover association would prove a disappointment in that it would inevitably fail to bring many of the advantages which the Parti Mauricien had claimed for it. These considerations also disposed of any likelihood that some of the parties which had been wavering would come down in favour of association; and in the course of the Conference all the major parties except the Parti Mauricien declared themselves for independence. In the circumstances Her Majesty's Government concluded that independence was the only alternative to the present position. The proposal for a referendum was rejected because it could only serve to accentuate existing communal divisions.

6. Now that a decision on the future of the island has been reached, and in spite of the Parti Mauricien walkout from the Conference, the outlook, at least in the short-term, is reasonably promising. We would expect the Parti Mauricien and other minority political parties to come to accept independence as inevitable and perhaps even to shed some of their illusions about the value or permanence of any alternative status. We cannot rule out the possibility of minor disorders but have no reason to expect that the existing Security Forces will not be able to contain them or that the transition to independence will not be reasonably smooth. However in the longer term [redacted] real cause for anxiety in the population explosion which the island is at present undergoing and the serious economic difficulties facing a country almost totally dependent on a single crop.

/We hope

We hope however, now that uncertainty about the island's future status has been dispelled, that the Mauritian parties will at last be stimulated to turn their attention to the economic problems which their island faces.

7. You may draw at your discretion on the foregoing in conversation with friendly colleagues or in response to questions. Missions in Old Commonwealth countries should, in view of discussions in June between British Ministers and Old Commonwealth Prime Ministers, convey the whole of the material in paragraphs 1-6 above to Canadian/Australian/New Zealand authorities.

[copies sent to C.O. for overseas distribution]

[redacted]

bbbbb

[redacted]

Annex 10

Note from M.R. Moreland,
25 October 1965

NOTHING TO BE WRITTEN IN THIS MARGIN

Defence Facilities in the Indian Ocean

It was agreed at the first meeting of the O.P.D.(O)(I.O.) sub-committee that the Foreign Office, after consultation with the Colonial Office on fishing off the Chagos archipelago, should ask the U.S. Government to make available to Mauritius navigational and meteorological facilities, fishing rights and the emergency use of an air-strip in the Chagos archipelago. It was generally agreed, though not specifically recorded in the minutes, that there was no hurry to go into these matters in any detail and that it would be sufficient for us to speak informally to a member of the U.S. Embassy. It might be enough for Mr. Arthur to warn Mr. Newman (or even for me to speak to Mr. Barringer) that we shall need to discuss these three possibilities with them at some stage.

2. Just to get the record straight I submit a draft letter to the Colonial Office, copied to other members of the sub-committee.

M.R. Morland

(M.R. Morland)
25 October, 1965.

Mr Graham
Mr Arthur

26/10.

I will speak to Mr. Newman when the letter has gone off, if that is in accordance with the minutes. To speak

26/10

M. Morland

Annex 11

Note from G.G. Arthur,
27 October 1965

[redacted]

Indian Ocean Islands

When Mr. Barringer of the U.S. Embassy called on me this morning to introduce Mr. Finkelstein of I.S.A., I took the opportunity to tell him that we should wish at a later stage to discuss with the U.S. Government three matters relating to the Chagos Archipelago, namely:

(a) the provision of meteorological information to Mauritius;

(b) fishing rights:

(c) emergency landing on any airstrip that might be built.

2. Mr. Barringer took note and made no comment.

(G. G. Arthur)
27 October, 1965

Mr. Graham

Mr. Morland

Mr Barringer rang up to ask about c); I explained that it related to Chagos, like a) & b). I have told him

MRM
2/11

Annex 12

Telegram from the Secretary of State for the Colonies,
8 November 1965

OUTWARD TELEGRAM

FROM THE SECRETARY OF STATE FOR THE COLONIES

TO MAURITIUS (Sir J. Rennie)

Cypher PAC. 93/892/01

Sent 8th November, 1965 15.47 hrs.

IMMEDIATE
SECRET
NO. 298

(314) Your telegram No. 247.

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

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

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

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

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

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

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

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

Copies sent to:-

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

Annex 13

Note on Mauritius and Diego Garcia,
12 November 1965

PAC 93/892/01 1961 - 65
Part A - E

MAURITIUS AND DIEGO GARCIA

BACKGROUND

Discussions between the US and UK on the possible strategic use of certain small British-owned islands in the Indian Ocean began in 1963. A joint Anglo/US technical survey of certain islands, including the islands of the Chagos Archipelago and Aldabra, Farquhar and Des Roches, was carried out betweeen June and August of 1964.(* On 5 April 1965 the British Government gave the following answer to a question from Mr James Johnson MP

* See ovl

> 'The Premier of Mauritius was consulted in July last about the joint survey of possible sites for certain limited facilities that was then about to begin. In November the Council of Ministers, who had been kept informed, were told that the results of the survey were still being examined and that the Premier would be consulted again before any announcement was made in London or in Washington.' (24)

On 27 April 1965 a note was prepared for the Cabinet about the legal status of the islands in question, which included the following passage

> 'Chagos Archipelago
> There can be no legal doubts about the position over the Lesser Dependencies of Mauritius, which include the Chagos Archipelago. Section 90 (1) of the Mauritian (Constitutional) Order 1964 defines Mauritius as meaning 'the islands of Mauritius and the Dependencies of Mauritius'. 'Dependencies' are defined in Section 3 (1) of the Mauritian Interpretation and General Clauses Ordinance, 1957, as being 'Rodrigues and the Lesser Dependencies' commonly called the 'Oil Islands'. The 'Oil Islands' are defined as including the islands of the Chagos Archipelago.' (37)

Foreign Office telegram number 3582 to Washington of 30 April 1965 (49), contained a message to be passed to Dean Rusk at the State Department. It recommendedthat the Indian Ocean Islands chosen for defence purposes, and to be developed either immediately or in due course, should be Diego Garcia and the rest of the Chagos Islands and the Islands of Aldabra, Farquhar and Des Roches, and went on:

Secretary of State [illegible] the following statement to the Council of Ministers (a similar statement was made to the Executive Council in Seychelles):-

Insert in para

"/Recent discussions between representatives of British and United States Governments have shown that it would be in the joint interest of both Governments, in helping them to play an effective part in the defence of the Western World (including vital British and Commonwealth interests), and in the maintenance of peace in the Indian Ocean, if additional facilities in the Indian Ocean were available to them. The facilities at present envisaged by both Governments include the installation of military communications and other supporting services. Precise requirements are not yet known but it is already clear that the most suitable sites, both technically and because they would occasion the minimum disturbance of existing land use and civilian life, would be in the Chagos and Agalega archipelagos and in Aldabra.

The first step will be a joint British and United States technical survey of the Islands. The Secretary of State for the Colonies has nominated Mr. Robert Newton, former Chief Secretary of Mauritius, to accompany the survey with the task of identifying the problems which the facilities in question would pose for the inhabitants, and the economic interests likely to be affected, and of bringing these matters to the notice of the British Government. The survey will accordingly start its work immediately, visiting Chagos, Agalega, Coetivy and Desroches. The British Government will consult fully with the Governments of Mauritius/Seychelles when the results of the survey are available and meanwhile, to avoid unnecessary speculation, rely upon Ministers/Councillors to treat this information as strictly confidential./"

'It is now clear that in each case the islands are legally part of the territory of the colony concerned. Generous compensation will, therefore, be necessary to secure the acceptance of the proposals by the local governments (which we regard as fundamental for the constitutional detachment of the islands concerned) in addition to compensation for the inhabitants and commercial interests which will be displaced ... Her Majesty's Government are not finally commited at this stage. We are, however, ready to approach the Seychelles and Mauritian authorities with firm proposals for the detachment of the islands listed above. Timing of such an approach is not yet finally decided because of Mauritian political considerations.' (49)

The proposals were discussed with the Governors of Mauritius and Seychelles during subsequent weeks. A detailed and largely accurate report on the proposals was contained in the Washington Post of 9 May 1965. (71a) Although British and American intentions were becoming widely known no direct approach was made either to Mauritian or Seychelles Ministers at this stage. Reasons for the delay included the imminence of the Commonwealth Prime Ministers Conference and the Algiers conference of the Afro-Asians. On 16 July 1965 guidance was sent out to certain Missions from the Foreign Office and the CRO on the proposals for defence facilities in the Indian Ocean. (182a) On 19 July the telegram instructing the Governors of Mauritius and Seychelles to approach local Ministers on the proposals was finally sent:

'... Ministers have therefore directed that discussions should now be opened with Mauritius and Seychelles Governments on proposals ... the object of this initial round of consultations with your Ministers (would be) to secure their reactions to enable us to gauge what it might be necessary to offer to secure willing and public acquiescence for proposed developments ... in putting ~~the~~ your matter to ~~the~~ your unofficials you should indicate that as regards Diego Garcia there is a firm requirement for the establishment of communications station and supporting facilities including an air strip ... we recognise however that in the light of recent newspaper speculation you may be asked about the possibility of islands

/being

being used in connection with nuclear forces ... you could ... point out that at present all that is intended is communications facilities in Diego Garcia.' (186/187)

The proposals were put to Mauritian Ministers by the Governor on 23 July; the purpose intended for the islands did not arouse particular opposition, but both Prime Minister Ramgoolam and Duval, leader of the PMSD, expressed their dislike of the idea of detachment of the Chagos Islands. (193) At a meeting of the Council of Ministers on 13 July Ramgoolam, speaking for the Ministers as a whole, said that

'They were sympathetically disposed to the request and prepared to play their part in the defence of the Commonwealth and the free world.' (205)

The Ministers however reiterated their objections to the idea of detachment of the islands which they said would be unacceptable to public opinion in Mauritius, and suggested as an alternative a long term lease, possibly for 99 years. They wished also that provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted. Meteorological and air navigation facilities should also be assured to Mauritius. These views were subscribed to by all the Ministers present; Ringadoo, Forget and Koenig were absent. In a telegram of 10 August 1965 to the Governor, the importance of securing Mauritius Ministers agreement to the detachment of the islands was stressed:

'Please explain to Ministers that the United States Government has maintained throughout our discussions with them that the islands chosen for the development of defence facilities must be made available directly by HMG and that a leasehold arrangement would not do.' (220)

The Governor replied on 12 August:

'I have explained the position to the Premier and will do likewise to other Ministers tomorrow. I have little doubt that wide preferences for lease and compensation in the form

/of

of trade will be repeated and suggestions of discussion in London renewed.' (223)

The following day the Governor added

'I conveyed to Ministers your views this morning explaining objections to lease and warning them of difficulty about compensation in the form of American trade. They renewed the suggestion of discussion in London between representatives of Governments concerned and both the Premier and Duval said that they were sure that agreement could be reached in this way. They were clearly not prepared to agree here and now.' (225)

THE AGREEMENT

It became clear that Mauritian agreement to the detachment of the Chagos Islands would have to await discussion of the issue during the constitutional talks planned to take place in London the following month. The first meeting at which the Chagos issue was discussed in London with Ramgoolam took place in the Colonial Office on 13 September. The Secretary of State for the Colonies explained to him again that it seemed unlikely that the US Government would accept the proposal that the islands should be leased, but inquired what terms the Mauritian Government envisaged for a lease agreement. In response Ramgoolam took up his bargaining position:

'Sir S Ramgoolam reminded the Secretary of State that the Mauritian Government had asked the US Government to undertake to purchase a substantial portion of Mauritian sugar output at the Commonwealth Sugar Agreement price. They also hoped that the US would purchase tunney and undertake to supply wheat and rice in fixed quantities and at fixed prices. In addition, they wanted continued meteorological and also possibly air navigation facilities, they would like preferences in any fishing rights in Diego Garcia waters and have hoped that any labour or materials required for construction of the facility would be obtained from or through Mauritius. They would also require the payment of a regular money rent.' (255)

/On

On 15 September the Mauritian delegation called at the US Embassy to discuss the questions of sugar, rice and wheat, and the possibility of increasing emigration of Mauritians to the US, but without much success. (257) The principle meeting to discuss the detachment of the Chagos Islands was held in Lancaster House on 23 September. The Mauritian delegation consisted of Ramgoolam, Bissoondoyal, Paturau, and Mohamed. A list of conditions for the detachment of Chagos was drawn up. Ramgoolam took this back to his hotel to mull it over with Mohamed and added the following conditions in a manuscript letter of 1 October

> '(vii) navigational and meteorological facilities
> (viii) fishing rights
> (ix) use of air strip for emergency landing and if required for the development of the other islands
> (x) any mineral or oil discovered on or near islands to revert to the Mauritian Government.' (272)

The final list of conditions took account of Ramgoolams additions, and the British Governments proposals were finally put forward in Colonial Office despatch number 423 of 6 October 1965 to the Governor

The 1965 negotiations with the Government of Mauritius (then of course a dependent territory) for the detachment of the islands were complicated, and extended over several months. This note is not intended to cover the whole field but only to deal with the undertakings of direct relevance in the present context, in particular those relating to resettlement, reversion of the islands to Mauritius if they were not needed for defence purposes, and the 'benefit' of minerals or oil discovered in or near the Chagos Archipelago.

~~Agreement reached with Government of Mauritius~~

~~2. After discussions the British Government's proposals were finally put forward in Colonial Office Despatch No. 143 of 6 October, 1965~~ to the Governor of Mauritius to which was attached the agreed record of a meeting ~~with Mauritius Ministers~~ on 23 September, 1965. ~~The discussion was summarised in~~ Paragraph 22 of the record ~~and this~~ can be read with the Despatch as constituting H.M.G.'s definitive proposals. A copy of the Despatch and an extract of paragraphs 22 and 23 of the record is attached at Annex A.

3. On 5 November, 1965 the Governor reported (Mauritius telegram No. 247) that the Mauritius Council of Ministers agreed to detachment of the Chagos Archipelago on the conditions enumerated by H.M.G. on the understanding quoted below:-

"(1) statement in paragraph 6 of your despatch 'H.M.G. have taken careful note of points (vii) and (viii)' means H.M.G. have in fact agreed to them.

(2) As regards (vii) undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or

(b) any payment or financial obligation by Mauritius as condition of return.

(3) In (viii) 'on or near' means within area within which Mauritius would be able to derive benefit but for change

In part reply to this [illegible] the Governor was informed as follows:-

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

(C.O. telegram No. 298 dated 8 November)

5. On 12 November the Governor asked to what extent Mauritius Ministers could make reference in public to the points in paragraph 22 of the enclosure to Despatch No. 423. He added "In this connection I trust further consideration promised ... ... will enable categorical assurances to be given."

6. The text of the Colonial Office reply (C.O. telegram 313 of 19 November, 1965) was as follows:-

"U.K./U.S. defence interests.

There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.

2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions over sugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.

3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.

4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not

/therefore

It will be seen that while the Colonial Office reply was not a simple acceptance of the Mauritian 'understanding' it did not differ on any point of substance and agreed to publication by Mauritius Ministers of the points listed in paragraph 22 of the record. The reply did however (i) lay emphasis on British sovereignty over the islands, (ii) make it clear that a decision on their retention must be for Britain alone, and (iii) reiterate that there was no intention of permitting prospecting for minerals and oil and that the question of benefits therefrom should not therefore arise unless the islands "were no longer required for defence purposes and were returned to Mauritius".

7. The reply appears to have been accepted by Mauritian Ministers as fully satisfying the conditions they had put forward. In December the Governor cleared with the Colonial Office a draft answer to a Question put down in the Mauritius Legislature and at the suggestion of the Colonial Office a reference in the draft to possible mineral benefits reverting to the Government of Mauritius was omitted, thus reflecting the line noted in paragraph 6 (iii) above.

Published Statements

8. The main U.K. statement was made by the Secretary of State for the Colonies in the House of Commons on 10 November, 1965. This statement was subsequently issued in Mauritius with an addition which was cleared with us by the Governor before issue. The full text of the Mauritius statement is at Annex B.* More information was disclosed in the Mauritius Legislative Assembly in answer to a Question on 21 December. The full text of the Question and Answer is given in Annex C & D.

9. We have not traced any further statement by the Mauritius Government, which adds to the ones attached and is of relevance in the present context; but without exhaustive research we cannot be certain that other points covered by the original agreements have not been made public.

Summary

10. The public statement made in Mauritius by the Mauritius Government in answer to a Question in the Legislature on 21 December, 1965 can be taken as a definitive statement of their

* A joint communique was issued on 3 December & repeated in the Mauritius Legislative Assembly Debate of 14 December (text at Annex C) /position

HMG UNDERTAKINGS: SUBSEQUENT EVENTS

The Defence Agreement

Britain's defence agreement with Mauritius was unilaterally wound up in 1976.

Resettlement of Former Inhabitants

HMG paid £650,000 to the Mauritian Government to assist with the resettlement of the former Chagos Islanders (the Ilois). A copy of Ramgoolam's receipt of this sum in full and final discharge of HMG's undertaking of 1965, is attached at Annex E (the case brought against the Crown by the former islander, Michael Vencatessen, for compensation for removal, is still to be resolved).

Use of Mauritian Labour and Materials

We have raised this matter withe the Americans in the past without sucess. We are however currently pursuing it again.

Fishing Rights

Reversion

The Prime Minister reaffired in the House of Commons in response to a question on 11 July 1980 that

> 'In the event of the Islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government.'

Mineral Rights

[illegible]

[illegible] [illegible]

MAURITIUS London, S.W.1.

No. 423 6 October, 1965.

Sir,

I have the honour to refer to the discussions which I held in London recently with a group of Mauritius Ministers led by the Premier on the subject of UK/US Defence Facilities in the Indian Ocean. I enclose a copy of the record prepared here of the final meeting on this matter with Mauritius Ministers – this record has already been agreed in London with Sir S. Ramgoolam, and by him with Mr. Mohamed, as being an accurate record of what was decided. 276

2. I should be grateful for your early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i) – (viii) in paragraph 22 of the enclosed record. 276

3. Points (i) and (ii) of paragraph 22 will be taken into account in the preparation of a first draft of the Defence Agreement which is to be negotiated between the British and Mauritius Governments before independence. The preparation of this draft will now be put in hand.

4. As regards point (iii), I am arranging for separate consultations to take place with the Mauritius Government with a view to working out agreed projects to which the £3 million compensation will be devoted. Your Ministers will recall that the possibility of land settlement schemes was touched on in our discussions.

5. As regards points (iv), (v) and (vi) the British Government will make appropriate representations to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.

6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).

I have the honour to be,
Sir
Your most obedient
humble servant,

(for Secretary of State)

Annex 14

Telegram from the Foreign Office to the United Kingdom's Mission to the United Nations,
24 November 1965

[redacted]AL

FROM FOREIGN OFFICE TO NEW YORK

(United Kingdom Mission to the United Nations)

Cypher/OTP and By Bag — TRUSTEESHIP DISTRIBUTION

No. 4748

24 November 1965 — D: 2020 24 November 1965

IMMEDIATE

CONFIDENTIAL

BUILD

Addressed to UKMIS New York telegram No. 4748 of 24 November

Repeated for information to: Governor Mauritius (Personal & Confidential)

And Saving to: Washington No. 4987

Your telegram No. 3068 [of 23 November]: British Indian Ocean Territory.

There is no truth in the suggestion that we made Chagos a pre-condition of independence for Mauritius. Independence has been envisaged for a long time (in fact, the 1961 constitutional talks foreshadowed independence as the ultimate goal), but the main stumbling block has always been the question of safeguards for minorities. At the Constitutional Conference in September all delegates except for 3 Parti Mauricien Ministers and 2 Independents were in favour of independence mainly because of decisions giving satisfactory safeguards for minorities. If it is alleged that the Parti Mauricien members walked out of the Conference because they opposed the detachment of Chagos, you should emphasise that their reason was, in fact, that they were opposed to independence.

2. Chagos question was not a factor either way and was not mentioned at the Conference. For your own information discussions about Chagos took place separately and in confidence with Ministers only.

NNNNN

[redacted]

Annex 15

Telegram from the Governor of Mauritius to the Foreign Office,
24 November 1965

PW 2

INWARD TELEGRAM

TO THE SECRETARY OF STATE FOR THE COLONIES

FROM MAURITIUS (Sir J. Rennie) 24/228 (c)

Cypher

D. 24th November, 1965.
R. 24th " " 12.00 hrs.

IMMEDIATE
CONFIDENTIAL AND PERSONAL
PERSONAL No. 234

Your Confidential and Personal telegram PERSONAL No. 280 (repeating UKMIS New York to Foreign Office telegram No. 3068). 24/228.

Indian Ocean Territory.

At press conference held by P.M.S.D. Ministers on 12th November after the resignation of the former Attorney-General, Koenig, who is leader of the P.M.S.D. is reported by the press e.g. "Le Mauricien" of 13th November as having said: "I wish to state most categorically that the P.M.S.D. is not against the principle of ceding sovereignty over Chagos or against the archipelago becoming a communication centre to facilitate the defence of the West. The P.M.S.D. approves the principle: it is in disagreement over the terms and conditions of cession."

(Passed to D.S.A.O. for retransmission IMMEDIATE to New York)

Copies sent to:-

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

Mr. Graham 13/12.
Mr Brooke-Turner 13/12.

Annex 16

Memo from Governor of Seychelles to Secretary of State,
29 November 1965

B 101/20 [redacted] (5)

[redacted] CYPHER TELEGRAM

FROM: GOVERNOR SEYCHELLES SENT: 29.11.65.

TO: SECRETARY OF STATE

Confidential. No. 125. Repeated Personal and Confidential to Governor Mauritius No. 29. Your telegram No. 368. (1)

Chagos Archipelago Fishing.

Your paragraph 1 (b).
I understand from Moulinie that Japanese and Formosan vessels have sometimes been seen fishing in these waters.

Your paragraph 1 (d)
Some additional information may be gleaned from Mr. Sato's report of which we recently sent you a copy.

2. Apart from the above, I have nothing to add to the information supplied by the Governor of Mauritius.

GOVERNOR

P.A.
29/11.

Annex 17

A handwritten note of the Governor/BIOT Commissioner,
18 April 1966

C.S.

(14) reveals some of the background of the earlier telegrams. In para 8 we are asked for comments as far as the former Seychelles islands are concerned. The suggestions in para 3 seem reasonable enough. Para 7 asks about plans to increase fishing activities & we might I suppose mention the possibility of interest on the part of the Ross group.

2. Ought we to say anything about Chagos too, by way of staking a claim? We are not invited to and any claim is implicit

fishing rights in those waters must be extremely tenuous. However if Mauritius' claim to those were to be based on the limited fishing activities of a Diego-Agalega company or its employees it is arguable that a Seychelles claim is at least equally strong since the company concerned is a Seychelles company.

18/4.

Annex 18

A note from the Commonwealth Office to Mr. Seller,
24 August 1967

DIST 54/61 (4)

34

BIOT/20 24th August, 1957

Please refer to the correspondence regarding fishing rights in the British Indian Ocean Territory resting with my telegram BIOT 37 of the 21st August (your reference QC.7/1). 33

I am not copying this letter to Sir John Rennie, as our security classifications are different. Were I operating a "personal" series this letter would certainly be in it.

We have had some difficulty in dealing with the matter, partly because of lack of information on the issues of international law, which may be involved, and partly because, with respect, your letter of the 12th July to Sir John deals sometimes with rights of access (variously defined) and sometimes with fishing rights. Moreover I have not been briefed on the precise terms of the "undertaking" given to Mauritius ministers in the course of discussion on the separation of Chagos from Mauritius. Indeed the matter was new to me. As you quote it, the undertaking appears to refer only to the United States, but presumably I am to infer that it would include H.M.G. and BIOT ? 28

I think it would be best if we dealt with the matter as three separate issues:-

(a) the adoption of fishery limits under the 1958 Territorial Sea Convention;

(b) the administration of fishery control within those limits until and unless a defence presence is established;

(c) the administration of control when a defence presence is established.

As regards (a) above I have already recommended in my savingram 193 of the 4th August that a 12 mile limit should be established for the Chagos Archipelago. Unfortunately since 40 in PM/177.11

BU 15.10.57. 15th.

/I.....

I wrote that further investigation has shown that it is possible that Japanese interests have fished within 12 miles of the land areas of the Archipelago during the last 10 years. Their vessels have been seen at sea, though whether they have been fishing at the time or not, and if so at what distance from the shore, are matters which cannot be established. The evidence is of course merely that of untutored and uninterested contract labour. Japanese vessels have certainly watered in the Archipelago and anchored for repairs etc., but whether they have fished at all or to an extent necessary to establish a "habitual fishing right" we are I am afraid wholly unable to say. It is I think unlikely, but I must admit that it is possible. In these circumstances the alternative in para 4(a) of your letter of the 12th July might be safer (assuming that Seychelles is included).

(b) The pattern of fishing in the Archipelago (apart from possible Japanese activities referred to above) over the last 10 years is perfectly clear, and I wholly endorse Sir John's assessment. No commercial fishing has been undertaken in the area either by Mauritius or Seychelles interests. For the last 5 years activity has been confined to "domestic" fishing by contract labour of the Chagos Agalega Company for their own consumption, under the control of the Company's representative. For the preceeding 5 years the situation is the same, save that the Chagos Agalega Company's twin predecessors were working the island. The Chagos Agalega Company is registered in the Seychelles though it is partly owned by Mauritius interests, and its predecessors were Mauritian companies, one of them partly owned here. The contract labour has been, and is drawn both from Mauritius and Seychelles.

Most of the fish is caught by bottom fishing in the lagoon of the three occupied atolls (Diego Garcia, Peros Banhos, and Salomon) but in good weather trips are made to the Great Chagos Bank. Fishing carried out in that part of the Indian Ocean by Japanese, and sometimes Formosan vessels, is long lining for tunny.

As you are aware from Mr. Sato's report on Chagos' fishing potential, copies of which were sent to you with Lloyd's letter FISH/18 of 15th June, 1965,

/he.....

be considered that the area was sufficiently rich in fish to merit the setting up of a fishing base in Chagos to catch tunny for Japan and other fish for the Ceylon market. During his visit to Seychelles earlier this year Mr. Sato also talked of the possibility of establishing a cultured pearl industry on the Great Chagos Bank. The Ross Group are of course no longer interested in catching crayfish in the area but an independent concern is at present investigating the possibility of setting up a crayfish industry and, although their plans are not yet firm, they may wish to work in Chagos.

