

**1982 UNITED NATIONS CONVENTION
ON THE LAW OF THE SEA**

**IN THE DISPUTE CONCERNING
THE 'MARINE PROTECTED AREA' RELATED TO THE CHAGOS ARCHIPELAGO**

MAURITIUS v. UNITED KINGDOM

**NOTIFICATION UNDER ARTICLE 287
AND ANNEX VII, ARTICLE 1 OF UNCLOS**

**AND THE STATEMENT OF THE CLAIM
AND GROUNDS ON WHICH IT IS BASED**

20 DECEMBER 2010

1982 UNCLOS - ANNEX VII ARBITRATION

NOTIFICATION

AND STATEMENT OF CLAIM

1. By decision dated 1 April 2010 the United Kingdom purported to establish a ‘Marine Protected Area’ (‘MPA’) in the so-called ‘British Indian Ocean Territory’ to cover the entire 200 mile zone that the United Kingdom has purported to declare around the Chagos Archipelago.¹ The ‘MPA’ covers an area of more than half a million square kilometres, within which all fishing and other activities are prohibited. The United Kingdom purported to bring the ‘MPA’ into force on 1 November 2010. The purported establishment of the ‘MPA’ violates the 1982 United Nations Convention on the Law of the Sea (‘the 1982 Convention’), to which Mauritius and the United Kingdom are party, and other rules of international law not incompatible with the 1982 Convention. Mauritius makes this Application, which comprises a Notification and Statement of Claim required by Article 1 of Annex VII of the 1982 Convention, in relation to a dispute concerning the legality of the ‘MPA’ under the 1982 Convention and to obtain an authoritative and legally binding declaration to that effect.

THE ‘MPA’ DISPUTE

2. The dispute over the ‘MPA’ arises against the background of longstanding differences between Mauritius and the United Kingdom. The Chagos Archipelago comprises a

¹ Foreign And Commonwealth Office, Press Release, 1 April 2010, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=22014096#>; attached as **Annex 1**.

number of islands located in the Indian Ocean, including Diego Garcia. Until 1965, the United Kingdom accepted the Chagos Archipelago as part of the Territory of Mauritius, over which it exercised colonial authority. That year, it dismembered Mauritius by purporting to establish a so-called “British Indian Ocean Territory”, a new colonial territory consisting of the Chagos Islands, which it excised from Mauritius, and the separate islands of Aldabra, Farquhar and Desroches, taken from the colonial territory of Seychelles.² By 1973, the United Kingdom had forcibly removed the entire indigenous population of the Chagos Archipelago, comprising a community of approximately 2000 persons calling themselves Ilois or Chagossians, whilst recognizing respect for traditional fishing rights in the waters of the Chagos Archipelago.

3. In 1968, Mauritius achieved independence from the United Kingdom. Article 111 of the Constitution of Mauritius states that “Mauritius includes...the Chagos Islands, including Diego Garcia”. By its 1977 Maritime Zones Act, Mauritius declared a 12-mile territorial sea, a 200-mile EEZ and a continental shelf to the outer edge of the continental margin around all of its territory, including the Chagos Islands. In 1989, Mauritius concluded an Agreement with the European Economic Community on fishing in Mauritian waters, which recalled that “in accordance with [the 1982] Convention, Mauritius has established an exclusive economic zone extending 200 nautical miles from its shores within which it exercises its sovereign rights for the purpose of exploring, exploiting, conserving and managing the resources of the said zone, in accordance with the principles of international law.” By its Maritime Zones Act of 28 February 2005, Mauritius reaffirmed

² In 1976, when Seychelles achieved independence, the latter three islands were returned to it.

its 200-mile Exclusive Economic Zone, as well as its 12-mile territorial sea and continental shelf. In 2008, pursuant to Articles 75(2) and 84(2) of the 1982 Convention, Mauritius submitted geographical coordinates to the United Nations Division for Ocean Affairs and the Law of the Sea, including in regard to the maritime zones emanating from the Chagos. In 2009, Mauritius submitted to the United Nations Commission on the Limits of the Continental Shelf a preliminary claim to an extended continental shelf in areas beyond 200 miles from the archipelagic baselines of the Chagos Islands.

4. In 1991, the United Kingdom purported to establish a 200-mile “Fisheries Conservation and Management Zone” around the Chagos Archipelago, and in 2003 it purported to declare a 200-mile “Environment Protection and Preservation Zone”. In March 2004 the United Kingdom deposited a list of geographical coordinates of points, pursuant to Article 75(2) of the 1982 Convention. Mauritius has objected to these and other actions, even if they were not intended to preclude fishing by Mauritius in the waters around the Chagos Archipelago, and did not have that effect: until 2010 Mauritian vessels have been able to fish in those waters. However, the United Kingdom has now sought to prevent all such fishery activity (including artisanal activity and fishing by the indigenous population) by purporting to establish an ‘MPA’ that *inter alia* prohibits all fishing activities. In establishing the ‘MPA’ the United Kingdom has failed *inter alia* (a) to have due regard to the rights of Mauritius and of those persons forcibly removed from the Chagos Archipelago, and (b) to act in a manner compatible with the provisions of the 1982 Convention, and (c) to seek to reach agreement with Mauritius or appropriate subregional or regional organizations, including the Indian Ocean Commission and the Indian Ocean Tuna Commission, on measures necessary to ensure conservation. It

appears that the true purpose of the ‘MPA’ is not conservation but to prevent the right of return (see recently reported comments of Mr. Colin Roberts, the Director of Overseas the United Kingdom’s Foreign and Commonwealth Office, that “establishing a marine park would, in effect, put paid to resettlement claims of the archipelago’s former residents”).³ By these actions, the United Kingdom has violated the 1982 Convention and rules of general international law not incompatible with it. The United Kingdom is not (in regard to the Chagos Archipelago) a “coastal state” within the meaning of the 1982 Convention. With regard to the attempt to prohibit all fishing activity, Mauritius invokes the requirement imposed on the United Kingdom by Article 300 of the 1982 Convention.

5. These facts have given rise to a dispute regarding the legality of the ‘MPA’ under the 1982 Convention. The dispute includes, but is not limited to, respective rights to declare and delimit an exclusive zone under Part V of the 1982 Convention, under which the ‘MPA’ has purportedly been established, and the interpretation and application of the term “coastal state” in Part V of the 1982 Convention.

JURISDICTION

6. Mauritius and the UK are parties to the 1982 Convention, having ratified respectively on 4 November 1994 and 25 July 1997. Part XV establishes a regime for the settlement of disputes concerning its interpretation and application. Article 279 requires States Parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1)

³ ‘UK Foreign Office does not regret evicting Chagos islanders’, US diplomatic cable, 13 May 2009, reproduced in *Le Matinal*, Port Louis, Mauritius, 2 December 2010; attached as **Annex 2**.

further requires that when a dispute arises between States Parties, they should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. The parties have exchanged views on the legality of the 'MPA' and the delimitation of the exclusive zones; given the previous and current stance adopted by the United Kingdom, there is no prospect of a negotiated settlement.

7. Article 286 of the 1982 Convention provides that "any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section." The parties to the dispute have not agreed on the means for the settlement of the dispute: Mauritius has made no declaration pursuant to Article 287(1), whereas by its declaration of 12 January 1998 the United Kingdom chose the International Court of Justice as the means for settling disputes concerning the meaning or application of the 1982 Convention. In accordance with Article 287(5