It is as yet too early to foresee how the fishing potential of Chagos will be developed or to forecast the likely demand for fish from that area for consumption in Seychelles but it is apparent that the area is potentially rich and that we should safeguard the future interests of Mauritius and Seychelles in whatever development takes place, both to provide opportunities for local companies and to ensure our future fish supply.

I suggest therefore in the light of the above that the fishing rights within the coastal limits be administered entirely by BIOT, under such instructions from you as you will safeguard both Mauritius and Seychelles interests.

(c) If a defence presence of any kind is established, it would I think be even more necessary to ensure that the control of fishing rights, and the access that goes therewith, should remain with BIOT - i.e. with H.M.G. When Mauritius becomes independent, it could as we have been thinking of doing, negotiate a fishing concession with the Japanese or Formosans or other export developers in this field. They could presumably also negotiate with other national interests, whose presence as of right in the area might be unwelcome to ourselves or the United States in certain circumstances.

In short, I think that the "reasonable arrangement" in para 3 of your letter of the 12th July should be modified in the light of the above, and expressed in terms of ~~guess~~ instructions to the Commissioner for BIOT.

/Finally.....

Finally I was under the impression that the ordinary 3 mile territorial sea limit already applied to all BIOT islands ?

C.A. Seller, Esq.,
Commonwealth Office,
London, S.W.1.

Annex 19

Note from the Foreign Office to the British Embassy in the United States,
6 September 1968

FOREIGN OFFICE, S.W.1.

(ZD 1/2/6). 6 September, 1968

Fishery Limits, B.I.O.T.

You will recall that in my letter ZD 4/47 of 18 October 1966 to Chancery, Washington, I gave some indication of how we were thinking on the subject of fishery limits in the British Indian Ocean Territory. The extent and application of these limits is, of course, complicated by the fact that the islands concerned are available for defence purposes and fishing near them may therefore be subject to security restrictions. In his reply 119101 of 27 February 1967 to Berthoud, Gilmore wrote that the proposals in my letter under reference seemed acceptable to the United States Government.

2. We have now given this subject further thought. One of the complicating factors in the situation is the need to consider what concessions should be granted to foreign governments when the time comes to phase fishing rights around the islands of the Territory. Unfortunately, there is little information about what foreign vessels might have established "habitual fishing rights"; it seems that both Japanese vessels and vessels from Taiwan may at some time have fished in the waters of, for instance, the Chagos Archipelago. When the position is indefinite, as it is here, it is the opinion of the Legal Advisers that provision should be made for a reasonable phasing-out period for all foreign fishing. This period should be at least one year since it will be difficult to deny fishing rights at less notice to foreign boats including even those that cannot prove habitual fishing in the previous three years. Were there no defence interests, such provision, as a preliminary to the establishment of an exclusive 12 mile zone, would seem appropriate; but given the defence interest, the presence of foreign vessels fishing in the vicinity of some of these islands might prove undesirable at an earlier stage.

K. M. Wilford, Esq., C.M.G.,
British Embassy,
Washington.

In the loosest sense, the term "foreign vessels" might be taken to include those of the Seychelles and Mauritius; however, as you probably know, an undertaking was given to Mauritius Ministers to ensure that fishing rights remain available to Mauritius in the Chagos Archipelago as far as is practicable; some rights are also claimed for Seychelles vessels in that area. Phase-out rights would therefore seem inappropriate to either Seychelles or Mauritius vessels. In these circumstances the application of an inner and outer 6 mile zone in accordance with current United Kingdom practice would seem preferable.

3. We have therefore come to the conclusion that there should be three zones for fishing in the territory:

(a) a full 12 mile zone open to unrestricted exploitation by Seychelles and (for Chagos only) Mauritius vessels before any defence interests become alive;

(b) an inner 6 mile zone open to Seychelles and (for Chagos only) Mauritius vessels on a restricted access basis following defence arrangements, such restriction to be the minimum compatible with security requirements;

(c) an outer 6 mile zone open to foreign vessels for a phase-out period. (This zone would remain open to Seychelles and Mauritius vessels after the phase-out period had been completed, unless security requirements made this impossible.)

4. No decision has yet been taken here as regards timing, but we think there would be advantage, particularly in view of the recent American approach about plans for the development of Diego Garcia, in announcing our decision to establish the fishing regime for B.I.O.T. on the lines outlined in the preceding paragraph as soon as possible. If an announcement of Her Majesty's Government's intent were made sufficiently in advance of the actual establishment of the fishing regime (i.e. at least one year) our Legal Advisers consider that it could then be argued that the Japanese and Taiwanese had in effect been accorded their phasing-out period, and then the only "foreign" fishing interests remaining to be considered would be those from the Seychelles and Mauritius. This would greatly ease our difficulties, particularly on the timescale. The only alternative is to announce the establishment of the fishing regime with a phasing-out period written in. There would then be a delay of several months before we were in a position to make such an announcement since there would

/have

have to be much legal groundwork first. There would be no such delay if we merely announce "intent" now, with the announcement of establishment following in due legal form 12 months hence.

5. Before proceeding further, we would be grateful if you could put our proposals to the State Department and ask them for an early indication of whether they are acceptable to them: you should draw on paragraph 2 above for your argumentation.

6. I am sending copies of this letter to Seller in Pacific and Indian Ocean Department, Counsell in East Africa Department, Stewart in DS 11 (Ministry of Defence) and Todd in an Office of the Administration of the B.I.O.T. (Seychelles).

(A. Brooke Turner)

Annex 20

Note from East African Department to British High Commission,
5 January 1978

[redacted]

[redacted]

R/R ✓
I suppose we do not have any 1971 papers about X/?
WAW 23/1

(1)

Foreign and Commonwealth Office
London SW1A 2AH

Telephone 01- 233 3381

D C Brown Esq
PORT LOUIS

Received in chancery registry
23 JAN 1978
British High Commission PORT LOUIS

Your reference

Our reference

Date
5 January 1978

Dear David,

1. The High Commissioner's letter of 2 December and Washington telegram number 5233 refer to a Mauritian claim to jurisdiction over the waters around Diego Garcia. You will have received a copy of our interim reply (our telegram 4227 to Washington). (42) 663/2 of 1977

(41) on 063/2 of 1977

2. Research Department have now studied the back papers. Our conclusion is that Sir Seewoosagur may have been referring to fishing rights when he stated that "since July 1971 the British have recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia". We are certain that it is only in respect of fishing rights that Mauritius can claim any rights in respect of these waters.

3. The BIOT Fishery Limits Ordinance came into operation on 1 July 1971. Shortly after the Ordinance was enacted the ~~the~~ BIOT administration formally recognised Mauritians as traditional fishermen in the Chagos Archipelago under section 4 of the Ordinance. This states, "for the purpose of enabling fishing traditionally carried on in any area within the contiguous zone by foreign fishing boats to be continued, the Commissioner may by order designate any country outside the Territory, and the area in which ~~and descriptions of fish or marine product for which fishing boats~~ registered in that country may fish".

4. The effect of the decision was to allow Mauritian fishing boats to continue their activities within the newly established fishing zone. Elliot's (FCO) letter of 2 July 1971, copy attached, refers to HMG's decision to do this and asks Port Louis to inform the Mauritian Government of the fact. Unfortunately, there is no record on our files to show whether or not any action was taken with the Mauritians and if so how they reacted. Perhaps your files will show what was done; if so we should be interested to have details. ~~But in no~~ way does this right (which you will notice is not specifically protected in the fisheries provision (13) of the 1976 Anglo-US Exchange of Notes on Diego Garcia CMND 6413) give Mauritius jurisdiction over the waters surrounding Diego Garcia.

X|

[redacted]

/5.

5. Whilst not seeking to make an issue of the matter, you should try to set the record straight when a suitable opportunity arises in conversation with the Mauritians.

6. For Washington

It is not clear that the Americans were consulted about our decision in 1971 to recognise Mauritians as traditional fishermen in terms of section 4 of the Fisheries Ordinance, or that this was taken into account in the 1976 Anglo-US Exchange of Notes. You should nevertheless inform them of our conclusions, as set out above, whilst not drawing attention to the possible conflict between the right afforded the Mauritians in 1971 under the BIOT Fisheries Ordinance and the Fishery restrictions imposed in para 13 of the 1976 Anglo-US Exchange of Notes.

David Carter
East African Department

cc: J P Millington Esq
WASHINGTON

Lt Commander Clarke RN
British Representative
BFPO Ships
Diego Garcia

Annex 21

Letter from W.A. Ward to Prime Minister's Office,
22 February 1978

068/1 (5)

063/1 22 February 1978

Mr S K Bunyamdhub
Prime Minister's Office
Government House
PORT LOUIS

The Prime Minister said in answer to a question (No B/634) in the Legislative Assembly on 29 November 1977 that "The British Government has since July 1971 recognised the jurisdiction of Mauritius over the waters surrounding Diego Garcia."

The British Indian Ocean Territory Fishery Limits Ordinance No 2/1971 was brought into force on 1 July 1971. Shortly after it was enacted the BIOT Administration recognised Mauritians as traditional fishermen in the Chagos Archipelago under section 4 of the ordinance. That Section at bes that "... for the purpose of enabling fishing traditionally carried on in any area within the contiguous zone by foreign fishing boats to be continued, the Commissioner may by order designate any country outside the Territory, and the area in which, and description of fish or marine product for which fishing boats registered in that country may fish". The effect of the decision was to allow Mauritian fishing boats to continue their activities within the newly established fishing zone. The exemption stemmed from the understanding on fishing rights reached between HMG and the Mauritius Government at the time of the Lancaster House Conference in 1965.

It appears from our records that information in the above sense was conveyed to the Mauritius Government in a letter from the British High Commission to the Attorney-General dated 15 July 1971.

Against this background it is assumed that the reply given to the Legislative Assembly question was referring to fishing rights in, and not to jurisdiction over, the waters surrounding Diego Garcia.

W A Ward

Annex 22

Letter from W.A. Ward to A.G. Munro (East African Department),
13 April 1978

CONFIDENTIAL

13 April 1978

A G Munro Esq
East African Department
Foreign and Commonwealth Office
King Charles Street
LONDON SW1

BIOT TERRITORIAL WATERS

(1)

1. David Carter's letter of 5 January asked me to set the record straight with the Mauritius Government about a statement made by the Prime Minister in Parliament to the effect that Britain had recognised Mauritius' jurisdiction over the waters surrounding Diego Garcia. Millington's letter of 18 January to Churchill in the State Department also refers. (3)

2. I took this up with the Prime Minister's Office who have admitted that there was some confusion and have confirmed that the statement was intended to refer to fishing rights in, and not to jurisdiction over, the waters surrounding Diego Garcia. I think we can leave it at that.

W A Ward

cc: J P Millington Esq
British Embassy
WASHINGTON

CONFIDENTIAL

Annex 23

A/CONF.62/C.2/SR.57, 57th meeting of Second Committee,
24 April 1979

SECOND COMMITTEE

57th meeting

Tuesday, 24 April 1979, at 11 a.m.

Chairman: Mr. A. AGUILAR (Venezuela).

Reports of the Chairmen of Negotiating Groups 4 and 7

1. The CHAIRMAN said that he had convened a meeting of the Second Committee for the purpose of complying with the procedure set out in document A/CONF.62/62,[1] whereby the results of the work of each negotiating group had to be reported to the Chairman of the appropriate Committee and to the President of the Conference. Once that had been done, there were two possible courses of action: the Chairman of the appropriate Committee might wish first to have his Committee consider the results of the negotiations, or the results could be brought direct to the plenary meeting by the President of the Conference. In the case in question, the first of those two courses had been chosen. The purpose of the exercise was to consider the possible inclusion in the revised informal composite negotiating text of formulations proposed by the chairmen of the negotiating groups.[2]

2. In that connexion, he wished to remind representatives that the documents containing the various formulations, whether or not prepared by a chairman of a negotiating group, were informal documents and did not constitute part of the formal results of the Conference. Consequently, it was not possible to amend them formally or to take decisions on them by a vote. Informal suggestions were, of course, acceptable. At the current stage, the Committee was attempting to assess the degree of support for each suggestion in order to decide whether or not the text in question should be included in the revised negotiating text.

3. Mr. NANDAN (Fiji), Chairman of Negotiating Group 4, said that the Group had held one meeting during the current session. It had become apparent, at that meeting, that there was no point in convening further meetings until intensive consultations had been held on the issues involved.

4. In the course of those consultations, numerous comments had been made on the compromise suggestions contained in document NG4/9/Rev.2[3] and various changes to that text had been suggested. A number of countries had expressed concern regarding certain aspects of the text, and an informal proposal had been submitted by Romania and Yugoslavia (C.2/Informal Meeting/41).

5. It had emerged from the consultations that none of the new suggestions commanded sufficient support in Negotiating Group 4 to justify any substantive change in the compromise suggestions. It appeared, moreover, that the text of the compromise suggestions offered a substantially improved prospect of consensus, by comparison with the existing wording of the negotiating text. He had thus informed the Negotiating Group that the compromise suggestions would be submitted for inclusion in the revised negotiating text.

6. Mr. HAMOUD (Iraq) said that intensive consultations had taken place in Negotiating Group 4 and a number of suggestions had been made. In his delegation's view, it would have been useful if those consultations could have continued, since the compromise suggestions by the Chairman of the Negotiating Group in document NG4/9/Rev.2 were not supported by all delegations. Although the document in question was perfectly acceptable as a basis for discussion, it was not suitable for inclusion in the revised negotiating text.

7. The CHAIRMAN said that the main purpose of the meeting was to determine whether or not there was substantial support for a given text. It was not necessary that there should be a consensus in favour of the text, but simply an agreement that the new text had a better chance of commanding a consensus than the wording in the negotiating text.

8. Mr. MHLANGA (Zambia) said he regretted that the consultations in Negotiating Group 4 had not proved very fruitful and that no agreement was yet in sight.

9. The compromise suggestions made by the Chairman of Negotiating Group 4 contained some serious weaknesses and, like the wording of the negotiating text, did not take sufficient account of the interests of land-locked and geographically disadvantaged countries.

10. The compromise suggestions were open to criticism in that their version of article 69 referred only to the living resources of the exclusive economic zone, and not to both living and non-living resources. His delegation was also unable to accept the proposal that land-locked and geographically disadvantaged States should have a right only to an appropriate part of the surplus of the living resources of the exclusive economic zones of coastal States, when currently they had equal rights with the coastal States to participate in exploiting the resources of the high seas.

11. Paragraph 2 and other subsequent paragraphs of the proposed text of article 69 referred to the conclusion of bilateral, subregional or regional agreements. If the land-locked and geographically disadvantaged States were merely accorded the right to negotiate with coastal States, that would not be enough, since they were always at a disadvantage in negotiations with coastal States.

12. His delegation had already submitted a proposal for regional or subregional economic zones in which all States of the region or subregion would have equal rights to participate in the exploitation of both living and non-living resources. That proposal, which was contained in document A/CONF.62/C.2/L.97,[4] provided for a fair redistribution of the existing rights of States under the international law of the sea.

[1] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4).

[2] *Ibid.*, vol. VIII (United Nations publication, Sales No. E.78.V.4).

[3] *Ibid.*, vol. X, p. 93.

[4] *Ibid.*, vol. VII (United Nations publication, Sales No. E.78.V.3).

13. In that connexion, he wished to refer to the Report of the Secretary-General[5] which had been presented to the Sea-Bed Committee prior to the convening of the current Conference, and which assessed the economic significance of various proposals. According to that document, a 40-nautical-mile limit would give 59 per cent of available resources to the coastal State and leave 41 per cent in the international area, while a 200-nautical-mile limit would give 87 per cent of available resources to the coastal State, and leave only 13 per cent in the international area. In his delegation's view, those figures constituted ample justification for the introduction of regional zones.

14. Mr. SHARMA (Nepal) said that his delegation still maintained that neither the provisions contained in the negotiating text nor those in the compromise suggestions by the Chairman of Negotiating Group 4 were satisfactory or equitable.

15. The resources of the exclusive economic zone should be shared among mankind as a whole and, in any case, any decisions regarding their distribution should be made by an international organization rather than unilaterally by a coastal State. Consequently, a surplus of the allowable catch was an unfair concept which departed inequitably from existing international law.

16. Article 69 in the compromise suggestions could be improved by replacing the words "appropriate part" in paragraph 1 by the words "substantial part". The reference in paragraph 2 of that article to States which were participating or were entitled to participate in the catch was most unfair to newly independent States which, for historical reasons, had been unable so to participate.

17. He submitted that the compromise suggestions by the Chairman of Negotiating Group 4 did not command sufficiently widespread support for inclusion in the revised negotiating text.

18. Mr. GLIGA (Romania) observed that the compromise suggestions made by the Chairman of Negotiating Group 4 contained an amendment to article 62, paragraph 2. At the previous session, his own delegation, together with that of Yugoslavia, had submitted an informal proposal to amend that article, with the aim of giving priority to the interests of all developing countries. That proposal had not been taken into consideration, and the suggestion made by the Chairman of Negotiating Group 4 had made the text even more unacceptable. For that reason, Romania and Yugoslavia had again submitted a proposal (C.2/Informal Meeting/41) which was designed to avoid discrimination among developing countries and to place all of them on an equal footing with regard to access to the living resources of the sea. The principle of priority for the developing countries, including priority in matters relating to the law of the sea, was generally accepted by the international community. The informal proposal by Romania and Yugoslavia took account of the compromise suggestion made by the Chairman of Negotiating Group 4, since the references to articles 69 and 70 were maintained. The coastal State, in determining its capacity to harvest the living resources of the exclusive economic zone, was to take special account of the interests of the land-locked States and geographically disadvantaged States and, more particularly, of the interests of the developing countries among that group of States. In the French and Russian versions of the informal proposal, the phrase "developing States in particular" should be underlined as it was in the other language versions.

19. With regard to article 70, although the text suggested by the Chairman of Negotiating Group 4 represented progress towards a compromise, his delegation was none the less convinced that it was necessary to find a solution satisfactory to all countries. More especially, it was essential to avoid impairing the interests of geographically disadvantaged developing countries situated in regions with limited fishing resources—countries which had invested in fishing fleets and would, as things stood, be excluded from the economic zones, whereas highly developed countries would acquire considerable advantages with regard to fishing. It was precisely those countries—i.e., coastal States with large ocean areas—that were invoking acquired rights in the matter of the continental shelf; but rights acquired by other countries, particularly developing countries, were no longer taken into account in discussions on the question of access to living resources. The same legal rules and reasoning must obviously be applied in respect of all countries.

20. He was therefore convinced of the need to find a solution that was equally satisfactory for countries in regions without fishing resources, and particularly for developing countries. In any event, the meaning of the term "region" should be sufficiently wide to cover the interests of all States. His delegation was ready to make every effort to arrive at a generally acceptable text on the subject of access by all countries to the living resources of the sea.

21. Mr. PERIŠIĆ (Yugoslavia) said that his delegation was ready to support any compromise suggestion that would command the support of the majority of States. The mandate of Negotiating Group 4 referred to the right of access of land-locked States and certain developing coastal States in a sub-region or region to the living resources of the exclusive economic zone, or the right of access of land-locked and geographically disadvantaged States to the living resources of the exclusive economic zone. Consequently, his own delegation and that of Romania considered that their informal proposal was fully consistent with that mandate. It was not a proposal for a direct amendment to article 62, paragraph 2, but a proposal to amend the suggestion by the Chairman of Negotiating Group 4.

22. His delegation held the view that, in keeping with the general philosophy of development of the United Nations Conference on Trade and Development, no discrimination should be exercised among developing States. The developing countries were all members of the Group of 77 and it was entirely unacceptable that discrimination should be practised among them from the outset. Nevertheless, his country also felt that special account should be taken of the interests of land-locked States and States with special geographical characteristics—in other words, the States referred to in articles 69 and 70.

23. Mr. AL-MOR (United Arab Emirates) said that the concept underlying the report of the Chairman of Negotiating Group 4 was unsatisfactory. Unfortunately, the Group had held only one meeting during the session. The Arab Gulf States—namely, Iraq, Bahrain, Kuwait, Qatar and the United Arab Emirates—had adopted a unified position in view of their special geographical situation, which called for a change in the text proposed by the Chairman of Negotiating Group 4. They had not wished to raise the matter within the Group itself and had preferred to consult the Chairman. Accordingly, they had submitted to him a reasonable and balanced proposal that would be acceptable to coastal States. However, the ocean States, which appeared to be trying to direct the affairs of the Conference in an arbitrary manner, had rejected all proposals and had informed the Chairman of the Group that the proposal by the Arab Gulf States was unacceptable.

24. That proposal was not only reasonable but even inevitable, since it was inconceivable that the interests of some countries should not be taken into consideration. Consequently, the Arab Gulf States had hoped that, in his report, the Chairman of the Group would take account of the proposal in question and thus furnish proof that the Conference was indeed paying attention to the legitimate interests of countries. The aim should be to arrive at a text which commanded wide support and offered the prospects of a consensus. In the opinion

[5] A/AC.138/87.

of his delegation, the suggestions made by the Chairman could not open the way to a genuine consensus.

25. The CHAIRMAN suggested that the Committee should defer further consideration of the report of the Chairman of Negotiating Group 4, and should now hear the report of the Chairman of Negotiating Group 7, who was obliged to leave Geneva shortly.

It was so agreed.

26. Mr. MANNER (Finland), Chairman of Negotiating Group 7, said that the Group had been established, in accordance with the decisions taken at the 90th plenary meeting, on 13 April 1978, and appearing in document A/CONF.62/62, to deal with the hard-core issue of delimitation of maritime boundaries between adjacent and opposite States and settlement of disputes thereon. Accordingly, the Group had considered articles 15, 74, 83 and 297, paragraph 1 (*a*). In its work, the Group had had to take into account the fact that for the possible modification or revision of the negotiating text the only solutions that could be suggested, as a result of the Group's deliberations, were those which could be found to offer a substantially improved prospect of a consensus. During the seventh and eighth sessions of the Conference, the Group had held a total of 41 meetings, with 39 working documents being distributed in the course of its discussions. As stated in his report of 17 May 1978 (NG7/21), there seemed to be widespread support for the retention of the present formulation of article 15, with two drafting amendments. Accordingly, the text would read as follows:

"Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith."

27. From the outset, the negotiations on paragraph 1 of article 74 and of article 83 had been characterized by the opposing positions of delegations supporting the equidistance rule and those specifically emphasizing delimitation in accordance with equitable principles.

28. At the end of the seventh session he had stated (NG7/24)[6] that, during the discussions, general understanding had seemed to emerge to the effect that, in broad terms, the final solution could contain four elements: a reference to the effect that any measure of delimitation should be effected by agreement, a reference to the effect that all relevant or special circumstances were to be taken into account in the process of delimitation, a reference, in some form, to equity or equitable principles, and a reference, in some form, to the median or equidistance line.

29. That scheme had also been referred to in his statement at the beginning of the current session (NG7/26), when he had expressed the view that the necessary compromise might be within reach if the Group could agree upon a neutral formula avoiding any classification or hierarchy of the elements concerned. During the current session, a number of compromise proposals had been made, more particularly by the delegations of Mexico and Peru. At least one of them, that contained in document NG7/36, had received a fair amount of interest as a possible basis for further negotiations. However, the proposal, as well as a revised version thereof (NG/7/36/Rev.1), had later been withdrawn by its sponsors.

30. Despite intensive negotiations, the Group had not succeeded in reaching agreement on any of the texts before it. The reasons why the various compromise efforts made during the Group's work had not succeeded had been clearly voiced by different delegations. He would not, of course, criticize those reasons, which were very important to the respective delegations, but he doubted whether, in view of the Group's lengthy deliberations and the controversies still prevailing, the Conference would ever be in a position to produce a provision that would offer a precise and definite answer to the question of delimitation criteria.

31. In the light of the various suggestions presented and assuming that, in one form or another, negotiations on the issue of delimitation were to be continued at the next stage of the Conference, he wished, as a possible basis for a compromise, to suggest the following text:

"The delimitation of the exclusive economic zone (or of the continental shelf) between States with opposite or adjacent coasts shall be effected by agreement between the parties concerned, taking into account all relevant criteria and special circumstances in order to arrive at a solution in accordance with equitable principles, applying the equidistance rule or such other means as are appropriate in each specific case."

32. As pointed out in his statement at the beginning of the session, with regard to paragraph 3 of article 74 and of article 83, the question of a rule on interim measures to be applied pending final delimitation had been approached from different angles. Some delegations had not considered such a provision necessary at all. Others had advocated inclusion of provisions obliging or encouraging parties having a delimitation problem, to agree on provisional arrangements pending final delimitation. A number of delegations had also found it necessary to suggest prohibitive rules against arbitrary exploitation of natural resources or other unilateral measures within the disputed area.

33. In addition to earlier proposals, several new formulations had been introduced at the current session. In that regard, the main interest had been accorded to the proposal by India, Iraq and Morocco (NG7/32), as well as the proposal by the Chair (NG7/38) presented after consultations in a private group composed of those three delegations and the delegations of the Union of Soviet Socialist Republics and the Ukrainian Soviet Socialist Republic.

34. Although those proposals had seemed to signify a step forward in the search for a compromise, they had not gained such widespread and substantial support as would justify a revision of the negotiating text. In view of the comments made, it seemed that the most serious difficulty relating to those proposals concerned the prohibitive references therein to activities or measures potentially to be taken during the transitional period. A number of delegations had criticized the proposals for introducing what they had felt to be a moratorium arguably prohibiting any economic activities in the disputed area.

35. In order to facilitate further discussions on the paragraph in question, he proposed the following text, based upon his previous compromise suggestion:

"Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and co-operation, shall make every effort with a view to entering into provisional arrangements. Accordingly, during this transitional period, they shall refrain from aggravating the situation or hampering in any way the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

36. With regard to article 74, paragraph 4, it seemed that, as stated in his report of 17 May 1978, the placing in the convention of the definition of the median or equidistance line, if such

[6] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.79.V.4), p. 170.

a definition were deemed to be necessary, could be left for consideration in the Drafting Committee.

37. With regard to article 74, paragraph 5, and potentially article 83, paragraph 4, as well, a proposal had been made that the word "all" should be added before the word "questions", but no conclusion had been reached on that point.

38. The discussions on the settlement of maritime boundary disputes had been characterized by opposing arguments on the nature of settlement procedures.

39. During the seventh session, a paper (NG7/20) containing a set of alternative approaches relating to article 297, paragraph 1(*a*), had been issued as a result of discussions held within an expert group led by Mr. L. B. Sohn (United States of America). The paper had subsequently been revised by Mr. Sohn (NG7/20/Rev.1) who had later presented an extensive survey (NG7/27) of various combinations of the main elements potentially to be taken into account in the consideration of the settlement of delimitation disputes. In order to narrow the ground for reaching the final compromise, Mr. Sohn had further presented a paper (NG7/37) containing four alternative basic choices for treatment of maritime boundary disputes. The tireless efforts of Mr. Sohn had contributed greatly to the work of the Group.

40. Despite lengthy discussions, the Group had not been able to solve that issue, which therefore remained open. At the beginning of the session he had expressed the view that there did not seem to be much prospect of finding the sought-after compromise on the basis of a rule which, in one form or another, would provide for the acceptance of a compulsory procedure entailing a binding decision. The discussions held during the current session had left him with the impression that no change had taken place in that regard. Although it was abundantly clear that several delegations still remained determined to advocate compulsory and binding procedures, it seemed equally clear that a consensus based on such a solution might not materialize.

41. As an alternative which perhaps could, in future consideration, prove conducive to the final compromise, he wished to offer the following formulation for article 297, paragraph 1(*a*), borrowing elements in particular from Mr. Sohn's papers, the proposal made by Israel contained in document NG7/30, and the proposal made by Bulgaria contained in document NG7/5:

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

42. On submitting that suggestion, he was well aware that it did not fully correspond to the established positions of many delegations, including those which had considered that the conciliation procedure should only relate to basic questions outstanding between the parties with respect to the specific circumstances, principles or methods which were to be considered by the parties concerned in resolving the issue in dispute. In his understanding, however, the suggestion might reflect a realistic view of the actual situation.

43. In that connexion it should also be pointed out that proposals had been made for the modification of the introduction to article 297 and for the deletion of article 74, paragraph 2, with possible deletion of the corresponding paragraph of article 83 as well. No conclusions had been reached on those points.

44. It was to be concluded that, except for the two drafting amendments to article 15, none of the proposals made during the work of the Group for the modification or revision of the negotiating text had secured a consensus within the Group or seemed to offer a substantially improved prospect of a consensus in the plenary meeting. Accordingly, apart from the changes to article 15, he was not in a position to suggest any modification or revision of the text to be made on the basis of the work of Negotiating Group 7.

45. On the other hand, and without prejudice to the organizational pattern of future work, it was his understanding that there was a general feeling in the Group that negotiations on the issues still pending solution should be continued. That feeling was strengthened by the positive attitude of several delegations, particularly during the final stage of the negotiations. In that connexion, it might also be recalled that it had been repeatedly pointed out by many delegations that the issues concerned were closely interrelated and should be considered together as elements of a "package" in the future.

46. Last but not least, he wished to express his thanks to the members of the secretariat for all their valuable help and assistance during the past year.

47. The CHAIRMAN said that, on behalf of the Committee, he wished to congratulate the Chairman of Negotiating Group 7 for the work undertaken on difficult and controversial issues and also to thank Mr. Sohn for his co-operation in the work of the Group.

48. Mr. ZEGERS (Chile) said that the progress made in the difficult task of Negotiating Group 7 was not sufficient to lead to a revision of the negotiating text, but it might well do so at the next stage of the Conference. He welcomed the consensus on the territorial sea, as formulated in article 15, and also that reached on the four elements for a substantive rule on the delimitation of the economic zone and the continental shelf. It was also encouraging to learn that a consensus appeared to be emerging with regard to a neutral formula leading to a compromise between those who advocated the equidistance line and those who advocated equitable principles. The formulation suggested by the Chairman of the Group reflected the discussions within the Group, called for close attention and, so far as his own delegation was concerned, constituted a worthwhile basis for negotiation.

49. The negotiating text envisaged a compulsory system of settlement of disputes that had commanded the support of an ample majority which had also expressed its views in the Negotiating Group. Admittedly a fairly large minority had voiced objections to such a system and Mr. Sohn had suggested alternative solutions. The Chairman of the Group, however, was now suggesting a system of compulsory conciliation which would deal only with future disputes. Moreover, the compulsory nature of the conciliation was relative, because it was stated that the parties would be allowed "a reasonable period of time" to reach agreement and no specific time-limit for reaching agreement was fixed. Again, the system did not cover disputes pertaining to territories or islands. The text proposed by the Chairman of the Group was not consistent with the opinion of the majority of the Conference or of the majority of the members of the Group itself; nor was it in keeping with three of the four formulations proposed by Mr. Sohn. The Chairman of the Group, doubtless with the best of

intentions, had exceeded his terms of reference and had failed to reflect the trends of opinion in the Conference. Consequently, his delegation regretted the inclusion in the report of the Chairman of the Group of the text relating to article 297, paragraph 1 (*a*), and considered that it should be regarded as non-existent for the purposes of future negotiations. He none the less wished to express his appreciation of the work undertaken by the Chairman and of the report as a whole.

50. Mr. ROSENNE (Israel) said that, in the opinion of his delegation, the question of the settlement of disputes should not be allowed to complicate the already difficult matter of delimitation, and that the terms of reference of Negotiating Group 7 should be suitably modified. His delegation saw no inherent difference between disputes over land frontiers and disputes over maritime boundaries. The disputes were about the spaces over which sovereignty or sovereign rights could be exercised. The International Court of Justice had recently stated in the Aegean Sea Continental Shelf Case[7] that maritime boundaries were excluded from the doctrine of *rebus sic stantibus* just as much as were land boundaries. His delegation had the strongest reservations about that statement, but it had to be taken into account since it was now established jurisprudence.

51. His delegation had suggested that the rule in articles 74 and 83 would be better if couched in the language of a residual rule which would come into operation in the absence of agreement, and it had proposed a text for such a residual rule (NG7/28). In the course of the discussions, it had withdrawn that proposal in favour of the proposal in document NG7/36 (but not in favour of the proposal in document NG7/36/Rev. 1); but it now formally requested that the text of the proposed residual rule should be reproduced as a foot-note in the summary record of the meeting or otherwise included in the records of the Conference.[8] It could accept the Chairman's suggestions regarding paragraph 1 of article 74 and of article 83 as a possible basis for compromise, subject to some adjustments in the order in which the elements were placed, but would reinstate its draft residual rule as an alternative basis for a compromise. It agreed that the rule should always encourage delimitation by agreement but did not think it necessarily followed that, in the absence of agreement, a dispute arose to which part XV of the convention would be applicable. For that reason, paragraph 2 of the two articles seemed incorrect and unacceptable. There was no need for any interim rule which might well do more harm than good.

52. His delegation agreed with the Chairman that the placing of the definition of the median and equidistance line could be left to the Drafting Committee, which would also keep in mind that the term was at present also defined in article 15.

53. It would be advisable to include the word "all" before the word "questions" in articles 74, paragraph 5, and 83, paragraph 4. All the terms of delimitation agreements between two or more States, including their provisions regarding the settlement of disputes, should be given absolute priority over the convention and the insertion of the word "all" would remove all doubts on that score.

54. His delegation could not accept article 297, paragraph (1) (*a*), in the form in which it was drafted. It would be prepared to consider some form of compulsory recourse to non-binding conciliation for future disputes only and had submitted a concrete suggestion in document NG7/30, to which the Chairman of Negotiating Group 7 had referred in his report; but the Chairman's own proposal did not make it sufficiently clear that it related only to disputes arising after the entry into force of the convention between the parties to the dispute. In the view of his delegation, that limitation must be clearly enunciated.

55. In conclusion, he said that the introduction to article 297 should be brought into line with the new introduction to article 296.

56. Mr. LACLETA (Spain), speaking as the co-ordinator of the group of countries which had sponsored document NG7/2, said that those countries ageed with the conclusion of the Chairman of Negotiating Group 7 that none of the proposals made during the work of the Group for the modification or revision of the negotiating text had secured a consensus within the Group. They also agreed that there was a general feeling in the Group that negotiations on the issues still pending solution should be continued. It should be noted that the three issues still awaiting solution, namely, delimitation criteria, interim measures and the settlement of disputes, were closely interrelated.

57. In his comments on the discussions on delimitation criteria, the Chairman had singled out the proposal put forward by the delegations of Mexico and Peru (NG7/36) as one in which much interest had been expressed. In that connexion, he wished to draw attention to the fact that the sponsors of document NG7/2 had been unable to support the proposal in document NG7/36. They were, however, prepared to consider carefully the new text on the question proposed by the Chairman.

58. The paragraphs of the Chairman's report devoted to the question of interim measures did not fully reflect all aspects of the discussion on the question. The sponsors of document NG7/2 had proposed a system whereby a delimitation line could be established. The proposal put forward by the delegations of India, Iraq and Morocco (NG7/32) differed radically from that in document NG7/2, and acceptance of it would imply a fundamental change in the structure of the delimitation mechanism described in document NG7/2. Nevertheless, the substance of the formulation proposed by the Chairman merited attention. It must be borne in mind, however, that the question of interim measures could not be separated from the questions of delimitation criteria and the settlement of disputes.

59. The Chairman's report did not accurately reflect the discussions of the Group on the question of settlement of disputes. The great majority of States still advocated compulsory and binding procedures. It was not correct, therefore, to state merely that several delegations advocated such procedures. The formulation suggested in the report as a compromise was absolutely unilateral.

60. In conclusion, he said that the sponsors of document NG7/2 considered that the Negotiating Group should continue its endeavours to find solutions to the problems before it. They agreed with the conclusions reached by the Chairman of the Group in his report.

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[7] *Aegean Sea Continental Shelf, Judgment, I.C.J. Reports, 1978*, p. 3.

[8] The informal working paper submitted by Israel (NG7/28) reads as follows:

"*Article 74*

"Title: reserved

"1. Failing agreement between the parties to the contrary,

or

In the absence of agreement,

or

Unless otherwise agreed,

the delimitation of the exclusive economic zone between States whose coasts are opposite or adjacent to each other shall be based on equitable principles taking into account the median or equidistance line and all other special circumstances.

"2. Where there is an agreement in force between the States concerned, all questions relating to the delimitation of the exclusive economic zone shall be determined in accordance with the provisions of that agreement (see NG7/10 and Add. 1, para. 4).

"3. Omit article 74, paragraphs 2 and 3, of the informal composite negotiating text.

"4. This proposal does not necessarily relate to article 83, but could be extended to it if that is the general desire."

61. Mr. SONG (Republic of Korea) said that Negotiating Group 7 must continue its efforts to find solutions to the difficult problems that had been referred to it by the Conference.

62. His delegation felt that the proposal by the Chairman of the Group on delimitation might not be acceptable to the Group; it hoped, therefore, that that proposal would be improved so as better to reflect the position of the Group.

63. In conclusion, he said that his delegation supported the Chairman's report.

64. Mr. POP (Romania) said that his delegation could not agree with the Chairman's proposal that the equidistance line should be regarded as a rule of law with privileged status. It was convinced that a basis for a compromise text could be found in articles 74 and 83, in document NG7/10 and Add. 1 and probably in the first proposal of the delegations of Mexico and Peru (NG7/36), as amended on a proposal made by the delegation of the USSR.

65. The Chairman's suggestion concerning interim measures might be satisfactory; his delegation would examine that suggestion in a spirit of compromise.

66. Mr. CASTAÑEDA (Mexico) said that, in general, his delegation could support the Chairman's report and the conclusions he had reached.

67. Mr. YOLGA (Turkey) expressed the hope that, at the next stage of the Conference, more time would be available for discussion of the important questions of the régime of islands and semi-enclosed seas.

68. Observing that the representative of Chile had expressed satisfaction at the inclusion in the report of a reference to a neutral formula for the criteria governing delimitation, he said that his delegation and the group of 29 were firmly opposed to such a formula.

69. In the opinion of his delegation, the wording of paragraph 1 of articles 74 and 83 should be examined in much greater depth.

70. His delegation fully agreed with the opinions expressed by the representative of Israel on article 297, paragraph 1.

71. Mr. CLINGAN (United States of America) said that his delegation agreed with the Chairman's conclusion that there had been no consensus on any changes other than the drafting amendments to article 15. In its view, therefore, it would not be possible to hope for a revision of the negotiating text on any of the remaining points under discussion.

72. The Chairman had also made three draft proposals of his own, which he had characterized as containing elements conducive to a compromise. Having listened attentively to all the debates in the Group, his delegation was not able to agree that those, or any other proposals that had been placed before the Group, offered any reasonable hope of achieving a consensus at the time. It considered, therefore, that it was premature to attempt to predict where any final outcome might lie. Much work remained to be done before such an effort might prove productive. For that reason, his delegation concluded that it could not accept the texts set forth in the Chairman's report as a basis for a compromise.

73. Mr. SAMPER (Colombia) said that, despite his endeavours, the Chairman of Negotiating Group 7 had not succeeded in producing a balanced report. The three questions dealt with in the report—delimitation criteria, interim measures and the settlement of disputes—constituted a package deal. There was a link between the three issues which could not be broken. His delegation shared the opinions expressed by the representatives of Spain and Chile on the question of delimitation criteria; it considered, nevertheless, that the text proposed by the Chairman represented a step towards consensus.

74. The compromise text on interim measures suggested by the Chairman represented no improvement on the negotiating text.

75. Turning to the question of the settlement of disputes, he said that article 297 could not be changed except by consensus. The discussions on that article had not been accurately reflected in the report. There was an obvious difference between the Chairman's conclusions on delimitation criteria and interim measures and his conclusions on the settlement of disputes. His delegation agreed with the Chairman's statement that he was not in a position to suggest any modification or revision of the negotiating text on the basis of the work of Negotiating Group 7. It also agreed that negotiations on the issues still pending should be continued.

76. Mr. SYMONIDES (Poland) said that, on the understanding that the Committee's task was to evaluate the results achieved in the negotiating groups rather than to continue the debate, his delegation could support the conclusion of the Chairman of Negotiating Group 7 that none of the proposals concerning paragraphs 1, 2 and 3 of articles 74 and 83 could be included in the revised negotiating text. It agreed that certain proposals, particularly that submitted by the delegations of Mexico and Peru (NG7/36), as amended by the USSR, and that put forward by the delegations of India, Iraq and Morocco (NG7/32), had received such a degree of support that they could be regarded as possible bases for further negotiations.

77. His delegation was firmly convinced that negotiations on delimitation should be continued during the second part of the session. The suggestion made by the Chairman on that matter might prove most helpful.

78. Mr. HAYES (Ireland), speaking as co-ordinator of the sponsors of document NG7/10 and Add. 1, endorsed the comments made by the representative of Romania on paragraph 1 of article 74 and of article 83.

79. He agreed with the representative of Turkey that no consensus had been reached in Negotiating Group 7 on the Chairman's suggestion for a neutral formula: the sponsors of document NG/10 and Add. 1 rejected that suggestion.

80. Mr. NASINOVSKY (Union of Soviet Socialist Republics) said that the Chairman's proposals on delimitation, interim measures and the settlement of disputes could constitute a satisfactory basis for a compromise solution on those issues. He stressed that the majority of the members of the Group had endeavoured to find solutions acceptable to all delegations. Looked at from that point of view, the report under discussion was a valuable contribution to the success of the Conference.

The meeting rose at 1.15 p.m.

Annex 24

Minute from C.C.D. Haswell, East African Department,
30 June 1980

Reference ... JC/BO20/3 (22)

[redacted]

Mr Wallace

Mr Robson

c c Mr Hewitt

Mr Maxwell (23) (Minute below)

DIEGO GARCIA: THE MAURITIAN CLAIM

1. On 26 and 27 June 1980 MMM and Labour Party Ministers and Backbenchers in Mauritius made an attempt to include the Chagos Archipelago in legislation declaring Tromelin (Claimed from France) as Mauritius Territory. The attempt was successfully resisted but only by a speaker's ruling after stout action by Ramgoolam and Sir Harold Walter. Afterwards Ramgoolam made a surprisingly robust statement about the issue (a copy of the text is attached.)

2. This incident marks the latest thrust in the steadily-growing momentum behind the movement to secure the return of the Chagos Archipelago to Mauritius. Ramgoolam is doing a sterling job in upholding the British interest in Chagos; but he is getting on, and his apparent support for us over this issue will further weaken his already somewhat shaky political credibility in Mauritius. In the run-up to next year's election, this can only be a bad thing for his party.

3. We are thus faced with two interlocked, undesirable developments in Mauritius: the continuing escalation of the campaign for the return of Chagos, and the growing likelihood that Ramgoolam's government will soon be replaced by one considerably less sympathetic towards British interests. Our objectives therefore are to try to put the Chagos issue in Mauritius to rest, and to try to bolster Ram's political standing.

4. We cannot silence the Chagos issue by evoking the agreement with Mauritian Ministers in 1965 that it would not be open to them to raise the issue of the return of the Archipelago: this would weaken Ramgoolam's standing by arousing criticism that he gave away too much at the 1965 negotiations, and would anyway not be binding on future Mauritian governments. It is for the same reason that in any future action we take, we cannot have recourse to the 1965 papers.

5. Nor can we quell the issue with offers of aid, even if we had aid to offer: this would amount to a tacit admission that we are in the wrong.

6. We should, however, wish to give the appearance that Ramgoolam had extracted concessions from us over the Chagos issue, whilst making it clear that sovereignty over Chagos remains firmly in British hands. If the concessions are genuinely useful to the Mauritians, Ramgoolam's prestige will be increased and we will go a long way to achieving our two objectives.

7. I would suggest the following as a possible course of action:

Part A

By way of 'clarifying the position', we should come to an agreement with Ramgoolam that:

(i) As long as the Chagos Archipelago is required for defence purposes, it will remain in British ownership;

(ii) once the Chagos Archipelago is no longer required for defence purposes, it will be ceded to Mauritius, leaving the former islanders free to return if they so wish;

(iii) The Archipelago will continue to be required for defence purposes as long as any littoral or hinterland state of the Indian Ocean continues to be threatened by Soviet aggression (or other definition to be agreed with Defence Department)

This approach would help to lay the blame for the 'non-return' of Chagos at least equally on Russian actions in the Indian Ocean area.

Part B

The inducements: We should suggest to Ramgoolam that:

(i) We should declare a 200-mile fishing limit around the Chagos islands;

(ii) Apart from the UK, only Mauritius will have fishing rights within the limit

(iii) Mauritian fishing vessels in the Chagos area will have recourse to help from Diego Garcia in times of distress. We would thus not only be making extremely good fish stocks available for the Mauritians virtually to monopolise, but assisting them to do so. We would also provide an excuse for keeping soviet 'fishing' vessels at least 200 miles from Diego Garcia.

8. These ideas obviously require greater consideration, and we would, probably, need to consult the Americans. But I should be grateful for your views on this approach to the problem.

Charles Haswell

C C D Haswell
East African Department

30 June 1980

Annex 25

Telegram from the Foreign and Commonwealth Office,
29 October 1980

FOMAU 066/33

RR PORT LOUIS

063/1 (85)

SRS 291

[redacted]

FM FCO 291130Z OCT 82
TO IMMEDIATE DELHI
TELEGRAM NUMBER 724 OF 29 OCTOBER
INFO ROUTINE PORT LOUIS

YOUR TELNO 772: DIEGO GARCIA

1. WHEN RAMGOOLAM WAS IN LONDON LAST WEEK HE ASSURED US ONCE AGAIN THAT DIEGO GARCIA IS NOT AN ISSUE BETWEEN OUR TWO GOVERNMENTS. HE FELT OBLIGED TO MAKE PUBLIC STATEMENTS ON THE ON THE MATTER FROM TIME TO TIME BECAUSE THE MAURITIAN OPPOSITION IS MAKING AN ELECTION ISSUE OF IT (LOCAL ELECTIONS ARE DUE TO BE HELD IN MAURITIUS IN DECEMBER). SUBSEQUENTLY THE MAURITIAN FOREIGN MINISTER GIVE SIMILAR ASSURANCES TO MR LUCE MAKING THE POINT THAT MAURITIUS HAD NOT FOLLOWED UP THE OAU RESOLUTION NOR HAD THEY TABLED A RESOLUTION AT THE UNGA.

2. IN VIEW OF THIS WE WOULD NOT WISH TO INITIATE ANY COUNTER TO RAMGOOLAM'S STATEMENT IN DELHI. HOWEVER YOU MAY DRAW FREELY ON PARA 3 BELOW IN RESPONSE TO DIRECT PRESS ENQUIRIES.
3. THE UK HAS FULL SOVEREIGNTY OVER DIEGO GARCIA. THE POSITION IS QUITE CLEAR. THE CHAGOS ISLANDS INCLUDING DIEGO GARCIA WERE DETACHED FROM MAURITIUS IN 1965 WITH THE AGREEMENT OF MAURITIAN MINISTERS TO FORM PART OF THE BRITISH INDIAN OCEAN TERRITORY. IN THE EVENT THAT IT IS NO LONGER REQUIRED FOR DEFENCE PURPOSES IT WOULD BE CEDED (FOR LEGAL REASONS CEDE SHOULD BE ADHERED TO. SEMI-COLON REVERT OR RETURN SHOULD BE AVOIDED) TO MAURITIUS. THIS WAS CONFIRMED BY THE PRIME MINISTER IN THE HOUSE ON 11 JULY THIS YEAR. AS REGARDS THE ISLANDS RETURNED TO SEYCHELLES THE POSITION IS THAT IN 1965 WHEN SEYCHELLES WAS A COLONY THREE ISLANDS WERE DETACHED FROM THE ARCHIPELAGO TO FORM PART OF THE BIOT. WHEN SEYCHELLES BECAME INDEPENDENT IN 1976 THESE ISLANDS WERE RETURNED. THIS ACTION IN NO WAY AFFECTED THE STATUS OF THE BIOT.

4. REFERENCE LAST SENTENCE OF YOUR PARA 2. COPY IS IN BAG LEAVING 31 OCTOBER.

CARRINGTON

NNNN

SBJS/RECD AT 30/0551Z FC/RPC

Annex 26

Mauritius' Interpretation and General Clauses (Amendment) Act 1982

THE INTERPRETATION AND GENERAL CLAUSES (AMENDMENT) ACT 1982

Act No. 4 of 1982

I assent,

D.BURRENCHOBAY
Governor-General

7th July 1982

ARRANGEMENT OF SECTIONS

Section

To amend the Interpretation and General Clauses Act
(17th July)

ENACTED by the Parliament of Mauritius, as follows-

Short title.

1. This Act may be cited as the Interpretation and General Clauses (Amendment) Act 1982.

Interpretation

2. In this Act-

"principal Act" means the Interpretation and General Clauses Act.

Section 2 of the principal Act amended

3. Section 2(b) of the principal Act is amended in the definition of "State of Mauritius" or "Mauritius" by deleting the words "Tromelin and Cargados Carajos" and replacing them by the words "Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia".

Commencement

4. This Act shall be deemed to have come into force on 13 July 1974.

Annex 27

Letter from British High Commission to the East African Department,
19 October 1983

(141)

Please r and r

PH 27/10.

063/1

JSB 024/1 (11)

RECEIVED 31 OCT 1983

DESK

INDEX

BRITISH HIGH COMMISSION

PORT LOUIS

19 October 1983

cc
Commander Hodgson, JT
LENLO, Diego Garcia.
Mr Bell (Defence Dept)
Mrs Walawalkar (Research Dept)
PH
27/10 PH Thomas (HOD DSS).
Mr Hiller (HOD DS11)
PH. 27/10.

W N Wenban-Smith Esq
EAD
FCO
London

My dear Nigel,

ACCESS TO THE BIOT

JSB 026/1 (14)

1. As you will know from my telno 136, Bill Squire was able to pass on to Sir G Duval and Kader Bhayat the news that Mauritian vessels would be permitted access to the outer islands of the BIOT and their territorial sea (FCO telno 84 to Johannesburg).

JSB 026/1 (13)

2. I went through this again with Anil Gayan on 12 October. His first reaction was rather legalistic. He said that if we were going to licence the Mauritians concerned, then the Mauritian Government would have to make a public statement asserting their sovereignty etc. I told him that I would regret this and hoped that the matter could be pursued in an altogether lower key. Surely, what individual Mauritians did should not evoke any heavy-handed statement by their government - we would be giving permits to individuals and the Mauritian Government did not surely need to look into this. (I believe that the only information the Mauritian authorities need from a Mauritian vessel leaving Port Louis is an indication of where they are sailing to: no doubt the Mauritian authorities would also be aware when coconuts or fish are put on the local market.) Gayan cooled down and appeared to accept that, providing not too much fuss was made publicly on our side, the Mauritians would also keep quiet.

JSB 040/2 (8)

3. In accordance with FCO telno 112, I have this week been talking to both Seesaram and Talbot. Seesaram came in to see me on 17 October. He was grateful for the British decision and said that he would be discussing this with his fellow directors. We could expect a letter from him in the near future requesting up to two visits for the period to the end of this year (as he has always told us, he envisages six trips in a year altogether). As to seasonality, Seesaram explained that October to December or January were probably the best months because of the Hindu religious festivals which required an adequate supply of coconuts. The rest of the year was reasonable except August and September: their experience this year suggested these two months were ones which had particularly bad weather in the Chagos.

4. In general discussion I emphasised the need not to over-exploit the natural resources of the Chagos and also for us to have precise details on what Seesaram and his mates were really up to. He insisted that there was a ready market for the coconuts and that the enterprise could be profitable. It required some clearing of the undergrowth so that the coconuts did not fall on to bushes etc which caused increased humidity and led to the nuts germinating and spoiling. One or two collectors would stay with the piled coconuts so that they could be loaded when the full cargo was ready, ie if

[redacted]

they were loaded piecemeal, those at the bottom of the hold soon went bad. This procedure does, of course, mean that these one or two people on each of the islands have to make some sort of rough camp but Seesaram was insistent that they would be absolutely scrupulous in accounting for every single member of their team and there would never be any question of anyone being left behind. He also referred to the salting of fish (you will recall that this was reported inter alia in the RNLO Diego Garcia's telno 011321z of 1 August). He said this required one or two men on shore for the three days of salting and two of drying. This was not the major objective of the Romaya's expedition but they reckoned to get about three tons of salt fish on each trip. (43)

5. I pressed Seesaram on whether anyone was likely to wish to compete with his syndicate for the collection of coconuts. He said that he knew of no-one with suitable boats but he had been amazed that someone had approached him about coconut collection two days after I had seen the Minister of External Affairs saying the latter had tipped him off.

6. I saw Joseph Talbot and his brother Claude this morning. They were absolutely delighted about the news. They do not envisage taking advantage of these arrangements until May or June next year. What they have in mind is that they might send both the Nazareth and La Perle III in May and June and one of the ships in July and September. They accept that we will, of course, wish to be assured that there is no overfishing. As usual, I found them very cooperative. They said that they had no intention of letting their people stay on shore because they lost money when they were not fishing. There might, however, from time to time be one or two fishermen who were four or five miles away from the mother ship and who went ashore to drink coconut milk or see old buildings etc. Apparently, when the Talbot brothers had seen the Royal Navy earlier this year, they had said that they were perfectly prepared to see any fishermen found ashore strafed! There was, of course, a need to obtain bait but this was usually accomplished by wading on the landward side of the reef. The Talbots thought that, given good weather, they would not necessarily be very near the islands even in the months of next year which they have in mind for visiting the Chagos Archipelago.

7. Claude Talbot told me that there were an amazing number of yachts in the Salomon Islands when they were there in July. They could not see how many were at Boddam but they got the impression that there must be so many there (?10) that at least three others were moored off Takamake even though this provided much less protection from the wind than Boddam.

8. The Talbots have little time for the coconut collectors. They believe that the Seesaram/Pyndiah operation is not profitable and are surprised that anyone should wish to continue it.

9. Joseph Talbot had heard nothing more about the approaches to him over using his ships for freight to the Chagos (para 6 of my letter to Peter Hunt of 1 September) but he remained interested in exploring prospects for this since his vessels were equipped both for dry and refrigerated cargo. (116)

J N Allan

Annex 28

Letter from British High Commission,
3 November 1983

(142)

JE 0441/1

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INDEX

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BRITISH
HIGH COMMISSION
CHAUSSÉE PORT LOUIS MAURITIUS

063/1

3 November 1983

P L Hunt Esq
EAD
FCO

Dear Peter

MAURITIAN FISHING OFF THE CHAGOS ARCHIPELAGO

(123) (127)

1. You will recall in my letters of 26 August and 8 September I told you about Ireland Blyth's ship the 'Lady Sushil' which has been in the vicinity of the Chagos Archipelago after fishing in the Pacific. I have received no comments from you on these letters but when I was chatting to Nigel Wenban-Smith on the telephone during my brief private visit to the United Kingdom he said that the arrangements for Mauritian vessels to fish in BIOT waters was against the background of traditional activities. In these circumstances the 'Lady Sushil' should not purse-seine within the 12 miles limit. I passed this on to Colin Hare who took note. Incidentally he said that the 'Lady Sushil' had had a very good catch about a hundred miles from the Chagos. In case this matter becomes active again could you please give me chapter and verse as to why it is that purse-seining by Mauritian vessels is not possible within the 12 miles limit and also let me know whether the procedures have now been completed for designating Mauritius under the Fisheries Limits Ordinance 1971, para 4 of your letter (3) of 6 January refers. Also have you any further background which you can give me in answer to the various questions I posed on general maritime questions in my letter of 18 August to Nigel Wenban-Smith.

(114)

Yours ever

John

J N Allan

Annex 29

Note from W. Wenban-Smith to A. Watts on BIOT: Fisheries Ordinance,
10 January 1984

[redacted]

Reference 1
JES 370/1
RECEIVED IN REGISTRY
30 JAN 1984
INDEX PA
R

Mr Watts,
Deputy Legal Adviser

BIOT: FISHERY LIMITS ORDINANCE

1. In para 2 of your minute of 8 November you asked if we could look at the extent of our commitment to Mauritius on fishing rights.

2. The starting point is clearly the Colonial Secretary's despatch No 423 of 6 October 1965, in particular para 22(vi)(b) of the meeting record annexed to it. Essentially the British Government undertook to use their good offices with the US Government to ensure that fishing rights in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable. The 1976 Exchange of Notes with the United States (see para 6 below) in effect defined 'practicable' in relation to fishing as meaning 'excluding the area round Diego Garcia itself'. (Incidentally, I take it that to ''exercise sovereign rights'' means that fishing is excluded within the 9 mile contingency zone as well as the 3 mile territorial sea.)

3. I attach a copy of [redacted] minute to [redacted] of 7 August 1980, which gives background to the matter. As you will see from para 2 of [redacted] letter to [redacted] of 2 July 1971, enclosed with [redacted] minute, the then Office view was that our commitment would be discharged as follows: ''... the Commissioner of BIOT will use his powers under Section 4 of BIOT Ordinance No 2/1971 to enable Mauritian fishing boats to continue fishing in the 9 mile contiguous zone in the waters of the Chagos Archipelago. This exemption stems from the understanding on fishing rights reached between HMG and the Mauritius Government at the time of the Lancaster House Conference in 1965 ...''

4. Article 4(1) of the Fishery Limits Ordinance 1971 (2/71) at present states in part that the Commissioner may ''designate any country outside the Territory and the area in which and descriptions of fish or marine product for which fishing boats registered in that country may fish.'' I assume that, since neither Mauritius nor it seems any other country has been designated as yet under Article 4(1), areas and descriptions of fish or marine product remain equally undesignated. Incidentally, with reference to the last sentence of para 2 of your minute, the papers leave me with the impression that ''traditional'' was intended to describe the grounds for allowing the Mauritians to go on fishing, not the elementary techniques used. If that is the right reading, then I do not see why the Mauritians should be exempt from the full rigour of the fisheries regulations.

/5.

[redacted]

5. We see merit therefore in your suggestion that we should extend Section 4(1) to make fishing by Mauritian vessels in the territorial sea, as well as the contiguous zone, subject to licence. This would enable the Commissioner to regulate areas fished in and fish caught through the licensing system, from the shore to 12 miles out in each case.

6. We have already agreed in Article 13 of the Exchange of Notes with the US Government (1976) that ''Furthermore, the Government of the United Kingdom will not permit commercial fishing or oil or mineral explorations or exploitations in or under those areas of the waters, continental shelf and sea-bed around Diego Garcia over which the United Kingdom has sovereignty or exercises sovereign rights, unless it is agreed that such activities would not harm or be inimical to the defence use of the island.'' The licensing system should give the Commissioner the flexibility to respond to changing views on whether or not commercial fishing around Diego Garcia would be harmful to the defence use of the island.

7. I understand that the fines exactable (your para 3) fall within the magistrate's powers. They clearly need to be pitched at a level where they make some impression on ship-owners.

8. I will draw the comment in para 4 of your minute to Mr Greenwood's attention.

W N Wenban-Smith
East African Department

10 January 1984

Annex 30

Letter from P.L. Hunt, East African Department to Mr. Watts,
14 February 1985

Reference.....

Mr Watts
Deputy Legal Adviser

BIOT: LICENCES FOR FISHING, TAKING OF MARINE PRODUCT AND COCONUT COLLECTING

1. Paragraph 5 of the BIOT Fishery Limits Ordinance 1984 (attached) provides that "the Commissioner or an agent authorised by him may grant licences for fishing boats permitting the taking of fish and marine product within the fishery limits". In practice we have only allowed Mauritian fishing vessels to fish within BIOT territorial waters and in fact only two boats, the MV Piranha and the MV Nazareth, have applied.

2. As a result of representations made to us by the Mauritius Government we also agreed to "licence" the collection of coconuts from the outer islands of the BIOT by the boats which we had permitted to fish in BIOT waters. To date the licensing system has consisted of the owner/either the Piranha or the Nazareth making a written application to the British High Commission in Port Louis to go to the Chagos to fish and/or collect coconuts. We are then consulted by telegram and have in all cases so far agreed to the applications subject to one or conditions (eg that they should keep in daily contact by radio with the BIOT authorities).

3. We would now like to formalise the system by introducing an Application Form (draft attached). The applicant would complete part A and the High Commission part B.

4. I should be grateful for your comments on the proposed form. Once we have your agreement we plan to introduce the Application Form forthwith.

P. L. Hunt

P L Hunt, East African Department
K301 233 8696

14 February 1985

Letter sent.

cc:- Miss McIntosh, MAED

PA. PA 19/2.

M. Hunt:
We can't cover coconuts under S.5 of the Ordinance.
I don't see the need for a "Reject" option on Part B - ij

CODE 18-77
AWO Ltd. 7/84

RESTRICTED

Part B

I hereby approve/reject the above application on behalf of the Commissioner of the British Indian Ocean Territory subject to the following conditions .....

.....

.....

Official Stamp seal

Signed .....

Dated .....

Rank .....

12. If a purpose of your request for a licence is to take fish or marine product please specify fishing methods to be used:

Pole and Line Number of poles: .....

Longlining Numer of hooks: .....

Purse Seining Length and depth of Net (m): .....

.....

Other method(s) (please specify): .....

.....

13. If a purpose of your request for a licence is to collect coconuts, specify from which island(s) .....

.....

.....

14. Period for which licence is required (please state date of departure of vessel and anticipated date of return)

.....

15. Planned route of vessel (location and timings): .....

.....

16. Date of any previous applications(s) .....

.....

I/We, owner(s)/charterer(s)/certified legal representative of the above boat, certify that the above information is true and accurate

Signed .....

Dated .....

/Part B

THE BRITISH INDIAN OCEAN TERRITORY

ORDINANCE NO 11 OF 1984

Application for a licence for the taking of fish, marine product or coconuts from the British Indian Ocean Territory or from within the territorial waters of the British Indian Ocean Territory.

Part A

1. Name of Boat: .....
2. Identification Marks: .....
3. Port of registration: .....
4. Owner(s)/Charterer(s): .....
5. Owner(s)/Charterer(s) Office and Address: .....
   .....
6. Boat Size - Overall length:.....
   Breadth:..... Draft: .....
7. Gross Tonnage: .....tonnes
8. Fish Hold Tonnage: ..... tonnes
9. Number and Nationality of Crew (attach list):
   .....
10. Call sign of Vessel .....
11. Precise purpose for which licence is required
    .....
    .....
    .....

/ 12. ...

we don't approve, but that.

The Commission would generally endorse the proposal of giving the licence to [illegible] [illegible] [illegible].

Otherwise, [illegible] comments.

Consultants will need separate "permission", but on similar basis.

[illegible signature]

Annex 31

Environment Protection (Overseas Territories) Order 1988

STATUTORY INSTRUMENTS

1988 No. 1084

MARINE POLLUTION

The Environment Protection (Overseas Territories) Order 1988

Made - - - -	*22nd June 1988*
Coming into force - -	*21st July 1988*

Her Majesty, in exercise of the powers conferred upon Her by section 26 of the Food and Environment Protection Act 1985(1), and of all other powers enabling Her in that behalf, is pleased by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

1. This Order may be cited as the Environment Protection (Overseas Territories) Order 1988 and shall come into force on 21st July 1988.

2.—(1) The provisions of Parts II and IV of the Food and Environment Protection Act 1985 and Schedules 2, 3 and 4 thereto, modified and adapted as in Schedule 1 hereto, shall extend and apply to the Territories specified in Schedule 2 hereto.

(2) For the purpose of construing the said Act as so extended and applied as part of the law of a Territory to which it extends, "the Territory" means that Territory and "any Territory" means any of the Territories to which it extends.

3.—(1) The Governor may by regulations specify in the currency of the Territory the amount which is to be taken as equivalent to the sums expressed in sterling in Schedule 1 hereto.

(2) A certificate given by or on behalf of the Governor in pursuance of paragraph (1) above shall be conclusive evidence of the matters stated therein for the purposes of this article, and a document purporting to be such a certificate shall, in any proceedings, be received in evidence and, unless the contrary is proved, be deemed to be such a certificate.

4.—(1) The Dumping at Sea Act 1974 (Overseas Territories) Order 1975(2) is revoked in respect of the territories to which this Order applies.

(2) Any licence under the Dumping at Sea Act 1974 (Overseas Territories) Order 1975 which is in force in respect of the territories to which this Order applies immediately before the coming into force of this Order–

(a) shall have effect as from the coming into force of this Order as if granted under this Order; and

(1) 1985 c. 48.
(2) S.I.1975/1831.

(b) in the case of a licence for a specified period, shall remain in force, subject to the provisions of this Order, for so much of that period as falls after the coming into force of this Order.

G. I. de Deney
Clerk of the Privy Council

SCHEDULE 1

PARTS II AND IV OF, AND SCHEDULES 2, 3 AND 4 TO, THE FOOD AND ENVIRONMENT PROTECTION ACT 1985 AS EXTENDED TO THE TERRITORIES SPECIFIED IN SCHEDULE 2 OF THIS ORDER

PART II

deposits in the sea

Licensing

Requirement of licences for deposit of substances and articles in the sea etc.

5. Subject to the following provisions of this Part of this Act, a licence under this Part of this Act is needed—

(a) for the deposit of substances or articles within the territorial waters of the Territory, either in the sea or under the sea-bed—

(i) from a vehicle, vessel, aircraft, hovercraft or marine structure;

(ii) from a container floating in the sea; or

(iii) from a structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea;

(b) for the deposit of substances or articles anywhere in the sea or under the sea-bed—

(i) from a British vessel, British aircraft, British hovercraft or British marine structure; or

(ii) from a container floating in the sea, if the deposit is controlled from a British vessel, British aircraft, British hovercraft or British marine structure;

(c) for the deposit of substances or articles anywhere within a fisheries zone of the Territory, either in the sea or under the sea-bed—

(i) from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure which was loaded in the Territory or the territorial waters of the Territory with any of those substances or articles; or

(ii) from a container floating in the sea which was loaded with any of those substances or articles in the Territory or the territorial waters of the Territory, if the deposit is controlled from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure;

(d) for the deposit of substances or articles anywhere under the sea-bed within a fisheries zone of the Territory from a vehicle which was loaded in the Territory with any of those substances or articles;

(e) for the scuttling of vessels—

(i) in the territorial waters of the Territory;

(ii) anywhere at sea, if the scuttling is controlled from a British vessel, British aircraft, British hovercraft or British marine structure; or

(iii) anywhere at sea within a fisheries zone of the Territory, if it is controlled from a foreign vessel, foreign aircraft, foreign hovercraft or foreign marine structure and the vessel scuttled was towed or propelled to the place where the scuttling takes place from the Territory or the territorial waters of the Territory;

(f) for the loading of a vessel, aircraft, hovercraft, marine structure or floating container in the Territory or the territorial waters of the Territory with substances or articles for deposit anywhere in the sea or under the sea-bed;

(g) for the loading of a vehicle in the Territory with substances or articles for deposit from that vehicle as mentioned in paragraph (a) or (d) above; and

(h) for the towing or propelling from the Territory or the territorial waters of the Territory of a vessel for scuttling anywhere at sea.

Requirement of licences for incineration at sea etc.

6.—(1) Subject to the following provisions of this Part of this Act, a licence is needed—

(a) for the incineration of substances or articles on a vessel or marine structure—

(i) in the territorial waters of the Territory;

(ii) anywhere at sea, if the incineration takes place on a British vessel or British marine structure; or

(iii) anywhere at sea within a fisheries zone of the Territory, if the incineration takes place on a foreign vessel or foreign marine structure which was loaded in the Territory or the territorial waters of the Territory with any of those substances or articles; and

(b) for the loading of a vessel or marine structure in the Territory or the territorial waters of the Territory with substances or articles for incineration anywhere at sea.

(2) In this Act "incineration" means any combustion of substances and materials for the purpose of their thermal destruction.

Exemptions.

7.—(1) The Governor may by regulations specify operations—

(a) which are not to need a licence; or

(b) which are not to need a licence if they satisfy conditions specified in the regulations.

(2) The conditions that regulations under this section may specify include conditions enabling the Governor to require a person to obtain the Governor's approval before he does anything for which a licence would be needed but for the regulations.

(3) Approval under subsection (2) above may be without conditions or subject to such conditions as the Governor considers appropriate.

Licences.

8.—(1) In determining whether to issue a licence the Governor—

(a) shall have regard to the need—

(i) to protect the marine environment, the living resources which it supports and human health; and

(ii) to prevent interference with legitimate uses of the sea; and

(b) may have regard to such other matters as the Governor considers relevant.

(2) Without prejudice to the generality of subsection (1) above, where it appears to the Governor that an applicant for a licence has applied for the licence with a view to the disposal of the substances or articles to which it would relate, the Governor, in determining whether to issue a licence, shall have regard to the practical availability of any alternative methods of dealing with them.

(3) The Governor—

(a) shall include such provisions in a licence as appear to the Governor to be necessary or expedient—

(i) to protect the marine environment, the living resources which it supports and human health; and

(ii) to prevent interference with legitimate uses of the sea; and

(b) may include in a licence such other provisions as the Governor considers appropriate.

(4) Without prejudice to the generality of subsection (3) above, the Governor—

(a) may include in any licence provisions requiring—

(i) that no operation authorised by the licence shall be carried out until the Governor has given such further consent to or approval of the operation as the licence may specify; and

(ii) that automatic equipment shall be used for recording such information relating to any operation of deposit, scuttling or incineration mentioned in the licence as the Governor may specify; and

(b) may include in a licence which only authorises operations such as are mentioned in section 5(f) or (h) above or section 6(1)(b) above provisions requiring that any operation of deposit, scuttling or incineration which is mentioned in it shall take place at a specified site, whether in the territorial waters of the Territory or not.

(5) The Governor may require an applicant for a licence to supply such information and permit such examinations and tests as in the opinion of the Governor may be necessary or expedient to enable the Governor to decide whether a licence should be issued to the applicant and the provisions which any licence that is issued to him ought to contain.

(6) Where automatic recording equipment is used in accordance with a provision included in a licence by virtue of sub-section (4)(a) above, any record produced by means of the equipment shall, in any proceedings under this Part of this Act, be evidence of the matters appearing from the record.

(7) The Governor may require an applicant for a licence, on making his application, to pay a reasonable fee in respect of the administrative expenses of processing his application.

(8) The Governor may also require an applicant for a licence to pay a further reasonable fee towards the expense—

(a) of carrying out any examinations and tests which in the opinion of the Governor are necessary or expedient to enable the Governor to decide—

(i) whether to issue a licence to the applicant; and

(ii) the provisions which any licence issued to him ought to include;

(b) of checking the manner in which operations for which a licence is needed have been or are being conducted; and

(c) of monitoring the effect of such operations.

(9) Fees under this section shall be determined on principles settled by the Governor after consultation with the organisations (if any) appearing to the Governor to represent persons who are likely to apply for licences.

(10) The Governor may vary or revoke a licence which he has issued if it appears to him that there has been a breach of any of its provisions.

(11) The Governor may vary or revoke a licence which he has issued if it appears to him that the licence ought to be varied or revoked—

(a) because of a change in circumstances relating to the marine environment, the living resources which it supports or human health; or

(b) because of increased scientific knowledge relating to any of those matters; or

(c) for any other reason that appears to him to be relevant.

(12) Schedule 3 to this Act shall have effect.

Offences relating to licensing system etc.

Offences relating to licensing system.

9.—(1) Subject to subsections (3) to (7) below, a person who—

(a) except in pursuance of a licence and in accordance with its provisions, does anything for which a licence is needed; or

(b) causes or permits any other person to do any such thing except in pursuance of a licence and in accordance with its provisions,

shall be guilty of an offence.

(2) A person who for the purpose of procuring the issue of a licence, or in purporting to carry out any duty imposed on him by the provisions of a licence—

(a) makes a statement which he knows to be false in a material particular;

(b) recklessly makes a statement which is false in a material particular; or

(c) intentionally fails to disclose any material particular,

shall be guilty of an offence.

(3) Subject to subsection (4) below, it shall be a defence for a person charged with an offence under subsection (1) above in relation to any operation to prove—

(a) that the operation was carried out for the purpose of securing the safety of a vessel, aircraft, hovercraft or marine structure or of saving life; and

(b) that he took steps within a reasonable time to inform the Governor—

(i) of the operation;

(ii) of the locality and circumstances in which it took place; and

(iii) of any substances or articles concerned.

(4) A person does not have the defence provided by subsection (3) above if the court is satisfied—

(a) that the operation—

(i) was not necessary for any purpose mentioned in paragraph (a) of that subsection; and

(ii) was not a reasonable step to take in the circumstances; or

(b) that it was necessary for one of those purposes but the necessity was due to the fault of the defendant.

(5) It shall be a defence for a person charged with an offence under subsection (1) above in relation to any operation—

(a) which falls within section 5(b) or (e)(ii) or 6(1)(a)(ii) above; and

(b) which was carried out outside the territorial waters of the Territory, to prove that subsections (6) and (7) below are satisfied in respect of that operation.

(6) This subsection is satisfied—

(a) in respect of an operation falling within section 5(b) above, if the vessel, aircraft, hovercraft, marine structure or container (as the case may be) was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles deposited;

(b) in respect of an operation falling within section 5(e)(ii) above, if the vessel scuttled was towed or propelled from a Convention State or the national or territorial waters of a Convention State to the place where the scuttling was carried out; or

(c) in respect of an operation falling within section 6(1)(a)(ii) above, if the vessel or marine structure on which the incineration took place was loaded in a Convention State or the national or territorial waters of a Convention State with the substances or articles incinerated.

(7) This subsection is satisfied in respect of an operation if the operation took place in pursuance of a licence issued by the responsible authority in the Convention State concerned and in accordance with the provisions of that licence.

Power to take remedial action.

10.—(1) The Governor may carry out any operation which appears to him to be necessary or expedient for the purpose of protecting the marine environment, the living resources which it supports and human health, or of preventing interference with legitimate use of the sea, in any case where anything for which a licence is needed appears to have been done otherwise than in pursuance of a licence and in accordance with its provisions.

(2) If the Governor carries out an operation under subsection (1) above, he may recover any expenses reasonably incurred by him in carrying it out from any person who has been convicted of an offence in consequence of the act or omission which made it appear to the Governor to be necessary or expedient to carry out the operation.

Enforcement

Powers of officers.

11.—(1) The Governor may authorise any person, subject to such limitations as may be specified in the instrument authorising him, to enforce this Part of this Act; and the following provisions of this Act shall be construed, in reference to a person so authorised, as subject to any such limitations.

(2) Subject to the following provisions of this Act, a person so authorised may enter—

(a) land and vehicles in the Territory;

(b) foreign vessels, foreign aircraft, foreign hovercraft and foreign marine structures in the Territory or within a fisheries zone of the Territory;

(c) British vessels, British aircraft, British hovercraft and British marine structures, wherever they may be,

if he has reasonable grounds for believing that any substances or articles intended to be deposited in the sea or under the sea-bed or incinerated on a vessel or marine structure at sea are or have been present there.

(3) A person so authorised may board—

(a) any vessel within a fisheries zone of the Territory; and

(b) any British vessel wherever it may be,

if it appears to him that it is intended to be scuttled.

(4) A person so authorised shall not enter premises used only as a dwelling for the purpose of enforcing this Part of this Act.

(5) Schedule 2 to this Act shall have effect with respect to persons authorised to enforce this Part of this Act.

Enforcement of Conventions.

12.—(1) The Governor may by regulations—

(a) declare that any procedure which has been developed for the effective application of the London Convention or the Oslo Convention and is specified in the regulations is an agreed procedure as between Her Majesty's Government in the Territory and the Government of any Convention State so specified; and

(b) specify any of the powers conferred by this Act for the purpose of enforcing this Part of this Act as a power that may be exercised, by such persons in such circumstances and subject to such conditions or modifications as may be specified, for the purpose of enforcing that procedure.

(2) A person who exercises any powers by virtue of regulations under this section shall have the same rights and liabilities in relation to their exercise that a person authorised under section 11 above would have in relation to the exercise of any powers for the purpose of enforcing this Part of this Act.

Miscellaneous

Powers of Governor to test and to charge for testing.

13.—(1) At the request of any person the Governor may conduct tests for the purpose of ascertaining the probable effect on the marine environment and the living resources which it supports of using for the purpose of treating oil on the surface of the sea any substance produced for that purpose.

(2) If the Governor conducts any tests under this section, he may recover any expenses reasonably incurred by him in conducting them from any person at whose request they were conducted.

Duty of Governor to keep register of licences.

14. The Governor shall compile and keep available for public inspection free of charge at reasonable hours a register containing—

(a) in respect of each licence issued by the Governor for an operation such as is mentioned in section 5(a), (b), (c), (d), (f) or (g) or section 6 above, the particulars specified in Part I of Schedule 4 to this Act; and

(b) in respect of each licence so issued for an operation such as is mentioned in section 5(e) or (h) above, the particulars specified in Part II of that Schedule,

and shall furnish a copy of the entry relating to any such licence to any person on payment by him of such reasonable fee as the Governor may determine.

Repeal of the Dumping at Sea Act 1974.

15. The Dumping at Sea Act 1974 is hereby repealed.

PART IV

general and supplementary

Application to Crown etc.

20.—(2) Subject to subsection (3) below, a person to whom this subsection applies may perform any functions under Part II of this Act in relation to land in which there is a Crown interest.

(3) Such a person shall not perform any functions—

(a) in relation to land in which there is no interest other than a Crown interest; or

(b) in relation to land which is exclusively in Crown occupation.

(4) Subsection (2) above applies to a person authorised to enforce Part II of this Act.

(5) In this section—

"Crown interest" means any interest belonging to Her Majesty in right of the government of the Territory;

"Crown occupation" means occupation by Her Majesty in right of the government of the Territory.

Offences— penalties etc.

21.—(1) A person guilty of an offence to which this subsection applies shall be liable—

(a) on summary conviction, to a fine of an amount not exceeding £2,000; and

(b) on conviction on indictment, to a fine or to imprisonment for a term of not more than two years or to both.

(2) The offences to which subsection (1) above applies are offences under section 9(1) above.

(3) A person guilty of an offence to which this subsection applies shall be liable—

(a) on summary conviction, to a fine of an amount not exceeding £2,000; and

(b) on conviction on indictment, to a fine.

(4) The offences to which subsection (3) above applies are offences under section 9(2) above.

(5) A person guilty of an offence under Schedule 2 to this Act shall be liable on summary conviction to a fine of an amount not exceeding £2,000.

(6) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(7) Where the affairs of a body corporate are managed by its members, subsection (6) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

General defence of due diligence.

22.—(1) In any proceedings for an offence under this Act it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) Without prejudice to the generality of subsection (1) above, a person is to be taken to have established the defence provided by that subsection if he proves—

(a) that he acted under instructions given to him by his employer; or

(b) that he acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,

and in either case that he took all such steps as were reasonably open to him to ensure that no offence would be committed.

(3) If in any case the defence provided by subsection (1) above involves an allegation that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged with the offence by his employers, or to reliance on information

supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

Financial provisions.

23.—(2) Any expenses of the Governor incurred in consequence of the provisions of this Act shall be paid out of the general revenues of the Territory.

(3) Any receipts of the Governor under this Act shall be paid into the general revenues of the Territory.

Interpretation.

24.—(1) In this Act, unless the context otherwise requires—

"British aircraft" means an aircraft registered in the United Kingdom or in any Territory;

"British hovercraft" means a hovercraft registered in the United Kingdom or which is owned by an individual resident in or a body corporate incorporated under the law of any Territory;

"British marine structure" means a marine structure owned by or leased to an individual resident in or a body corporate incorporated under the law of any part of the United Kingdom or of any Territory;

"British vessel" means a vessel registered in the United Kingdom or in any Territory, or a vessel exempted from such registration under the Merchant Shipping Act 1894(3)

"captain", in relation to a hovercraft, means the person who is designated by the operator to be in charge of it during any journey, or, failing such designation, the person who is for the time being lawfully in charge of it;

"commander", in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator, or, failing such designation, the person who is for the time being the pilot in command of the aircraft;

"Convention State" means a state which is a party to the London Convention or the Oslo Convention;

"fisheries zone of the Territory" means any fisheries zone or area within the fishery limits established for the Territory by proclamation of the Governor;

"Governor", in relation to any Territory, means the officer for the time being administering the Government of that Territory or any person whom the Governor may by order designate to perform such of the Governor's functions under this Act as may be specified in such order;

"incineration" has the meaning assigned to it by section 6 above;

"licence" means a licence under Part II of this Act;

"the London Convention" means the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;

"marine structure" means a platform or other man-made structure at sea, other than a pipe-line;

"master", in relation to any vessel, includes the person for the time being in charge of the vessel;

"the Oslo Convention" means the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft concluded at Oslo in February 1972;

"pest", "pesticide" and "pesticide residue" are to be construed in accordance with section 16 above;

(3) 1894 c. 60.

"plants" means any form of vegetable matter, while it is growing and after it has been harvested, gathered, felled or picked, and in particular, but without prejudice to the generality of this definition, includes—

(a) agricultural crops;

(b) trees and bushes grown for purposes other than those of agriculture;

(c) wild plants; and

(d) fungi;

"sea" includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river;

"territorial waters" means any part of the sea within the seaward limits of the territorial waters of the Territory; and

"vessel" has the meaning assigned to it by section 742 of the Merchant Shipping Act 1894

(2) Any reference in this Act to the London Convention or the Oslo Convention is a reference to it as it has effect from time to time.

(3) Any power conferred by this Act to make orders or regulations may be exercised—

(a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

(b) so as to make, as respects the cases in relation to which it is exercised—

(i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);

(ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act;

(iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such incidental or supplemental provision in the orders or regulations as the Governor considers appropriate.

SCHEDULE 2

Section 11

OFFICERS AND THEIR POWERS

Introductory

1. In this Schedule "officer" means a person authorised to enforce Part II of this Act.

Assistants for officers etc.

2.—(1) An officer may take with him, to assist him in performing his functions—

(a) any other person; and

(b) any equipment or materials.

(2) A person whom an officer takes with him to assist him may perform any of the officer's functions, but only under the officer's supervision.

Powers in relation to vessels, aircraft etc.

3.—(1) In order to perform functions under Part II of this Act an officer may require any person—

(a) to give details of any substances or articles on board a vessel, aircraft, hovercraft or marine structure; and

(b) to give information concerning any substances or articles lost from a vessel, aircraft, hovercraft or marine structure.

(2) In order to perform any such functions an officer—

(a) may require any vessel, aircraft, hovercraft or marine structure to stop; and

(b) may require the attendance—

(i) of the master, captain or commander of a vessel, aircraft or hovercraft;

(ii) of the person in charge of a marine structure; and

(iii) of any other person who is on board a vessel, aircraft, hovercraft or marine structure,

and may require any person on board to assist him in the performance of his functions.

(4) In order to perform any such functions an officer may detain a vessel, aircraft, hovercraft or marine structure.

(5) If an officer detains a vessel, aircraft, hovercraft or marine structure, he shall serve on the master, captain, commander or person in charge a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an officer.

Containers etc.

4. Without prejudice to his powers under any other provision of this Act, in order to perform his functions an officer—

(a) may open any container;

(b) may carry out searches, inspections, measurements and tests;

(c) may take samples;

(d) may require the production of documents, books and records; and

(e) may photograph or copy anything whose production he has power to require under paragraph (d) above.

Evidence of officers' authority

5.—(1) An officer shall be furnished with a certificate of his authorisation, and when he proposes to perform any function under Part II of this Act, it shall be his duty, if so requested, to produce that certificate.

(2) It shall also be his duty, if so requested, to state—

(a) his name;

(b) the function that he proposes to perform; and

(c) his grounds for proposing to perform it.

Time of performance of functions

6. An officer must perform his functions under Part II of this Act at a reasonable hour unless it appears to the officer that there are grounds for suspecting that the purpose of their performance may be frustrated if he seeks to perform them at a reasonable hour.

Entry into dwellings

7.—(1) An officer may only enter a dwelling for the purpose of performing his functions under Part II of this Act if a justice has issued a warrant authorising him to enter and search that dwelling.

(2) A justice may only issue such a warrant if on an application made by the officer he is satisfied —

(a) that the officer has reasonable grounds for believing that there is present in the dwelling anything to which those functions relate, and

(b) that—

(i) it is not practicable to communicate with any person entitled to grant entry to the dwelling; or

(ii) a person entitled to grant entry to the dwelling has unreasonably refused an officer entry; or

(iii) entry to the dwelling is unlikely to be granted unless a warrant is produced; or

(iv) the purpose of entry may be frustrated or seriously prejudiced unless an officer arriving at the dwelling can secure immediate entry to it.

(3) In this paragraph "justice" means a magistrate or a justice of the peace.

Power of officer to use reasonable force

8. An officer may use reasonable force, if necessary, in the performance of his functions.

Protection of officers

9. An officer shall not be liable in any civil or criminal proceedings for anything done in thepurported performance of his functions under Part II of this Act if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

10. Any person who—

(a) intentionally obstructs an officer in the performance of any of his functions under Part II of this Act;

(b) fails without reasonable excuse to comply with a requirement made or direction given by an officer in the performance of his functions under Part II of this Act; or

(c) in purporting to give information required by an officer for the performance of any of his functions under Part II of this Act—

(i) makes a statement which he knows to be false in a material particular;

(ii) recklessly makes a statement which is false in a material particular; or

(iii) intentionally fails to disclose any material particular,

shall be guilty of an offence.

SCHEDULE 3

Section 8

LICENCES—RIGHT TO MAKE REPRESENTATIONS ETC

1. If within 28 days of the issue of a licence the person to whom it is issued requests the Governor to give him notice in writing of the reasons for the inclusion of any provision in it, the Governor shall comply with his request within 28 days of receiving it.

2. On issuing a licence to a person the Governor shall notify him of the effect of paragraph 1 above.

3. If the Governor refuses an application for a licence, the Governor shall give the applicant notice in writing of the reasons for the refusal.

4. If the Governor varies or revokes a licence without the holder's consent, the Governor shall give the holder notice in writing of the reasons for the variation or revocation.

5. If within 28 days of receipt of a notice under this Schedule giving the Governor's reasons the person to whom it is given makes written representations to the Governor concerning the matter to which the notice related, the Governor may at his discretion constitute a committee to consider his representations.

6. A notice under this Schedule giving the Governor's reasons shall state the effect of paragraph 5 above.

7. The Governor shall draw up and from time to time revise a panel of persons who are specially qualified in the Governor's opinion to be members of committees constituted under this Schedule, and any such committee constituted by the Governor shall be drawn from members of the Governor's panel.

8. If the Governor constitutes a committee, the Governor shall appoint one of the members of the committee to be its chairman.

9. It shall be the duty of the chairman—

(a) to serve on the person who made the representations a notice requiring him to state within 14 days of receipt of the notice whether he wishes to make oral representations to the committee; and

(b) to serve on him, not earlier than the date of the notice under paragraph (a) above, notice of the place, date and time of the meeting of the committee.

10. A notice under paragraph 9(b) above shall not specify a date for the meeting of the committee earlier than 21 days from the date of the notice, unless the person who made the representations has agreed to an earlier meeting.

11. If he expresses a wish to make oral representations, the committee shall afford him an opportunity of doing so, either in person or by any person authorised by him in that behalf.

12. The committee shall consider—

(a) the reasons given by the Governor under this Schedule; and

(b) any representations made under this Schedule,

and shall make a report to the Governor after the close of their consideration, giving their findings of fact and their recommendations, and the Governor shall reconsider the decision of the Governor to which the representations relate in the light of the report.

13. The Governor shall notify the person who made the representations of the result of the Governor's reconsideration and the reasons for it and shall send him a copy of the committee's report.

14. Subject to paragraph 15 below, the Governor may pay to a person who makes representations under this Schedule such sum as the Governor considers appropriate in respect of costs or expenses incurred by that person in connection with the making of the representations and of any hearing relating to them by a committee.

15. No payment shall be made in a case where the result of the reconsideration is that the Governor confirms the original decision without modification.

16. The Governor may make arrangements for securing that such of the Governor's officers as the Governor considers are required are available to assist a committee constituted by the Governor under this Schedule.

17. The Governor may pay—

(a) such fees and allowances for members of such committees;

(b) such other expenses of such committees,

as the Governor may determine.

SCHEDULE 4 Section 14

PARTICULARS TO BE CONTAINED IN REGISTERS

PART I

licences for deposit or incineration or associated operations

1. The name of the holder of the licence.

2. The period of the licence.

3. The name, where known, of the producer of the substances or articles.

4. Their description and quantity.

5. Their country of origin, where known.

6. The site at which it was intended to deposit or incinerate them.

7. The place from which it was intended that they should be taken to that site.

8. The nature of any container or packaging in which it was intended that they should be when deposited.

9. The results of any toxicity tests carried out for the purpose of determining whether the licence should be issued or the provisions to be included in it.

PART II

licences for scuttling or associated operations

10. The name of the holder of the licence.

11. The period of the licence.

12. The name of the owner of the vessel.

13. A description of the vessel.

14. The site at which it was intended to scuttle it.

15. The place from which it was intended that it should be taken to that site.

SCHEDULE 2 Article 2

TERRITORIES TO WHICH THIS ORDER APPLIES

Bermuda
British Virgin Islands
Cayman Islands
Montserrat
St Helena
St Helena Dependencies
Turks and Caicos Islands

EXPLANATORY NOTE

(This note is not part of the Order)

This Order extends, to the territories specified in Schedule 2 thereto, the provisions of Parts II and IV of the Food and Environment Protection Act 1985, and related Schedules, subject to exceptions, adaptations and modifications.

The purposes of the Act were, so far as material, to replace the Dumping at Sea Act 1974 (c. 20) with fresh provision for controlling the deposit of substances and articles in the sea, to make provision for the control of the deposit of substances and articles under the sea-bed, and for connected purposes.

Annex 32

The Constitution of Mauritius (Amendment No. 3) Act 1991, section 19

THE CONSTITUTION OF MAURITIUS (AMENDMENT No.3) ACT 1991

Act No. 48 of 1991

I assent,

V. RINGADOO
Governor-General

17 December 1991

ARRANGEMENT OF SECTIONS

Sections

An Act

To amend the Constitution of Mauritius

1. Short title.

This Act may be cited as the Constitution of Mauritius (Amendment No. 3) Act 1991.

2. Interpretation.

(1) In this Act -

"amended Constitution" means the Constitution as amended by this Act;

"appointed day" means the 12th March 1992.

(9) Section 99 shall apply to a full enquiry under his section.

(10) Subject to the other provisions of this section, the Ombudsman shall be bound by the law of evidence as applicable in proceedings before the Supreme Court.

(11) Any complaint made in writing to the Ombudsman or any evidence given before the Ombudsman shall not, where made or given in good faith, give rise to any civil or criminal proceedings.

(12) On the completion of an enquiry under this section, the Ombudsman shall make a report to the President.

(13) (a) On receipt of a report under subsection (12), the President shall submit a copy thereof to the Prime Minister.

(b) The Prime Minister shall, within 3 months of the receipt of a copy of the report, lay it before the Assembly.

19. Section 111 of the Constitution amended.

Section 111 of the Constitution is amended in subsection (1) -

(a) by deleting the definitions of "Crown" and "Governor-General";

(b) in the definition of "Assembly", by deleting the words "Legislative Assembly" and replacing them by the words "National Assembly";

(c) in the definition of "Government", by deleting the words "Her Majesty's Government of Mauritius" and replacing them by the words "the Government of the Republic of Mauritius";

(d) by deleting the definition of "Mauritius" and replacing it by the following definition -

"Mauritius" includes -

(a) the Islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius;

(b) the territorial sea and the air space above the territorial sea and the islands specified in paragraph (a);

(c) the continental shelf; and

(d) such places or areas as may be designated by regulations made by the Prime Minister, rights over which are or may become exercisable by Mauritius;

(e) in the definition of "public service", by deleting the word "Crown" and replacing it by the word "State";

(f) by adding or inserting, as the case may be, the following definitions in their proper alphabetical order -

"Judicial Committee" means the Judicial Committee of the Privy Council established by the Judicial Committee Act 1833 of the United Kingdom as from time to time amended by any Act of Parliament of the United Kingdom;

"President" means the President of the Republic of Mauritius;

"State" means the Republic of Mauritius;

"Vice-President" means the Vice-President of the Republic of Mauritius.

20. The First Schedule to the Constitution amended.

The First Schedule to the Constitution is amended in paragraph 5(4) by adding at the end the words "or where there is no unreturned candidate of the appropriate community, to the most successful unreturned candidates belonging to the most successful party, irrespective of community".

21. The Second and Third Schedules to the Constitution repealed and replaced.

(1) The Second and Third Schedules to the Constitution are repealed and replaced by the First and Second Schedules to this Act.

(2) Where an office specified in the Second Schedule to the Constitution has been restyled, any reference in any other law to that office shall be deleted and replaced by the office as restyled.

(3) Any person who, before the commencement of this Act, has taken and subscribed an oath under the Constitution shall on the commencement of this Act, be deemed to have taken and subscribed the oath prescribed in the amended Constitution.

22. New Fourth Schedule added to the Constitution.

The Constitution is amended by adding the Third Schedule to this Act as the Fourth Schedule to the Constitution.

23. Consequential amendments.

(1) Subject to this Act, the Constitution is amended in the sections specified in the first column of the Fourth Schedule by deleting the words specified in the second column of that Schedule and replacing them by the words specified in the corresponding third column.

(2) In any law other than this Constitution -

(a) the word "Governor-General" shall, wherever it appears, be deleted and replaced by the word "President";

(b) the words "Crown" or "Crown in right of Mauritius" shall, wherever they appear, be deleted and replaced by the word "State";

(c) the words "Her Majesty in Council" or "the Privy Council" shall, wherever they appear, be deleted and replaced by the words "the Judicial Committee";

Annex 33

Submission from East African Department,
17 May 1991

[redacted]

MINISTER

Could this be a job for a Fisheries Protection Service like Gatteridge's? Overall this seems a sensible plan on which we should proceed.

When PM Jugnauth is here - those meeting him will need briefing plse.

FROM : [redacted]
East African Department
DATE: 17 May 1991

[redacted]

PS/Mrs Chalker

cc: [redacted], AMD
[redacted] ECD(E):
[redacted] ECD(I)
[redacted] NPDD
[redacted], CCD
[redacted], Legal Advisers
[redacted], Legal Advisers
[redacted], SAD
[redacted] ODA Fisheries Adviser
[redacted] SEC(O)C, MOD
[redacted] SAAD
[redacted], RMD
[redacted] MRS
[redacted] BHC Port Louis
[redacted] BHC Victoria

BRITISH INDIAN OCEAN TERRITORY (BIOT) FISHERIES LIMIT

Problem

1. Should we extend BIOT's fisheries limit to 200 miles? ?

Recommendation

2. The arguments in favour are :

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

(b) not to do so suggests that we are ambivalent about our sovereignty;

(c) fish stocks and threatened marine species, eg. rare turtles, dolphins, will suffer irreparable damage without conservation measures;

/(d)

ST1BAW [redacted]

(d) we can expect to raise useful and much-needed revenue from licenses from Far Eastern and West European fishing fleets which operate in these waters. (This could be sufficient to fund a BIOT patrol vessel.)

The possible drawbacks are :

(a) the likelihood of a negative reaction from Mauritius who claims the islands (but see paragraph 10 below);

(b) difficulty of enforcement and administration (but see paragraph 12 and 15 below);

(c) the need for negotiations with the Maldives on the demarcation o the northern limit of the Zone (but see paragraph 13 below).

3. I recommend a) that we extend the BIOT's fisheries limit to 200 miles with provision for establishing a median line between the BIOT and the Maldives. (b) that the Marine Resources Assessment Group of Imperial College London assist us in the management of the regime.

The ODA Fisheries Adviser, AMD, RMD, Finance Department, Legal Advisers agree. EAD have also drawn on the experience of other small dependent territories, and a range of outside expert opinion. Our High Commission in Port Louis considers that while there is likely to be a reaction from Mauritius, it is unlikely to be sustained. In his view, the timing of the declaration does not make a great deal of difference. We have established that the Americans have no objection, provided fishing is not allowed close to Diego Garcia. The MOD accept that the decision is ours but wish to make clear that they are not able to make any additional resources available in connection with a 200 mile EFZ.

/Background

Background

4. There is a three mile territorial sea around the islands of the
A Chagos Archipelago which comprise BIOT (see map). A twelve mile fisheries zone was declared in 1969. Fishing within the twelve mile limit (apart from around Diego Garcia which is a military exclusion zone) is restricted to Mauritian fishermen, who have access following an understanding with the Mauritian Government in 1965, which allowed, as far as practicable, the continuance of traditional Mauritian fishing in BIOT waters. The British High Commission in Port Louis issue free licences for fishing vessels, but have this year reduced the numbers of licences because of reports of poor catches in 1990, which would indicate declining stocks.

5. The Chagos Archipelago is also of great interest to science, and we have sought since 1965 to rigourously preserve the environment. It remains the last unspoilt major coral reef ecosystem, and is the only uninhabited fully protected haven for marine turtles. UK bears an international responsibility to which many will call her to account.

6. In the central and west Indian Ocean, the main interest is in tuna. Principally based in the Seychelles, the large scale industrial fleets of Japan, Taiwan, Korea and the EC (mainly France and Spain) are active in the area. Records indicate that a substantial proportion of the fish caught in the Central Indian Ocean could well be drawn from the area within 200 miles of BIOT. The presence of the US Naval Facility in Diego Garcia has probably acted as a deterrent to fishing there at least close to the archipelago.

Argument

7. Apart from the BIOT, all Indian Ocean islands and littoral states have declared 200 miles EEZs or Fisheries Zones. France has a 200 mile EEZ around Réunion. The absence of a 200 mile for BIOT

/could

could be interpreted as an admission of uncertainty about UK sovereignty. As we are certain about sovereignty over the BIOT we should exercise it to the fullest extent permitted under international law. Mauritian protests should be containable (see para. 10). Apart from Gibraltar, the Sovereign Base areas in Cyprus and Hong Kong, where special situations apply, and the British Antarctic Territory and South Georgia which are subject to international treaty arrangements, the only Dependent Territory without a fisheries zone is BIOT. There are many precedents for the creation of similar zones around islands without indigenous population (eg. Ascension I) although there is a small risk that the judgement in the Jan Mayen case at present before the International Court of Justice will challenge the validity of such zones.

8. There is a three-fold conservation argument in support of declaring a 200 mile fishing limit. Firstly, it will enable the BIOT to limit fishing access by a licensing regime. Fish landings (eg in Seychelles) during the 1990 Indian Ocean fishing season have for the first time recorded a decline in fish catches. Fishing nations blame the weather but coastal states blame overfishing. A 200 mile limit would allow the BIOT administration in London to be selective of fishing access and to monitor closely fishing catches through specialist advisers eg the Renewable Resources Assessment Group from Imperial College. Secondly, other Indian Ocean fishing regimes are already active in conservation of fish stocks through licensing and monitoring of fish catches. Because tuna species are migratory, unlimited access to waters around the BIOT reduce the effectiveness of conservation activities in the western Indian Ocean generally. It is also important that we demonstrate appropriate commitment to stock management and environmental conservation by being represented in regional organisations. Thirdly, by licensing vessels and monitoring fishing wider

/protection

protection to vulnerable marine mammals and turtles could be provided, for example the complete prohibition of pelagic drift-net fishing in BIOT waters.

9. The other main consideration is revenue. Without a population or external trade there are no sources of revenue apart from fees levied by the Commissioner's Representative on island for legal services, marriage licences etc, fines for offences, and the sale of stamps. This allows nothing more than petty cash for the civil administration, which relies almost entirely on the FCO Vote. The situation could be entirely reversed if fishing licence revenue is brought into the equation. In our calculations we have sought the assistance of the Marine Resources Assessment Group of Imperial College London in providing a forecast of revenue likely from a properly managed fishery regime. Their preliminary estimates are as follows :

For an interim licencing period from :

1st August 1991 - 1 February 1992	£300,000 to £500,000
Annually, w.e.f February 1992	£700,000 - £1,000,000

Inter alia the revenue could be sufficient to enable BIOT to procure a boat to meet the longstanding requirement to reach the outer islands independently. At present we are totally dependent on American good will in this respect.

10. The most serious disadvantages of declaring a 200 mile Zone, is the likely reaction of Mauritius given its claim to the Chagos.

In 1984, Mauritius purported to declare a 200 mile EEZ around BIOT but have done nothing to enforce this and it is ignored internationally. The UK formally protested at the time. This is

/therefore

therefore a sensitive area and the Mauritians will doubtless complain that we are "stealing" their revenues. We consider the storm would be shortlived and be ridden out successfully. Our defence will be based on the threefold environmental arguments in paragraph 8. It may help to defuse criticism if we can demonstrate that the new measures to protect fish stocks are in the interests of Mauritius as well as other Indian Ocean states. As we have made clear to Mauritius on many occasions, the UK will cede the BIOT to Mauritius when no longer required for defence use. It is therefore in Mauritian interests to protect fish stocks now. It would also be prudent to undertake to conserve other aspects of the marine environment not formally incumbent upon us in extending an EFZ. There could also be an initial reaction from India, who has consistently opposed British military presence in the Indian Ocean.

11. A necessary concession will be to continue to licence Mauritian fishermen on the same basis as hitherto ie. without costs, and to extend their present access to BIOT inshore waters in the new 200 limit. This special facility will not prejudice the imposition of lucrative revenue fees on other fishing fleets including the UK. It will be important to givee the Mauritians advance notice of our intention to declare a 200 mile limit.

12. We have thought carefully about the aspect of enforcement. The existing RN presence in BIOT would be unable to enforce the regime and MOD would be unable to provide any additional resources for monitoring or enforcement. The US would no doubt be willing to continue observations from their pre-positioning ships and P3 reconnaissance aircraft (as they do for inshore vessels) but they could not provide the kind of control exercised in Western European waters. The regime will be essentially unpoliced. But this is not unusual, particularly in dependent territories and microstates eg. St Helena. We are advised that the 'secret' is to pitch the licence at a level which encourages rather than deters compliance. We would, of course, require licencees to report catches and could also

/require

require them to report non-licencees. There is provision for court proceedings in Diego Garcia against fishing violations which can be undertaken in the (unlikely) circumstances of being able to arrest a vessel.

13. Fortunately, BIOT waters abut on existing EFZ's only in one direction. The BIOT is less than 400 miles from the southerly tip of the Maldives so an agreed boundary between the two will need to be established in due course. A line equidistant between the nearest base points (a median line) would be best. The Maldives has already declared a rectangular EEZ which extends beyond the median line. We do not accept the Maldives claim, which departs from the rules of international law on EFZ limits so this could be a tricky negotiation. However until an agreed boundary is established, an interim limit should be declared in BIOT legislation. We propose this should be median line and that we would inform the Maldives Government in advance signalling our readiness for fuller negotiations in due course.

14. As mentioned in paragraph 8, the Marine Resources Assessment
B Group (MRAG) has provided us with a proposal to undertake the management of the regime. They undertake a similar and much valued service to FCO in respect of the fisheries of the Falkland Islands and St. Helena and are indeed the only organisation that could provide such a highly specialised service. Their fees would amount to approximately £250,000 for the establishment of the regime and £150,000 per year thereafter, or alternatively between 8% and 25% of the revenue (depending on level of that revenue). Their proposals set out this alternative basis which would involve an advance payment for the preparatory phase of £35,000 only, and the balance of the fees from the revenues as they are raised. Larger than expected revenues would benefit MRAC, but also EMG. To minimise the conflict

of interest for MRAG in their attempts both to raise revenue and operate a conservation conscious regime, they have proposed a reduced percentage fee for higher levels of revenue. FCO will make the major decisions on the legal framework, the level of licences, and the countries and organisations to be included and licenced each year. We propose that MRAG are involved in the general management and in conducting negotiations within agreed guidelines.

[redacted]

East African Department
K322A 270 2890

[redacted], his predecessor [redacted] and I have gone into this very thoroughly over an extended period. I believe that a 200 mile fisheries regime will be practical, lucrative and politically manageable. The idea has been put into the "too difficult tray" for too long. If we delay further, we shall find these waters fished out under our noses.

[redacted] 17/5

I discussed this at some length with [redacted] and support the proposal. I do not go along with the argument that failure to do this would imply uncertainty about our sovereignty. But the rest of the argument is persuasive.

The main problem is lack of patrolling capacity. We shall need to consider buying a boat early on in the new regime if we are to have credibility. The Mauritians have serious problems without one.

20/5

Annex 34

Telegram from East African Department,
8 November 1991

[redacted]

51/05
MOLOAN 8893

TOP COPY
Q DIST 2

[redacted]
FM FCO
TO PRIORITY PORT LOUIS
TELNO 154
OF 081745Z NOV 91
AND TO PRIORITY DIEGO GARCIA

FROM EAD
[redacted]S TELECOM: BIOT 200-MILE FISHERIES ZONE:
PARTICIPATION OF MAURITIAN COMPANIES

1. MRAG DID NOT SEND ANY DETAILS OF THE FISHING REGIME TO MAURITIAN COMPANIES. THIS WAS DONE ON OUR AUTHORITY AND THE REASONS ARE BELOW.

2. OUR ORIGINAL INTENTION, AT THE TIME OF SEEKING MINISTERIAL APPROVAL FOR THE REGIME, WAS THAT WE WOULD GRANT LICENCES FREE OF CHARGE TO MAURITIAN COMPANIES IN THE ZONE BEYOND THE PRESENT 12 MILES TO 200 MILES. THE MARINE RESOURCES ASSESSMENT GROUP (MRAG), WHEN THEY LEARNED ABOUT IT STRONGLY ADVISED AGAINST THE PRINCIPLE OF EXEMPTING MAURITIAN BOATS FROM LICENCE FEES BECAUSE THIS WOULD INVITE ABUSE BY FOREIGN COMPANIES CHOOSING TO OPERATE UNDER THE MAURITIAN FLAG TO AN EXTENT THAT IT WOULD UNDERMINE A VIABLE REGIME. WE DID NOT FINALLY RESOLVE THE POINT AS MRAG INFORMED US THAT NONE OF THE MAURITIAN COMPANIES DEALING IN TUNA ACTUALLY CAUGHT THE FISH BUT BOUGHT FROM FOREIGN FLEETS. THUS WE DID NOT SEND LICENCING DETAILS TO YOU.MRAG'S ADVICE WOULD APPEAR NOW TO HAVE BEEN INCORRECT.

3. THIS LEAVES US WITH THE DECISION ON WHETHER MAURITIAN COMPANIES SHOULD PAY FOR LICENCES OR NOT.OUR PRELIMINARY VIEW, SUBJECT TO COMMISSIONERS VIEWS ON HIS RETURN ON 12 NOV IS THAT THEY SHOULD DO SO FOR THE FOLLOWING REASONS:

(A) WE PRESUME MTFCE THEY WILL WISH TO USE LADY SUSHIL I AND LADY SUSHIL II. THESE ARE PURSE SEINERS AND MUCH LARGER THAN THE LONG LINERS THAT WE HAVE REGISTERED SO FAR. A REASONABLE MONTHLY LICENCE FEE FOR A PURSE SEINER WOULD BE ABOUT PDS STG 10,000 A MONTH, (AS OPPOSED TO THE LONG LINERS WHO PAY PDS STG2,700 MONTH). QUITE APART FROM THE REVENUE IMPLICATIONS, IF IT SHOULD BECOME KNOWN THAT THE MAURITIANS FISH FOR FREE, THIS COULD DETER OUR OTHER LICENCEES.

(B) THE REFLAGGING PROBLEM, WHICH WE SHALL NOT BE ABLE TO

[redacted]

CONTROL.

(C). THE MAURITIANS SEEM TO HAVE REJECTED THE IDEA OF FREE LICENCES ANYWAY. THE FORMULATION AS GIVEN TO THE MAURITIANS IN OUR THIRD PARTY NOTE (TELEGRAM NO. 417) WAS INTENDED TO BE A CONFIRMATION THAT EXISTING ARRANGEMENTS FOR INSHORE FISHING WOULD CONTINUE. IN THE EVENT WE SUSPECT THAT THE MAURITIANS INTERPRETED IT AS REFERRING TO THE WIDER 200 MILES

2. HOWEVER, WE SHOULD BE GRATEFUL FOR ANY VIEWS BEFORE WE FINALLY DECIDE.

3. SO FAR NTFCE HAS ASKED ONLY TO ENTER THE ZONE BUT NOT TO FISH. YOU OUGHT FOR THEIR SAKE TO MAKE IT CLEAR THAT LICENCES WILL BE REQUIRED. WE HAVE ASKED MRAG TO FAX APPROPRIATE EXTRACTS FROM THE GUIDANCES IN RESPECT OF LICENCE APPLICATION ETC.

HURD

YYYY

DISTRIBUTION 18

MAIN 18

MINIMAL

LEGAL ADVISERS

EAD

NNNN

Annex 35

Telegram from Howell,
11 November 1991

154765
MDLIAN 3151

3 JAN 1992

FM PORT LOUIS
TO PRIORITY FCO
TELNO 217
OF 110930Z NOVEMBER 91
AND TO PRIORITY RNLO DIEGO GARCIA

YOUR TELNO 154: MAURITIAN FISHING COMPANIES

1. [redacted] OF MTFCE IS PRESSING TO SEND 3 FISHING BOATS TO NORTHERN BIOT WATERS, WHICH APPEARS TO BE A REGULAR FEATURE OF COMPANY'S ACTIVITIES. HE CLAIMS THIS IS THE HEIGHT OF THE FISHING SEASON AND THE BOATS SHOULD LEAVE IN THE NEXT FEW DAYS. HE SAYS HIS UNDERSTANDING FROM CONVERSATION WITH HARRIS ON 4 NOVEMBER WAS THAT THERE SHOULD BE NO PROBLEM OVER LICENCES.

2. THERE ARE SEVERAL DIFFICULTIES IN PRESENT SITUATION:

(I) IF MTFCE VESSELS WERE TO BE ARRESTED, THIS WOULD INFLAME MATTERS FURTHER.

(II) IF WE TELL MTFCE NOT TO GO UNTIL THEY HAVE SECURED A LICENCE FROM MRAG, THEY WILL MISS FISHING SEASON AND COMPLAIN THROUGH GOM. OUR POSITION IS WEAKENED BY REMARKABLE IGNORANCE OF MRAG AND CONSEQUENT FAILURE TO PROVIDE US WITH LICENCING DETAILS.

3. THE NEATEST WAY OUT OF THIS MIGHT BE FOR US TO TELL MTFCE THAT IT IS TAKING SOME TIME TO PUT REGIME IN FORCE, BUT PENDING THAT AND WITHOUT PREJUDICE TO FURTHER OPERATIONS, THEY CAN GO AHEAD WITHOUT LICENCES THIS YEAR. WE WOULD OBTAIN DETAILS OF VESSELS CONCERNED AND SEND TO RNLO DIEGO GARCIA KTO ENSURE NONE ISARRESTED.

4. GRATEFUL URGENT REPLY.

HOWELL

YYYY

Annex 36

Telegram from British High Commission to Foreign and Commonwealth Office,
11 November 1991

[redacted]

FM PORT LOUIS
TO PRIORITY FCO
TELNO 215
OF 110930Z NOVEMBER 91
AND TO PRIORITY RNLO DIEGO GARCIA

JEM 044/10

15 JAN 1992

YOUR TELNO 134: MAURITIUS/BIOT:FISHERIES ZONE

1. MY VIEW IS STRONGLY THAT WE SHOULD NOT CHARGE MAURITIAN COMPANIE FOR LICENCES. REASONS AS FOLLOWS:

(I) THE CONTINUED AVAILABILITY TO KMAURITIUS OF FISHING RIGHTS IN THE CHAGOS WAS ONE OF THE CONDITIONS ATTACHED TO THE ORIGINAL DETACHMENT OF THE CHAGOS. RECORD OF MEETING IN LANCASTER HOUSE ON 2 SEPTEMBER 1965 AND RELATED DOCUMENTS REFER. OUR UNDERTAKING WAS TO USE OUR GOOD OFFICES WITH US GOVERNMENT TO ENSURE THIS AND GRATIS AVAILABILITY WAS NOT SPECIFIED. BUT [redacted] ME [redacted]

(II) YOUR TELNO 153 STATES ''WE HAD GIVEN MAURITIUS AMPLE NOTICE O OUR INTENTION TO DECLARE A 200 MILE FISHING ZONE AROUND BIOT AND WE GAVE PREFERENTIAL ACCESS TO MAURITIAN VESSELS TO FISH IN BIOT WATERS''. AS INSTRUCTED, I PASSED THIS COMMENT TO BERENGER AND I INCORPORATED IT IN THE SPEAKING NOTE I LEFT WITH HIM.

2. [redacted]

3. THERE ARE OTHER WAYS OF DEALING WITH MRAG'S PROBLEMS, INCLUDING SEEKING THE COOPERATION OF THE GOM ON REFLAGGING. ALSO, I THINK TH [redacted]

4. SEPARATE TEL FOLLOWS ON MTFCE PROBLEM.

HOWELL

YYYY

Annex 37

Letter from East African Department to MRAG,
15 November 1991

160

15 November 1991

Foreign & Commonwealth Office

London SW1A 2AH

Telephone: 071-

[redacted]
MRAG Ltd
27 Campden Street
LONDON

JHB 044/8
RECEI
06 JAN 1992

PA
M 31/12

Dear [redacted]

BIOT FISHERIES: POSITION OF MAURITIAN FISHING COMPANIES

We have today informed our High Commission in Port Louis that we have decided not to impose licencing fees on the three vessels of Mauritian Tuna Fishing and Canning Enterprises about to depart for BIOT waters. They will, however, still need to be licenced without a fee and to agree to abide by the licence conditions, including the requirement to provide details of the vessels and of any catches made. We have told the High Commission that under the relevant BIOT legislation all vessels must obtain licences although we can use a discretion given in the legislation not to charge licence fees. Other Mauritian companies, if they apply, will also be given free licences during the interim phase. Subject to advice by legal advisers on our 1965 obligations, it will however be our intention to impose fees from 1 April 1992. To do otherwise would risk seriously undermining the viability of the new fishing regime, and we have therefore asked the High Commission to warn MTFCE that free licences are unlikely to be available beyond March 1992.

The application forms will now be passed to MTFCE with a request that they be returned immediately by fax to you (071-589 5319). The High Commission will tell MTFCE that pending actual issue of the licences, their vessels can proceed to BIOT waters but that they must advise RNLO Diego Garcia and ourselves of the details of the ships before they enter the zone. This information should include entry position, time and date and volume of catch at time of entry. We will inform Diego Garcia as soon as the licences are issued. Meanwhile we are working on the assumption that two ships are Lady Sushil I and Lady Sushil II and that the third is Mauritian and owned by MFTCE.

Yours sincerely,

[redacted]
East African Department

RW3AGN

Annex 38

Note Verbale No. 50/91 from Mauritius Ministry of External Affairs to British High Commission, 27 November 1991

MINISTRY OF EXTERNAL AFFAIRS
MAURITIUS

50/91(1311) 27 November 1991

The Ministry of External Affairs presents its compliments to the British High Commission and has the honour to refer to the High Commission's Note No. 065/91 of 18 November 1991 concerning the arrest of the MV Jabeda on 14 August 1991.

The Ministry wishes to inform the High Commission that the Government of Mauritius maintains its claims of sovereignty on the Chagos Archipelago and the waters surrounding it and reiterates its stand on the arrest of the MV Jabeda as clearly spelt out in the Ministry's Note No. 49/91(1311) of 11 November 1991, copy of which is enclosed.

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

MINISTRY OF EXTERNAL AFFAIRS
MAURITIUS

The British High Commission
King George V Avenue
Floreal.

Annex 39

Telegram recording a meeting between the British High Commissioner and Foreign Minister Bérenger, 4 December 1991

[redacted]

054630
MDLIAN 9346

[redacted]

FM PORT LOUIS
TO PRIORITY FCO
TELNO 230
OF 040500Z DECEMBER 91

YOUR TELNO 160: MAURITIUS/BIOT

1. THE APPOINTMENT WITH BERENGER I REQUESTED ON 25 NOVEMBER WAS GIVEN FOR 3 DECEMBER. I CALLED AND SPOKE AS IN PARA 4 OF YTUR. ON YOUR POINTS:

(A) HE MADE NO COMMENT.

(B) HE TOOK NOTE AND WOULD CONSIDER CAREFULLY WITH HIS COLLEAGUES WHETHER THERE WERE ANY SPECIFIC PROPOSALS THE GOM WOULD WISH TO MAKE.

(C) THE STAMP ISSUE WOULD GO AHEAD. IT HAD BEEN PLANNED NOT ONLY BEFORE HARARE BUT A YEAR OR SO EARLIER, AND IT DEPICTS ALL THE ISLANDS THAT MAKE UP MAURITIUS, INCLUDING CHAGOS AND TROMELIN. ON THIS POINT, HE MENTIONED ALSO THAT THE LEGISLATION RELATING TO THE REPUBLIC WOULD INCORPORATE A DEFINITION OF THE STATE OF MAURITIUS WHICH WOULD INCLUDE CHAGOS AND TROMELIN. THIS HAD BEEN INCORPORATED IN THE REPUBLIC LEGISLATION BROUGHT TO THE ASSEMBLY IN 1985 AND 1990 THOUGH IN NEITHER CASE HAD THE BILLS GOT ON TO THE STATUTE BOOK. HE REPEATED THAT NEITHER THE STAMP ISSUE NOR THE REPUBLIC LEGISLATION SHOULD BE SEEN AS PROVOCATIVE AND NEITHER FELL INTO THE POST-HARARE CONTEXT.

(D) HE NOTED.

2. I THEN SPOKE ABOUT THE INDIAN PROTEST (YOUR TELNO 1111 TO NEW DELHI). I MUST HAVE REFERRED TO HIS QUOTE REPORT UNQUOTE TO THE INDIANS OF THE CONVERSATION WITH MRS CHALKER BECAUSE HE REPLIED THAT HE DID NOT ACCEPT THAT HE HAD REPORTED THE CONVERSATION TO RANA IN THE SENSE THAT THE GOM DID NOT REPORT TO ANY OTHER GOVERNMENT. HE CERTAINLY DISCUSSED THE QUESTION OF BASES IN THE INDIAN OCEAN WITH INTERESTED HEADS OF MISSION IN MAURITIUS INCLUDING THE INDIAN BUT IT WAS NOT THE MAURITIAN HABIT ANY MORE THAN IT WAS THE BRITISH TO DIVULGE CONFIDENTIAL EXCHANGES TO OTHERS. HE DID NOT ACCEPT EITHER THAT WHAT HE HAD SAID MIGHT HAVE BEEN AN UNFAITHFUL ACCOUNT. HE

COULD NOT ANSWER FOR WHAT RANA HAD TOLD DELHI BUT ANY REFERENCE HE HAD MADE WOULD HAVE BEEN ACCURATE.

3. IN FURTHER CONVERSATION HE REPEATED THAT HE WOULD CONSIDER CAREFULLY AND PRECISELY WHETHER HE WOULD PUT FORWARD PROPOSALS FOR BILATERAL DISCUSSION/CONSIDERATION. HE REALISED THAT THIS WOULD BE IN THE CONTEXT OF BILATERAL EXCHANGES AND IF GOM DECIDED TO TAKE THE MATTER TO THE UN, THIS ROUTE WOULD NOT BE AVAILABLE. I CONFIRMED THIS.

COMMENT (UNDERLINED)

4. THE COMMENT ABOUT THE UN DID NOT FIT EASILY INTO THE CONVERSATION AND MAKES ME WONDER. I AM ASKING UKMIS NEW YORK TO MAKE DISCREET ENQUIRIES TO SEE IF ANY MOVES ARE UNDERWAY, EVEN AT THIS LATE STAGE IN THE SESSION.

5. THERE WAS A CHANGE IN ATMOSPHERE THIS TIME. ALMOST AS IF BERENGER HAD DISCOUNTED UK DISPLEASURE AND DECIDED TO GO THE CONFRONTATIONAL ROUTE AND TAKE THE CONSEQUENCES. OR PERHAPS HE WAS JUST TIRED. I SHALL DIG AROUND.

HOWELL

YYYY

DISTRIBUTION 27

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MINIMAL
EAD
LEGAL ADVISERS
AMD

ADDITIONAL 4

MR MYHILL, CSAD/ODA
MR BIRD, OT4/DTI
MR C RALEIGH, CCATPD/ODA
MR TARBIT,
(SENIOR FISHERIES ADVISER/ODA)

NNNN

[redacted]

Annex 40

Telegram from R.G. Wells (East African Department) to M.E. Howell (Port Louis),
3 April 1992

[redacted] JEB 044/7 (11)

(9)

060377

MDTTAN 6177

[redacted]

FM FCO
TO TELELETTER PORT LOUIS
TELELETTER NFR
OF 031650Z APRIL 92

Copy to P. Williams, AMD 8/4

Enter + BU 3 weeks
Noted MJ. ROayL. 7/4

FROM: R G WELLS, EAD FCO
TO: M E HOWELL CMG OBE, PORT LOUIS

CHAGOS: FISHING LICENCES

/6

1. THANK YOU FOR YOUR TELELETTER OF 31 MARCH.

2. COPY OF TOM HARRIS' LETTER OF 13 JANUARY TO MAURITIAN NEWS FOLLOWS BY BAG. JEB 044/1 (10).

3. I CAN CONFIRM THAT WE HAVE DECIDED THAT WE WILL NOT (REPEAT NOT) CHARGE FOR FISHING LICENCES ISSUED TO MAURITIAN VESSELS. WE HAVE ACCEPTED THAT OUR UNDERTAKINGS IN THE PAST PRECLUDE US FROM DOING SO, IN SPIRIT IF NOT STRICTLY IN LAW. (MRAG WERE NOT HAPPY WITH THIS DECISION AS THEY FEEL IT WILL UNDERMINE THE PROFITABILITY OF THE ZONE). WE DO NOT, HOWEVER, WISH THE POINT ABOUT FREE LICENCES TO BECOME WIDELY KNOWN. WE ARE PARTICULARLY CONCERNED THAT FOREIGN VESSELS IN MAURITIUS MIGHT REFLAG TO TAKE ADVANTAGE. WE ARE CONSULTING WITH OTHERS HERE ABOUT HOW WE MIGHT DEAL WITH THAT EVENTUALITY.

4. MY TELELETTER TODAY TO HUGH SAMUEL EXPLAINS THAT WE CANNOT RENEW MTFC LICENCES UNTIL THEY MEET THE CONDITIONS OF THE PREVIOUS ONE.

SIGNED R WELLS

YYYY

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SINGLE COPIES EAD

NNNN

[redacted]

Annex 41

Letter from the BIOT Commissioner to MRAG,
5 May 1992

copied to topic files.

HM Commissioner
British Indian Ocean Territory
Foreign and Commonwealth Office
London SW1A 2AH

17

5 May 1992

071-270 2898

[redacted]
Marine Resources Assessment Group
27 Campden Street
LONDON W8 7EP

[redacted]

Thank you for your letter of 9 April and your fax of 29 April. We were, of course, able to cover several of the topics raised over lunch. In particular, your visit to Seychelles was very worthwhile and has opened up a number of areas of potential co-operation.

I confirm that we do intend to issue free licences to Mauritian vessels. You are right that this was not my original intention. I was very conscious of your advice on this issue but further research into the informal commitments made to the Mauritians in 1965 make it very difficult for us to come to any other decision. It would have exacerbated an already difficult situation. We are, however, looking with our Aviation and Marine Department colleagues into how to deal with the possibility of additional vessels reflagging in Mauritius to qualify for the free licences. Meanwhile we will not publicise this concession.

[redacted] has sent to you the data on the vessels which was provided by MTFCE in December including photographs. I am afraid the High Commission did not forward these at the time. I am assured, however, that the Company now have all the required documentation. I am sorry for this breakdown in the system. If after examining the documents there are any further questions in relation to MTFCE, we shall do what we can to secure the answers as soon as possible.

We were much encouraged by your visit to the Seychelles and have read your report with interest. We are happy

This seems now to have gone cold, but we see merit in informing them of the interest of the French and Spanish companies with whom we have in touch. No doubt the Commission will wish to satisfy themselves of such interest and if there has been no lobbying the French and Spanish, the Commission are not likely to be over-excited by our approach. We shall keep you in touch with developments.

Yours ever,

T G Harris

T G Harris
Commissioner

Annex 42

Prevention of Oil Pollution Ordinance 1994

THE BRITISH INDIAN OCEAN TERRITORY.

THE PREVENTION OF OIL POLLUTION ORDINANCE, 1994

Came into force 1.11.1994

An Ordinance to prevent the pollution of the waters of the Territory by the discharge or escape of oil and to provide for matters connected with or incidental to the foregoing.

Arrangement of sections.

Enacted by the Commissioner for the British Indian Ocean Territory.

23 September 1994

D. R. MacLennan

Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 7 of 1994

Citation and commencement.

1. This Ordinance may be cited as the Prevention of Oil Pollution Ordinance 1994 and shall come into force on 1 November 1994.

Interpretation.

2. (1) In this Ordinance, unless the contrary intention appears -

"oil" means oil of any description and includes spirit produced from oil of any description, and also includes coal tar;

"place on land" includes anything resting on the bed or shore of the waters of the Territory and also includes anything afloat (other than a vessel) if it is anchored or attached to the bed or shore of such waters; and

"occupier", in relation to any such thing as is mentioned in the preceding provisions of this definition, if it has no occupier, means the owner thereof, and, in relation to a road vehicle, means the person in charge of the vehicle and not the occupier of the land on which the vehicle stands;

"transfer", in relation to oil, means transfer in bulk;

"vessel" means a merchant vessel; and

"the waters of the Territory" means -

(a) the territorial sea of the Territory; and

(b) all seawaters on the landward side of the baselines from which the territorial sea of the Territory is measured.

(2) Any reference in this Ordinance to a mixture containing oil shall be construed as a reference to any mixture of oil with water or any other substance.

(3) Any reference in this Ordinance, other than in section 6, to the discharge of oil or a mixture containing oil from a vessel, except where the reference is to its being discharged for a specific purpose, includes a reference to the escape of the oil or mixture from that vessel.

(4) For the purposes of any provision of this Ordinance relating to the discharge of oil or a mixture containing oil from a vessel, any floating craft (other than a vessel) which is attached to a vessel shall be treated as part of the vessel.

Discharge of oil into BIOT waters.

3. If any oil or mixture containing oil is discharged as mentioned in the following paragraphs into the waters of the Territory, then, subject to the provisions of this Ordinance, the following shall be guilty of an offence under this section, that is to say -

(a) if the discharge is from a vessel, the owner or master of the vessel, unless he proves that the discharge took place and was caused as mentioned in paragraph (b);

(b) if the discharge is from a vessel but takes place in the course of a transfer of oil to or from another vessel or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other vessel or that place, the owner or master of that other vessel or, as the case may be, the occupier of that place;

(c) if the discharge is from a place on land, the occupier of that place, unless he proves that the discharge was caused as mentioned in paragraph (d);

(d) if the discharge is from a place on land and is caused by the act of a person who is in that place without the permission (express or implied) of the occupier, that person.

Discharge of oil from a pipe-line.

4. If any oil or mixture containing oil is discharged into the waters of the Territory from a pipe-line, then, subject to the provisions of this Ordinance, the owner of the pipe-line shall be guilty of an offence under this section unless the discharge was from a place in his occupation and he proves that it was due to the act of a person who was there without his permission (express or implied), in which case that person shall be guilty of the offence.

Defences of persons charged with offences under s.3 or s.4.

5. (1) Where a person is charged with an offence under section 3 as the owner or master of a vessel, it shall be a defence to prove that the oil or mixture was discharged for the purpose of securing the safety of any vessel, or of preventing damage to any vessel or cargo, or of saving life, unless the court is satisfied that the discharge of the oil or mixture was not necessary for that purpose or was not a reasonable step to take in the circumstances.

(2) Where a person is charged as mentioned in subsection (1), it shall also be a defence to prove -

(a) that the oil or mixture escaped in consequence of damage to the vessel and that, as soon as practicable after the damage occurred, all reasonable steps were taken for preventing, or (if it could not be prevented) for stopping or reducing, the escape of the oil or mixture; or

(b) that the oil or mixture escaped by reason of leakage, that neither the leakage nor any delay in discovering it was due to any want of reasonable care, and that, as soon as practicable after the escape was discovered, all reasonable steps were taken for stopping or reducing it.

(3) Where a person is charged, in respect of the escape of any oil or mixture containing oil, with an offence under section 3 or section 4 as the occupier of a place on land or as the owner of a pipe-line, it shall be a defence to prove that neither the escape nor any delay in discovering it was due to any want of reasonable care and that, as soon as practicable after it was discovered, all reasonable steps were taken for stopping or

reducing it.

Duty to report discharge of oil.

6. (1) If any oil or mixture containing oil -

(a) is discharged from a vessel into the waters of the Territory; or

(b) is found to be escaping or to have escaped from a vessel into those waters; or

(c) is found to be escaping or to have escaped from a place on land or from a pipe-line into those waters, the owner or the master of the vessel or, as the case may be, the occupier of the place on land or the owner of the pipe-line shall forthwith report the occurrence to the Commissioner's Representative.

(2) A report made under subsection (1) by the owner or master of a vessel shall state whether the occurrence falls within paragraph (a) or paragraph (b) of that subsection.

(3) If a person fails to make a report as required by this section he shall be guilty of an offence under this section.

Penalties and enforcement.

7. (1) Any person guilty of an offence under section 3 or under section 4 shall be liable on conviction by the Magistrates' Court (and notwithstanding section 194(1) of the Criminal Procedure code 1986) to a fine not exceeding £50,000 or on conviction by the Supreme Court to a fine.

(2) Any person guilty of an offence under section 6 shall be liable to a fine not exceeding £500.

(3) Notwithstanding section 59 of the Criminal Procedure Code 1986, any proceedings in respect of an offence under this Ordinance may be commenced at any time after the commission of the offence.

(4) The limitation imposed by section 226 of the Criminal Procedure Code 1986 upon the costs that a court may order to be paid shall not apply to the costs that may be so ordered upon the conviction of any person of an offence under this Ordinance or upon the acquittal or discharge of any person charged with such an offence or upon the determination of any appeal against any such conviction.

(5) Where, upon the conviction of the master or owner of a vessel of an offence under this Ordinance, the court orders him to pay a sum by way of fine or costs or both, it may, on application made by or with the authority of the Principal Legal Adviser, further order that, in default of payment forthwith of the sum due, he shall give security, to the satisfaction of the court, for the payment of that sum, failing which the vessel shall be detained in such manner and circumstances as the Commissioner's Representative may direct (and no part of the vessel's cargo, tackle, furniture or apparel may, save with the consent of the Commissioner's Representative, be removed from the vessel) until, subject to subsection (6), the sum is paid or the security is given or until

the court otherwise orders.

(6) If, at the expiry of a period of 30 days (or such longer period as the court may allow) after a vessel has been ordered to be detained under subsection (5), the sum has still not been paid nor the security given, then, without prejudice to any other powers for enforcing payment, the court may, on application made by or with the authority of the Principal Legal Adviser and subject to such terms, if any, as it thinks just, order that the vessel, its cargo, tackle, furniture and apparel be forfeited to the Crown, to be disposed of as the Commissioner may direct.

Annex 43

Excerpts from Mauritius' Legislative Assembly Debates, 1994

Mr. Dulloo: The Leader of the Opposition just now referred to posters without the name of the printers thereon. Sir, we know there are such posters that have been placed right now bearing certain communal insinuations and undertones therein. Is an enquiry being held on these particular posters right now?

The Prime Minister: The hon. Member may make a complaint to the Police concerned. I do not know where it is but the complaint should be made either to the Commissioner of Police or to the District Police Station.

Mr. Dulloo: May I ask the Rt. hon. Prime Minister whether the Police and he himself and other people around have not seen those posters?

The Prime Minister: Sir, I have not seen them.

CHAGOS ARCHIPELAGO - BRITISH-MAURITIAN FISHERIES COMMISSION

(No.B/163) Mr. P. Bérenger(Third Member for Stanley & Rose Hill) asked the Minister of External Affairs whether, in regard to the recent Joint Statement on the Conservation of Fisheries around the Chagos Archipelago which established a British-Mauritian Fisheries Commission, he will:-

(a) say when and where the Commission is scheduled to meet for the first time and what will be the composition of each of the two delegations;

(b) say what will be the definition of the maritime area concerned that Mauritius will propose;

(c) make a statement on recent reports on fishing licences being granted by the British authorities for fishing in the Chagos Archipelago area, the increase in revenue from such licence fees as a result of an unlicensed fishing boat having been recently fined and on the activities of the Fisheries Management Research Programme of Imperial College, London, in relation to the fisheries around the Chagos Archipelago;

(d) say whether the British authorities have agreed to a visit by him and his colleague the Minister for Fisheries & Marine Resources to the Chagos Archipelago; and

(e) say when was the issue of sovereignty of Mauritius over the Chagos Archipelago last raised with the Untied Kingdom and the United States authorities.

Dr. Rasenally: Sir,

(a) It is proposed that the British-Mauritian Fisheries Commission should meet for the first time during this month in Mauritius. The exact dates are being worked out.

We are as yet unaware of the composition of the British delegation. On the Mauritian side, we are in the process of constituting the composition of the delegation.

(b) It is not proposed as indeed it would not be proper to divulge such information prior to the Meeting of the Commission.

(c) We are not aware of licences which are not granted by our authorities for fishing in the Chagos Archipelago area.

As far as I am aware, the Fisheries Management Research Programme of Imperial College, London, has no involvement in the fisheries around the Chagos Archipelago. We are, however, seeking additional information from Imperial College.

(d) Following a firmer relationship that has been established at the highest level of Foreign Affairs between our two countries, a visit is being worked out for a delegation to include myself and the Minister of Fisheries & Marine Resources to visit Diego Garcia.

(e) The issue was raised with the British Secretary of State for Foreign and Commonwealth Affairs, the Rt. hon. Douglas Hurd, when I met him again in London on the 27th January, 1994, following my previous meeting with him in the wake of the last Commonwealth Summit Meeting in Cyprus.

I also raised the issue of the Chagos Archipelago with the United States Assistant Secretary of State, Mr. George Moose, when I met him in New York last October.

No. B/163 (contd.)

Mr Bérenger: Mr. Speaker, Sir, with reference to part (c) where I asked the Minister to make a statement on recent reports on fishing licences being granted by the British Authorities for fishing around the Chagos Archipelago, can I ask him whether he has enquired with the British High Commissioner here whether they are, indeed, granting fishing licences and increasing them?

Dr Kasenally: Sir, as a matter of fact, this question of fishing licences being issued by the British Authorities is one of the aim of the British/Mauritian Fisheries Commission and that Commission is going to collect data from the British side as well as the Mauritian side.

Mr Bérenger: Sir, the Minister had ample time to look around the question. My question also referred to the increase in revenue for the British authorities from such licence fees as a result of an unlicensed fishing boat having been recently seized and fined by the British Authorities dn our territory of the Chagos Archipelago. Can I ask the Minister whether he has tried to find out whether there has been such an act by the British Authorities: seizure and fining of a fishing vessel around the Chagos Archipelago?

Dr Kasenally: Sir, if we try to accept the fact that the British Authorities are entitled to give licensing rights in our territorial water, this weakens our position on the sovereignty issue. This is one reason why when we signed the statement, one of the points to be included was the Joint Commission will look into the various concept of fishing within the region with a view to limit all the ecological damage within that region.

Mr Bérenger: This is perfectly in order, Sir, but if there has been such giving of fishing licences, if there has been seizure and fining of a foreign vessel in our territory and if there is no protest on our part on record, this would amount to admitting their right to deliver licences and to fine seized vessels. Has such a protest been made?

Dr Kasenally: Sir, I accept that these things which do occur, as I just remind the House, would weaken our position, but the Commission is going to meet in the next two or three weeks, this issue will be raised and our views will be made forthright to the authorities in London.

Mr Bérenger: Sir, as usual *blablabla*, but the Minister is confirming that there has been no protest todate concerning the seizure and fining of fishing vessels. I gave the Minister ample time in my question when I asked him whether he would make a statement on the activities of the Fisheries Management Research Programme of Imperial College, London, in relation to the fisheries around the Chagos Archipelago. I heard the Minister reply that as far as he is

s/163 (contd.)
re there is no involvement of the Fisheries Management Research ogramme of Imperial College, London. Is the Minister aware of press ports to the contrary recently in the international press?

Dr Kasenally: Sir, as I just said, we tried to get some of the information of Imperial College activities in the Archipelago. The British foreign service informed us that there is no such activity. We are trying to get in touch with the Imperial College management sector. As we know they are actually during the easter break, and as soon as the college resumes its activities early this week, we are going to revert back. As far as press reports are concerned we are not going to go by the international or local press, we are going to look for direct information from the authorities concerned.

Mr Bérenger: Is the Minister confirming that the Foreign Office in London has denied any involvement of the Imperial College of London in the running of fisheries around the Chagos Archipelago. Is the Minister putting on record that the Foreign Office has denied this.

Dr Kasenally: Sir, our High Commission in London has provided us with that information and I am going to stick to it.

Mr Bérenger: Can I then bring to the attention of the Minister the fact that - the other day he was unaware of press articles on Comoros next door - Can I bring to his attention that in The Economist of the 19th March 1994 there was an article on fishing and there was reference to John Beddington of Imperial College, London who runs the Fisheries Management Research Programme for British Overseas Development Administration and it goes on to say:

> "Mr Beddington's group helps to run the fisheries around the Chagos Archipelago in the Indian Ocean when an unlicensed fishing boat was fined £ 1.5 m recently revenue from licence fees promptly shot up."

I shall table that because obviously the Minister is not aware of that.

Dr Kasenally: Sir, I am aware. I read The Economist before the hon. Member started reading it.

Mr Bérenger: Sir, clearly the Minister was not aware at all as he was not aware last week of what takes place in the Comoros next door. As a final supplementary question, can I ask the Minister whether he can make a statement on what took place in the Seychelles Legislative Assembly only a few days ago when the question of fishing rights around the Chagos Archipelago was raised by the Leader of the Opposition there, Mr. James Mancham?

No. B/163 (contd.)

Dr Rasenally: Sir, I am not aware of anything that happened in the Seychelles a few days or a few hours ago, but what I can inform the House is that when information was published in the local press that the Leader of the Opposition in Seychelles is going to table a motion concerning the so-called fisheries agreement between the Government of Mauritius and the Government of the United Kingdom, I informed my Colleague, the Minister responsible for Foreign Affairs in Seychelles with a copy of the statement which we signed in London and the hon. Minister in Seychelles replied back with a copy of the motion that was not tabled then and the hon. Minister told me as soon as matters would be discussed in the Seychelles Parliament, she will revert back to me and she has not yet done so up to now.

Mr Bérenger: Mr. Speaker, Sir, I am not talking about a few hours ago. The Minister won't get away like that for his ignorance.

Mr Speaker: Well, the hon. Member should not qualify the Minister as such. Please withdraw.

Mr Bérenger: Yes, but the Minister is wrong. I am telling him that it is not hours ago. I am asking the Minister whether he is aware that it is on the 24th March that this was discussed in the Seychelles Legislative Assembly. And since we are supposed to have a Honorary Consul in Seychelles, how is it that since the 24th March this has been discussed, the Minister is not aware of anything and he is expecting the Minister of Seychelles to inform him what has been taken place? Can the Minister explain to the House this kind of behaviour?

Dr Rasenally: Mr. Speaker, Sir, there is no kind of behaviour, there is no ignorance, this is typical of a certain mentality. As far as Government business is concerned, I stand to be guided by the promise which the Minister of External Affairs of Seychelles made that she would revert back to me once this issue is discussed. I am going to take information and give credence to information that my Colleague at the Government of Seychelles will provide to me.

Mr Cuttaree: The hon. Minister said that asking about licences from the British might prejudice our claim to sovereignty. Can I ask the hon. Minister whether he does not believe that asking for permission from the British Authorities for two Government Ministers to go and visit the Chagos Archipelago, whether this is not going to affect the Government of Mauritius...

Dr Rasenally: Sir, what is happening is the visit of myself and my Colleague constitutes one of the confidence building measure that this Government will develop with the British Authorities in the final analysis to retrieve the island of Diego Garcia.

(No B/164 cont'd)

Mr Bérenger: I do not think this is in order, but the question is that precisely.....

Dr Kasenally: On a point of order, the hon. Member said that this is not in order. Is that in order?

Mr Speaker: It is in order.

Mr Bérenger: Can I ask the hon. Minister whether he has not bothered to check with the President of the Republic of Mauritius how the matter arose and what was discussed? Since the putting of the question, why has the Minister not found out whether this was discussed and it was discussed. It was raised by the President of the Republic of France. It is vital for him to have that knowledge. Why has he not found out with the President of the Republic of Mauritius?

Dr Kasenally: Sir, the hon. Member is putting words in my mouth. He is claiming that I have not asked the President of the Republic. When I said "No, Sir", it is on the basis of my enquiry with the Presidency and the Office of the President is adamant in saying during the last Francophone Meeting in October, the issue of Tromelin was never discussed.

PEOPLE'S REPUBLIC OF CHINA - MAURITIUS EMBASSY - OPENING

(No B/165) Mr P Bérenger (Third Member for Stanley & Rose Hill) asked the Minister of External Affairs whether he will state if on the occasion of his recent visit to Mauritius, the Deputy Prime Minister and Minister for Foreign Affairs of the People's Republic of China, H.E. Mr Qian Qichen, reiterated China's wish to see Mauritius open an embassy in Beijing and if he will make a statement, referring in particular to Government's decision to open an embassy in South Africa after having opened one in Malaysia.

Dr Kasenally: Sir, His Excellency Mr Qian Qichen did not raise the question of the opening of a Mauritius Diplomatic Mission in Beijing at the official working session during his recent visit to Mauritius.

However, I am informed that following a lunch offered by my Colleague the Minister of Tourism on 21st January 1994, his Excellency Mr Qian Qichen was quoted as saying that he wished to see the opening of a Mauritius Mission in Beijing, but he expressed his understanding that the opening of a mission by a small country entailed additional financial burden.

It is our sincere wish to see the opening of a Mission in Beijing as soon as the circumstances allow it.

TROMELIN ISLAND - MAURITIUS SOVEREIGNTY

(No. B/164) Mr P Bérenger (Third Member for Stanley & Rose Hill) asked the Minister of External Affairs whether, in regard to the issue of the sovereignty of Mauritius over Tromelin Island, he will -

(a) say if he has been informed of any discussions between the President of the Republic of France and the President of the Republic of Mauritius held on the occasion of the recent Francophone Summit and if he will make a statement indicating the circumstances in which the matter was brought up for discussions between the two Presidents; and

(b) say when the issue was last discussed between Mauritian and French officials and what progress has been achieved so far?

Dr Kasenally: The answer is as follows:-

(a) No, Sir.

(b) Discussions with the French are ongoing on this issue. As the hon. Member is aware it was last raised in Paris on 5th October, 1992 between officials of our two Governments.

Mr Bérenger: Sir, that's a long way back. Can we know why has there been no progress, no further action or development since 1992?

Dr Kasenally: Sir, as we know and the hon. Member himself is aware that the question of getting the second meeting of the legal experts which is supposed to have taken place in Mauritius. We have been trying to get in touch with the French Authorities to have the second meeting. The first meeting, as we know, took place in December 1990 and from the 5th December, 1991 up to the 18th August, 1993, there have been several attempts to no avail, and the hon. Member cannot expect what he has not been able to do for two years to be done in six months.

Annex 44

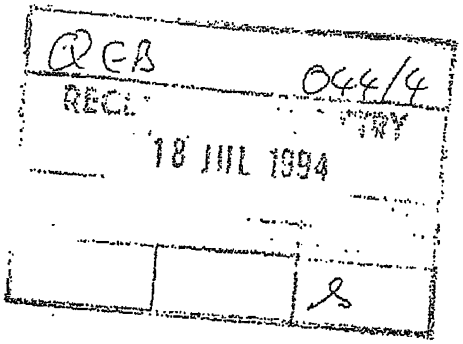
Internal note from the BIOT Director of Fisheries to the British High Commission, 2 June 1994

[redacted]

British Indian Ocean Territory Administration
Foreign and Commonwealth Office
London SW1A 2AH

2 June 1994

270-2890



Mr [redacted]
Port Louis

Dear [redacted]

BIOT: MAURITIAN TUNA VESSELS

1. You will recall that during your briefing in London, we discussed the present arrangements for licencing Mauritian purse seiners in BIOT waters. It will help if I rehearse the background.

2. In the past we have issued free licences on a six monthly basis for the three Mauritian vessels (MV Cirne, Lady Sushil, Lady Sushil II). This "favour" was an extension of the old agreement with Mauritius whereby we would continue to allow free licenced access to artisanal fishing (ie inshore).

3. We have suspected for some time that these three vessels are actually part of joint ventures between Mauritian companies and the Japanese. The total catch value taken by these vessels in our waters in 1993/94 was some £1.7m. Joint venture arrangements would mean that the Japanese are enjoying a proportional share of this amount and a free ride on licence fees. Clearly this was not the intention of the original grace and favour agreement with the Mauritians.

4. I raised this matter at the the recent Fisheries Commission meeting and indicated our concern. I made it clear that one of the three vessels, the MV Cirne, which had been chartered to Mitsubishi for one year, would no longer be given a free licence for BIOT waters. Their agents (see below) had been informed and told that Mitsubishi should now apply to the BIOT authorities if they wished to fish in our waters. I also gave [redacted] a private assurance that I would not pursue the matter of licence fees for the other two vessels at this stage but that we were not in the business of putting money into Japanese pockets and that I would take this forward at the next Commission meeting. He agreed with both points.

5. The two Lady Sushils are owned and operated by the Mauritius Tuna Fishing & Canning Enterprises Ltd (MTFCE) and the MV Cirne is owned by the New Cold Storage Co Ltd. However, MTFCE are the agents for the Cirne. We now need to obtain information on the joint venture arrangements between the above two companies and the Japanese. In particular, details of the percentage split would be useful as this will guide our thinking on any licence fees which may be applicable. I should be grateful therefore if you could do some research and let me have the results. Obviously, we would not want this to become known to the two companies.

Yours ever,

[redacted]

Director of Fisheries

PS Many thanks for all your help during our recent visit. I hope you have settled in and think the next few months are quite easy!

Annex 45

Internal note from the Foreign and Commonwealth Office to the British High Commission, 2 November 1994

RESTRICTED
FM FCO
TO PRIORITY PORT LOUIS
TELNO 103
OF 021540Z NOVEMBER 94

[redacted]

SUBJECT: BIOT/MAURITIUS FISHERIES

SUMMARY

1. Instructions to approach the MEA about the Mauritian licence.

DETAIL

2. We share your concern (your teleletter of 21 October) at the Mauritian action in issuing a fishing licence to cover quote the Chagos unquote.

[redacted] it suggests a reversion to old habits. It is hard to believe that there has been a mistake though it might just be an unauthorised initiative by the Ministry of Fisheries. It may be difficult to get the Mauritians to agree to revoke licences already issued but at least we might be able to stop them from issuing any further ones.

3. We agree you should now call on Makhan and make the following points:

a) We were very concerned to discover that the Ministry of Fisheries have issued a fishing licence which purports to cover BIOT waters.

b) All vessels wishing to fish in our waters must hold a valid BIOT licence. Mauritian fishing companies are aware of our requirements.

c) As a gesture of good will, BIOT Licences are issued free to Mauritian fishing companies, but we will not hesitate to prosecute any vessel fishing illegally. From this month a fisheries protection vessel will be patrolling BIOT waters.

d) We hope that the action of the Ministry of Fisheries is not the result of a deliberate policy decision by the Mauritian government and that there will be no further reference to the Chagos in licences.

4. Depending on Makhan's reaction you might go on to point out that having agreed to set aside the dispute on sovereignty, it is disappointing to find that the Mauritian government reopening the issue in a variety of ways. Unless he can offer a satisfactory explanation for the fisheries licence point, you should conclude that you will have to report back, but anticipate that the Mauritian position will have implications for our fisheries co-operation.

HURD

YYYY

DISTRIBUTION 16

MAIN 16

AD(E) [redacted]
LEGAL ADVISERS

NNNN

Annex 46

British/Mauritian Fisheries Commission Agenda: Background,
14 March 1995

COMMISSION AGENDA: BACKGROUND

AGENDA ITEM 3 - REVIEW OF JOINT STATEMENT (COPY ATTACHED)

Introduced as a means of confirming that the issue of sovereignty of BIOT will be set aside and that the workings of the Commission continue to be governed by the formula set out in Para 1 of the Joint Statement.

ITEM 4 - REPORT ON SCIENTIFIC SUB-COMMITTEE MEETING

[redacted] to provide report on this informal meeting which will take place Thursday 16 March.

The meeting offers the opportunity to discuss levels of fishing and to reaffirm our strong concerns about conservation in the fisheries around BIOT. It will cover the poor fishing season not only in BIOT but in the Indian Ocean as a whole and the need for continued cooperation. [redacted] will also indicate that with the uncertainties about tuna stock, we decided to cap the number of licences issued.

In addition, results of the 1994 Inshore Fisheries Observer programme will be discussed as will collaboration between MRAG and the Albion Fisheries Centre in 1995. In particular, we will be seeking agreement on placing an Observer on a Mauritian vessel this year.

ITEM 5 - DATA EXCHANGE

One of the main functions of the Commission (as set out in the Joint Statement of 27 January 1994) is to facilitate the exchange of scientific data on fish stocks. So far, the exchanges have all been one way and the Mauritians have not met their obligations. The reason, which we believe to be genuine, is that their database contains information from other Indian Ocean countries, primarily the Seychelles, which they have been unable to separate. MRAG will offer technical assistance but nevertheless, we should express concern that the agreement reached at last year's Commission was not met.

This item also provides us with the opportunity of raising the question of extending data sharing with other Indian Ocean countries, such as the Seychelles and the Maldives.

ITEM 6 - THE 1995 INSHORE FISHERIES OBSERVER PROGRAMME

Much will depend on progress made at the scientific sub-committee meeting but we would like to see a further programme this year. If necessary, we might suggest agreement in principle with the detailed arrangements to be worked out by MRAG and the Albion Fisheries Centre.

ITEM 7 - LICENSING ARRANGEMENTS

We need to express concern that the Ministry of Fisheries has issued licences for the Chagos without reference being made to the fact that all vessels wishing to fish in BIOT waters must have licences issued by the BIOT authorities. In the spirit of cooperation, we issue licences to Mauritian vessels free of charge. The Mauritian licences simply cause confusion. We should reiterate our determination to prosecute all vessels caught fishing without licences, no matter what the circumstances.

N.B. it is worth noting that there is little we can do to stop the Mauritians from imposing restrictions on their fleets including issuing licences to fish in a particular area but this does not alter the fact that BIOT licences are a statutory requirement for fishing in BIOT waters.

The Mauritian Ministry of Fisheries has also been issuing Total Allowable Catch (TAC) entitlements to inshore fishery vessels. We should enquire on what basis were the levels decided and express suprise that we were not consulted.

We will also provide details of our plans for issuing licences to Mauritian vessels for the coming year including the number we propose to issue and also indicate that the number will be kept under review. Some applications have already been received and there is an indication that the vessels would like to start fishing somewhat earlier than in previous years. This is not a problem.

If the Mauritians raise the question of a possible extension of the inshore season we would need time to consider whether this would result in excess fishing.

Last year the question of free licences for Mauritian vessels jointly owned with Japanese companies was raised. We should make the point that although it is not our intention to refuse licences to jv vessels, we do expect them to pay some proportion of the overall licence fee. Details to be worked out by MRAG.

ITEM 8 - DEFINITION OF WATERS OF CONCERN

It was agreed at the last Commission that this subject required more consideration and would need to be taken further at this year's meeting. The area has to cover Mauritian as well as BIOT waters and a suitably defined patch in between reflecting the highly migratory nature of certain fish. There is an indication (Port Louis teleletter of 14/3) of a softening on the Mauritian position. Last year we suggested that the area be defined by a set of geographical coordinates and this remains the essence of our proposal. There is probably room for some negotiation on the coordinates to be used but these **MUST** include Mauritian (or at the very least part of Mauritian) territorial waters.

AD(E)
14 March 1995

Annex 47

British/Mauritian Fisheries Commission, Joint Communiqué,
17 March 1995

JOINT COMMUNIQUE

BRITISH/MAURITIAN FISHERIES COMMISSION

1. The second meeting of the British/Mauritian Fisheries Commission took place at the Foreign and Commonwealth Office, London on 16 and 17 March 1995. The Mauritius delegation was led by Ambassador Vijay S Makhan, Secretary for Foreign Affairs. The British delegation was led by Mr David MacLennan, Head of African Department (Equatorial), Foreign and Commonwealth Office and Commissioner of the British Indian Ocean Territory.

2. On the issue of sovereignty of the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas, both delegations recalled that the meeting of the Commission, and anything resulting from it, would be governed by the formula set out in paragraph 1 of the Joint Statement on Conservation of Fisheries signed in London on 27 January 1994.

3. The meeting then proceeded to review the report of the Scientific Sub-committee, and consider matters arising. The commission endorsed recommendations by the scientific sub-committee in relation to data exchange, inshore fisheries management and the observer programme and agreed to recommend these to their governments.

4. The Commission expressed satisfaction with the collaboration achieved in 1994/95. A number of tasks for 95/96 were identified by the scientific sub-committee concerning the inshore fisheries observer programme and technical aspects of data exchange for the tuna fisheries. These were approved by the Commission which agreed to recommend them to their governments.

5. The Commission then looked at prospects for 1995/96.

6. The Commission agreed on the need for appropriate conservation and management measures for the fishery resources. Current levels of activity were not considered to be outside sustainable limits although concerns were expressed in relation to localised fishing areas and stocks.

7. In considering the implications of illegal fishing, the Commission agreed there was scope for further cooperation in exchange of information on relevant fishing activities.

8. Following on from discussions in the first meeting of the Joint Fisheries Commission and taking account of scientific advice, the Commission agreed to recommend to their governments, that the area of waters of concern to the Commission under paragraph 4 of the Joint Statement on the Conservation of Fisheries should be based on the area within the following points:

Latitude 0^0 0′ (Equator), Longitude 53^0 0′ East
Latitude 0^0 0′ (Equator), Longitude 77^0 0′ East
Latitude 25^0 0′ (South), Longitude 77^0 0′ East
Latitude 25^0 0′ (South), Longitude 53^0 0′ East

but excluding the Exclusive Economic Zones of the neighbouring countries. The area would therefore include the Fisheries Conservation and Management Zone of the BIOT (Chagos Archipelago), the Mauritian Exclusive Economic Zone and intervening international waters.

9. The second meeting of the British/ Mauritian Fisheries Commission was held in a friendly and positive atmosphere and its deliberations were guided by a co-operative spirit.

AGREED CONFIDENTIAL MINUTE

10. For vessels licensed to engage in the inshore fishery the duration of the licence will be extended to 80 days.

11. The number of vessels licensed in the inshore fishery will be determined by the needs of conservation as before.

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

Mr D R MacLennan
Head of the British Delegation

Ambassador Vijay S. Makhan
Head of the Mauritian Delegation

London, 17 March 1995

JOINT COMMUNIQUE

BRITISH/MAURITIAN FISHERIES COMMISSION

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Mr D R MacLennan
Head of the British Delegation

Ambassador Vijay S. Makhan
Head of the Mauritian Delegation

London, 17 March 1995

Annex 48

Third meeting of the British/Mauritian Fisheries Commission,
Report of the Scientific Sub-Committee, 19 March 1996

17

Third Meeting of the
British/Mauritian Fisheries Commission

Report of the Scientific Sub-Committee, 19 March 1996

1. Introductory remarks

1.1 The meeting of the Scientific Sub-committee of the British Mauritian Fisheries Commission was held at the Albion Fisheries Research Centre (AFRC), Mauritius on 19 March 1996.

1.2 [redacted] welcomed the participants to the meeting.

2. Adoption of the agenda

2.1 The provisional agenda was adopted without amendment (Appendix A).

2.2 Background papers circulated at the meeting are listed in Appendix B.

3. Composition of the delegations

Mauritius

[redacted] (Head of Delegation)
[redacted]

The following attended as observers:

[redacted]

United Kingdom

[redacted] (Head of Delegation)
[redacted]

The following were appointed as rapporteurs:

[redacted]

4. Review of the 1995/96 tuna fishery

4.1 A background paper prepared by the Mauritian delegation reviewing the various agenda items was circulated at the meeting and fomed the basis for discussion of the Mauritian fisheries (BG5).

4.2. Three purse seiners having a total net tonnage of about 2000 tonnes were involved

in the Mauritian tuna fishery. Since 1994, one of the purse seiners was chartered to a foreign company.

4.3. A decrease in the catch was noted from 1993 to 1995.

4.4. The artisanal tuna fishery mainly around Fish Aggregating Devices produce about 600 tonnes yearly.

4.5. The volume of tuna transhipped has increased from 11,807.1 tonnes in 1993 to 14,772.3 in 1995.

4.6 Under the Fishing Agreement between the E.U. and Mauritius, 17 purse seiners were licensed in 1995.

4.7 Thirteen Taiwanese and Japanese longline vessels were licensed to fish in the Mauritian EEZ in 1995. Catch reported was 217 tonnes.

4.8 No catch report had been received from the E.U. vessels operating in the Mauritian waters. The issue will be raised with the E.U. when the Fishing Agreement comes up for renewal.

4.9 Longliners entering Mauritian EEZ for fishing activities communicate about their catch, position, date, etc. to the Mauritian authorities.

4.10 Catch by longliners in the EEZ of Mauritius are reported by fishing agents to the Mauritian authorities.

4.11 Two background papers were circulated at the meeting describing the tuna fisheries in BIOT (Chagos Archipelago) waters during the period 1991 to 1995: BP3 - A review of the British Indian Ocean Territory Fisheries Conservation and Management Zone tuna fishery 1991-1995 (Pearce 1995 - submitted as a background paper to the IPTP meeting in Colombo in September 1995); and BP4 - A summary analysis of the fishing season 1994/95 (MRAG). These papers covered the period which had been reviewed by the Scientific Sub-Committee at its last meeting in March 1995, but provided some additional detail. A report of the 1995/96 season had not been prepared prior to the meeting because the season had gone on longer than usual and many of the logbooks were still not submitted.

4.12 [redacted] presented a brief verbal review of the tuna fishery in the British Indian Ocean Territory (BIOT) (Chagos Archipelago) Fisheries Conservation and Management Zone (FCMZ) during the 1995/96 season.

4.13 The 1995/96 purse seine fishing season was again concentrated in the period November to February, although the amount of fishing late in the season was greater than expected. A total of 43 purse seine vessels, including two Mauritian flagged vessels were licenced during this period. More fishing activity than usual was reported to the east of the BIOT FCMZ in late November.

4.14 The 1995/96 season for the European purse seiners in BIOT (Chagos Archipelago) waters was much better than the 1994/95 season, but not as good as the 1993/94 season, which is now being viewed as a bumper season. The total reported catch in BIOT (Chagos Archipelago) waters in the 1995/96 season is not yet available because the logbooks have not all been returned and processed. However,

indications from within season reports are that the catch was in the region of 15-16 thousand tonnes of tuna. This compares to 2 thousand tonnes in 1994/95 and 33 thousand tonnes in 1993/94. The main difference between the 1995/96 and 1993/94 seasons appears to have been in the availability of large free schooling yellowfin tuna. The estimated total catches of skipjack in these two seasons were similar, but the estimated total catch of yellowfin in 1995/96 was less than half that in 1993/94.

4.15 There has been a movement of purse seine vessels from the Atlantic to the Indian Ocean over recent years. The BIOT authorities are considering imposing a limit on the number of purse seine vessels licensed to fish during the 1996/97 season.

4.16 In the 1995/96 fishing season the total number of longline licences issued decreased to 16. These were issued during only one period from September to November 1995.

4.17 The total effort of longliners in BIOT (Chagos Archipelago) waters during the 1995/96 season was low and the total estimated catch was only 67 tonnes, although this figure is also awaiting confirmation from logbooks. This compares to catches of 700 tonnes and 530 tonnes in the 1994/95 and 1993/94 seasons respectively. Fishing effort during these seasons was much higher.

4.18 In relation to reporting requirements for longliners, on submission of the fishing logbook to the BIOT authorities, part of the licence fee (£ 500) is refunded as an incentive for the return of completed logbooks.

4.19 No illegal fishing has been reported for purse seiners. One unlicensed Indonesian longliner believed to have set a line in BIOT waters was encountered in December 1995.

4.20 The Sub-Committee recommended that the longline logbook formats of BIOT and Mauritius be compared with a view to possible standardisation in the future.

5. Review of the 95/96 inshore fisheries

5.1. A background paper (BP2) was presented which reviewed the improved data reporting logbooks for the 1995 inshore fishing season in BIOT (Chagos Archipelago). Seven licenses were issued to 6 vessels in 1995 (one was an unutilised experimental license). Three vessel-licences were unutilised in 1995. Of those utilised, one vessel failed to properly complete its logbook.

5.2. Details of the analysis were discussed. The question of species composition changes and possibility of short term depletion by species and species guild was discussed. Subsequent analyses will investigate this in more detail.

5.3. Catch rates in BIOT (Chagos Archipelago) are less than at the southerly Mauritian banks, but have been consistently so for a number of years. Questions over the productivity of the banks in BIOT (Chagos Archipelago) indicate that continued detailed monitoring of the fishery is required to ensure the fishery is sustainable. In this context, the Terms and Conditions of licensing of inshore vessels will be more strictly applied (BP2) to ensure proper reporting (entry/exit reports; the BIOT Authorities will be informed within 7 days of the Date of Validity of the licence if it is

not to be utilised - a licence may then be issued to another vessel).

5.4 It was reported that a catch quota system is presently being imposed on Mauritian vessels fishing on Nazareth and Saya de Malha banks. Those vessels which exhaust their quota on these banks may require licences from BIOT (Chagos Archipelago) earlier in the season than in the past. It was indicated by the Mauritian Delegation that more flexibility in the period of licensing was required by vessel owners. It was recognised that for vessels fishing outside the normal period, reporting requirements must be strictly adhered to. AFRC indicated that they could place an observer on board vessels fishing outside the normal season, and also confirm with the fishing companies the reporting requirements, and consequences of failure to report.

5.5 The UK Delegation stated that current licences were for a maximum of 80 days and that two out of three applications this year had been for a shorter period. At present there were no plans to permit fishing outside the main season.

5.6 The question of any inshore fishery licenses issued to vessels other than those of Mauritius was raised. Whilst enquiries have been received from a Seychelles and South African Company, no licences other than to Mauritian vessels have been issued.

5.7 Illegal fishing activity in the inshore fishery by Sri Lankan vessels was reported. Two vessels have been prosecuted by the BIOT Authorities. The method of fishing appears to be pelagic gill netting and long lining principally for sharks. The vessels have fished very close inshore. One vessel on innocent passage through BIOT (Chagos Archipelago) Waters had fished on Saya de Malha Bank.

6. Data exchange since the first Commission meeting

6.1 The exchange of data on tuna fisheries since the last Commission meeting in March 1995 was discussed.

6.2 At last year's meeting the Sub-Committee had identified a number of problems regarding the extraction of data from the Mauritian database. Following that meeting, scientists from the Albion Fisheries Research Centre (AFRC) and MRAG worked together in London to develop the mechanism for the data exchange.

6.3 Tuna data covering the period up to the end of November 1994 available to the BIOT Authorities were provided to AFRC scientists by MRAG at the end of last year's Commission meeting. During a visit to Mauritius in April 1995, Dr Chris Mees received tuna data from AFRC for the period 1989 to 1994.

6.4 MRAG received a data diskette from AFRC in January 1996. This contained data for Mauritian purse seiners and covered the period up to the end of 1994. The exchange of catch and effort data was therefore currently up to date.

6.5 The Sub-Committee noted with concern that the Mauritian authorities were continuing to experience difficulties in receiving catch and effort data from EU vessels operating under the EU/Mauritius Fisheries Agreement. These problems had been discussed at last year's meeting.

6.6 Arrangements were agreed for the exchange of catch and effort data at this meeting of the Commission covering the period up to the end of 1995.

6.7 In order to coordinate the data exchange with the purse seine fishing season, the Sub-Committee recommended that future exchange would take place on 1 July each year and that this would cover the preceding period 1 May to 30 April.

6.8 The background paper BP3 included a list of vessels licensed by the BIOT Authorities during the 1994/95 season. The Sub-Committee recommended that information on vessels licensed should be exchanged on a routine basis between AFRC and MRAG. The Sub-Committee proposed that a list of licensed vessels including vessel names, nationality, dates of issue and periods of validity be exchanged at the beginning of each year and updated on a monthly basis.

6.9 At AFRC, effort for the tuna purse seine fishery is calculated in terms of fishing hours and days at sea using the ORSTOM database software. The effort data required by the British-Mauritian Fisheries Commission is by set. This should be possible in future.

6.10 Information on inshore fisheries would be exchanged at the time of the Commission meetings.

7. Observer programme for inshore fisheries, 1996

7.1. Both sides agreed that there had been fruitful cooperation on past observer programmes and that the programme should continue.

7.2. A background paper (BP2) proposed details for a 1996 joint British/Mauritian observer programme. Data collection procedures and priorities remain unchanged from those proposed for the 1995 programme.

7.3. The timing of the programme, and choice of vessel was discussed. This is complicated by the fact that not all vessels seeking a licence actually use it, making planning difficult. It was agreed that as soon as MRAG for the BIOT Authorities was aware of details of licence applications, these would be transmitted to AFRC together with a suggested priority list of vessels for the observer programme. AFRC, for the Mauritian Authorities, will liaise with the companies and ascertain which are committed to going to Chagos, and confirm the vessel choice for the programme. The possibility of AFRC sending observers on 'out-of season' trips to Chagos, if these were to be permitted, was confirmed.

7.4. The lower catch rates in BIOT (Chagos) were explored in some detail. One possibility is that discards occur, and thus the catch is under-reported. It was proposed that the observer programme could be used to explore this possibility.

7.5. Opportunities for collection of other additional scientific information by observers were discussed. This will include collection of specimens for further assay for ciguatera, collection of otoliths and improved reporting of fishing activities (dory location / hook size).

7.6. Independent data verification, recommended in 1995 was discussed. This had not occurred because of a number of problems, now resolved, and will be possible in

future.

7.7. As in previous years, local arrangements for the observer programme will be made by AFRC, including customs clearance for the observer. The need for additional safety equipment and supplies was noted.

8. Any other business

8.1. The UK Delegation reported that the BIOT Authorities are considering implementing marine protected areas (MPA's) around the islands of Peros Banhos, Egmont and Salomons. The Scientific Sub-Committee agreed there was merit in this, but questions were raised concerning sheltering sites for vessels in periods of rough weather.

8.2. The potential value of experimental closed areas on the Great Bank was raised by the British Delegation. It was considered that additional information was required before the precise location of any closed area could be determined.

8.3. The 1996 Chagos Expedition was briefly described and discussed.

9. Adoption of the report

9.1 The report of the meeting was adopted.

The meeting was closed

Appendix A

Third Meeting of the
British/Mauritian Fisheries Commission

Scientific Sub-Committee, 19 March 1996

Provisional Agenda

1. Introductory remarks
2. Adoption of the agenda
3. Composition of the delegations
4. Review of the 1995/96 tuna fishery
5. Review of the 1995/96 inshore fisheries
6. Data exchange since the first Commission meeting
7. Observer programme for inshore fisheries 1996
8. Any other business

Appendix B

List of Background Papers

BP1 Proposals for a Joint British / Mauritian Observer Programme for the 1996 Inshore Fishery in the Chagos Archipelago (C.C. Mees)

BP2 A Brief Review of the BIOT Inshore Fishery in 1995, and Examination of Catch and Effort by Location With a View to Management by 'Marine Protected Area'. (C.C. Mees and G. Pilling)

BP3 A review of the British Indian Ocean Territory Fisheries Conservation and Management Zone tuna fishery 1991-1995 (J. Pearce 1995 - submitted as a background paper to the IPTP meeting in Colombo in September 1995)

BP4 A summary analysis of the fishing season 1994/95 (MRAG)

BP5 British-Mauritian Fisheries Commission Scientific Sub-Committee, 3rd Meeting - 19 March 1996, Review of Agenda Items.

Annex 49

British/Mauritian Fisheries Commission, Joint Communiqué,
20 March 1996

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JOINT COMMUNIQUE

BRITISH/MAURITIAN FISHERIES COMMISSION

1. The third meeting of the British/Mauritian Fisheries Commission took place at the Ministry of Foreign Affairs, International and Regional Cooperation, Port Louis on 19 and 20 March 1996. The Mauritius delegation was led by Mr. K. Ponnusamy, Permanent Secretary. The British delegation was led by H E Mr. J C Harrison, the British High Commissioner.

2. On the issue of sovereignty of the British Indian Ocean Territory (Chagos Archipelago) and the surrounding maritime areas, both delegations recalled that the meeting of the Commission, and anything resulting from it, would be governed by the formula set out in paragraph 1 of the Joint Statement on Conservation of Fisheries signed in London 27 January 1994.

3. The meeting then proceeded to review the report of the Scientific Sub-Committee, and to consider matters arising.

4. The Commission endorsed the recommendations made by the Scientific Sub-Committee relating to arrangements for the exchange of data, data reporting and inshore fisheries management and agreed to recommend these to their governments.

5. A number of tasks for 1996/97 were identified by the Scientific Sub-Committee concerning the inshore fisheries observer programme. These were approved by the Commission, which agreed to recommend them to their governments.

6. The Commission noted with concern some reports of illegal fishing in the Area of Concern to the Commission during the 1995/96 season and agreed to recommend to their governments a mechanism for the exchange of information relating to illegal fishing and enforcement mechanisms.

7. The Commission noted the intention of the BIOT Authorities to introduce a system of marine protected areas (MPAs) for BIOT (Chagos Archipelago). The Mauritian Delegation would be kept fully informed of progress on this.

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

9. The Commission noted plans for the management of the inshore-fishery on the Saya de Malha and Nazareth banks, including the catch quota system introduced in 1994. It also noted arrangements for the licensing of vessels for the inshore fishery in BIOT (Chagos Archipelago) waters in 1996.

10. The Mauritian Delegation raised the question of assistance for the training of fisheries personnel. They also enquired about the provision of assistance including fishing equipment for the Ilois community. The British Delegation described arrangements which had been made in the past using funds available through the British Partnership Scheme. They indicated that future requests for such assistance would be considered positively.

11. The Mauritian Delegation proposed extending the mandate of the Commission to include reporting on fisheries to regional and international fisheries organisations. The British Delegation took note of this new proposal and agreed to examine it further.

12. The next meeting of the British/Mauritian Fisheries Commission will be held in London during the period March/April 1997.

13. The third meeting of the Commission was held in a positive and friendly atmosphere and its deliberations were guided by a co-operative spirit.

Mr K. Ponnusamy
Head of the Mauritian
Delegation

H E Mr J.C. Harrison
Head of the British
Delegation

Port Louis, 20 March 1996

Annex 50

Regulation of Activities by Vessels Ordinance 1997

THE BRITISH INDIAN OCEAN TERRITORY.

Ordinance No.3 of 1997

An Ordinance to regulate activities conducted by or from vessels in the waters of the Territory and to provide for matter erected therewith or incidental thereto.

Arrangement of sections.

THE BRITISH INDIAN OCEAN TERRITORY

ORDINANCE NO 3 of 1997

An Ordinance to regulate activities conducted by or from vessels in the waters of the Territory and to provide for matter erected therewith or incidental thereto.

ENACTED by the Commissioner for the British Indian Ocean Territory

7 March 1997 Commissioner

Short title and commencement.

1. This Ordinance may be cited as the British Indian Ocean Territory Waters (Regulation of Activities) Ordinance 1997 and shall come into force on 1 April 1997.

Interpretation.

2. - (1) In this Ordinance, unless the contrary intention appears -

"authorised officer" means the Commissioner's Representative, a Peace
Officer, an Imports and Exports Control Officer appointed under the Imports and Exports Control Ordinance 1984, a Fisheries Protection Officer within
the meaning of the Fisheries (Conservation and Management) Ordinance 1991 or a Visiting Vessels Control Officer appointed under the Outer Islands (Services for Visiting Vessels) Ordinance 1993;

"the Commanding Officer" means the United States Navy Officer in command of the United States Navy Support Facility on Diego Garcia;

"master", in relation to a vessel, includes any person for the time being in charge of the vessel;

"regulated activities" has the meaning assigned by subsections (2) and

(3); "vessel" means any seagoing craft;

"the waters of the Territory" means the internal waters and the territorial sea of the Territory; and

"without consent" means without the consent of the Commissioner or an authorised officer given under section 3 or otherwise than in accordance with any conditions attached to a consent so given.

(2) In this Ordinance, "regulated activities" means any activities conducted by or from a vessel other than (but subject to subsection (3))

(a) activities constituting, or incidental to, the exercise of the right of innocent passage through the territorial sea of the Territory;

(b) fishing, within the meaning of the Fisheries (Conservation and Management) Ordinance 1991, provided that it is conducted in accordance with that Ordinance and the Regulations made thereunder;

(c) mooring, as defined in the Outer Islands (Services for Visiting Vessels) Ordinance 1993, at a place in the outer islands (as so defined), provided that the relevant requirements of that Ordinance are complied with;

(d) activities which are conducted wholly on board the vessel and which (except where reasonably required for the safe navigation of the vessel) do not involve the incursion of any person, or the insertion of any object, or the projection or emission of any electric, acoustic or other impulse or signal, into the waters of the Territory;

(e) swimming or bathing in the waters of the Territory for purely recreational purposes, or the launching from the vessel and the sailing within those waters, for purely recreational purposes, of small ancillary craft, in either case not involving the use of any diving equipment or underwater-swimming equipment;

(f) in the case of a shore-based vessel operating from Diego Garcia, any recreational activities that are for the time being authorised by the Commissioner's Representative or the Commanding Officer; or

(g) in the case of a vessel that is for the time being within the anchorage at Diego Garcia (or at any other place within the waters of Diego Garcia that the Commissioner's Representative has designated as a permitted anchorage) with the authority of the Government of the Territory (including any vessel that is there, with the authority of the Government of the United States of America, in connection with the United States Navy Support Facility on Diego Garcia), such activities as are required for the maintenance of the vessel or for its operation in

accordance with such authority.

(3) For the avoidance of doubt and notwithstanding anything in subsection (2) (other than paragraph (b) thereof, which excepts activities authorised under the Fisheries (Conservation and Management) Ordinance 1993), "regulated activities" includes any form of exploration or survey of, or research into, any aspect of the waters of the Territory or the seabed or subsoil beneath those waters or the living or non-living resources of those waters or of that seabed or subsoil, whether such exploration or survey or research is conducted for reward or in pursuit of scientific knowledge or for pleasure or for any other purpose whatever.

No regulated activities without consent.

3. - (1) No person may conduct any regulated activities in the waters of the Territory without the consent of the Commissioner or of an authorised officer, given in writing under his hand.
(2) The Commissioner or an authorised officer may at any time, by writing under his hand, revoke any consent given under this section.

(3) A consent given by the Commissioner or an authorised officer under this section may have attached to it such conditions as the Commissioner or the authorised officer thinks fit, and the Commissioner or an authorised officer may at any time, by writing under his hand, attach such conditions, or such further condition.-,, as he thinks fit to a consent already given or may amend as he thinks fit any conditions previously attached to such a consent.

(4) The powers conferred by subsections (2) and (3) may be exercised by the Commissioner or an authorised officer in relation to any consent given under this section or, as the case may be, in relation to any condition attached to such a consent, irrespective of who gave that consent or who attached that condition.

Powers of authorised officers.

4. - (1) For the purpose of enforcing this Ordinance an authorised officer may exercise the following powers with respect to any vessel within the waters of the Territory:

(a) he may stop the vessel;

(b) he may require the master to facilitate the boarding of the vessel by all appropriate means;

(c) he may go on board the vessel and take with him such other persons as he may require to assist him in the exercise of his powers;

(d) he may require the master or any other member of the crew or any passenger to produce, and he may examine and take copies of, any certificate of registry, official logbook, official paper or any other document relating to the vessel or to any member of the crew or to any passenger, or to any activities that may have been conducted by

or from the vessel, that is in the possession of the master or such other member of the crew or such passenger:

(e) he may muster the crew of the vessel and all passengers thereon;

(f) he may require the master to appear and give any explanation concerning the vessel or any member of its crew any passenger thereon or any document mentioned in paragraph (d);

(g) he may cause the vessel to be taken to such place in the Territory as he may appoint for the purpose of carrying out any search, examination or enquiry;

(h) if it appears to him that the master or any other person on board the vessel has committed an offence against this Ordinance

(i) he may seize or take copies of any documents which he believes relevant to the offence;

(ii) he may arrest the suspected offender and shall then, as soon as practicable, bring him before a Magistrate in some convenient place in the Territory, there to be dealt with according to the law; and

(iii) he may, at the same time as he exercises his powers under sub-paragraph (ii), seize the vessel, together with all equipment and other goods on board it, and cause it to be taken to some convenient place in the Territory and to be there detained until the conclusion of the proceedings against the suspected offender (or against all suspected offenders who have been brought before a

Magistrate in pursuance of sub-paragraph (ii)) or, if an order is made under section 5(4), until such time as is specified in that order or, in any case, until such earlier time as a Magistrate may order.

(2) In exercising the powers conferred by subsection (1), an authorised officer and any persons accompanying him under paragraph (c) of that subsection may use such force as is reasonably necessary.

(3) An authorised officer may give to the master of a vessel or to any other member of the crew or to any passenger such directions concerning the navigation, handling or management of the vessel, or of any equipment or other goods on board it, as he considers necessary for the effective discharge of the powers conferred on him by this section.

(4) When a consent given under section 3 in relation to activities to be conducted by or from a particular vessel has been revoked and that vessel is then within the waters of the Territory, an authorised officer may direct the vessel concerned to depart forthwith from those waters.

Offence, penalties and enforcement.

5. - (1) The master of any vessel which conducts any regulated activity in the waters of the Territory without consent or from which any such activity is so conducted (and whether or not the activity was conducted with the authority or knowledge of the master), and any person who so conducts such an activity, is guilty of an offence under this Ordinance.

(2) Any person who obstructs an authorised officer in the exercise of his powers under this Ordinance or who, without lawful cause (the onus of proof of which lies on him), refuses or fails to comply with any direction or requirement reasonably given to him by such an officer or to answer any question reasonably
put to him by such an officer or who gives an answer to such a question which he knows to be false or misleading in any material particular or who prevents or attempts to prevent another person from complying with such a direction or requirement or from answering such a question is guilty of an offence under this Ordinance.

(3) Any person who commits an offence under this Ordinance is liable, on conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding £5000 (and the Magistrates' Court shall have jurisdiction to impose such a fine notwithstanding anything contained in the Criminal Procedure Code 1986).

(4) When any person is convicted of an offence under this Ordinance, the court by which he is convicted may order that any vessel, together with any equipment or other goods on board it (or such of them as the order may specify), that is then being detained under section 4(1)(h)(iii) in connection with the offence shall continue to be detained until any fine that has been imposed under this section has been satisfied or until a court orders it to be earlier released.

(5) Where any fine that has been imposed on any person for an offence under this Ordinance has not been been satisfied in full after the expiry of a period of 90 days after it was imposed or such longer period as may be allowed by the court to which an application is made under this subsection, any vessel, equipment or other goods then being detained under subsection (4) shall, on such terms, if any, as the court may think just, be forfeited to the Crown by order of any court upon application made by or with the authority of the Principal Legal Adviser and shall then be disposed of in such a manner as the Commissioner may direct.

(6) The power of a court, under subsection (5), to order the forfeiture of any vessel, equipment or other goods is without prejudice to the power of that or any other court to make, instead or in addition, any other order consequent upon the non-payment of a fine that is authorised by any other law for the time being in force in the Territory.

(7) In any proceedings under this section, a certificate by the Commissioner's Representative that, at any material time, an activity was or was not authorised as mentioned in section 2(2)(f), or that a place within the waters of Diego Garcia was or was not a permitted anchorage as mentioned in section 2(2)(g), or that a vessel was or was not within the anchorage at Diego Garcia (or at such a place) with such authority as mentioned in section 2(2)(g), shall be conclusive of that fact.

Savings.

6. Nothing in this Ordinance shall be construed as derogating from or as otherwise prejudicing the provisions of the Immigration Ordinance 1971, the Fisheries (Conservation and Management) Ordinance 1991 or the Outer Islands (Services for Visiting Vessels) Ordinance 1993; and in particular, and without prejudice to the generality of the foregoing, nothing in this Ordinance shall be construed as authorising any person on board or connected with a vessel (whether or not consent has been given under section 3 in respect of activities to be conducted by or from the vessel) to land in the Territory, or in any other way to enter the Territory, unless he is in possession of a permit, or his name is endorsed on a permit, issued under the Immigration Ordinance 1971.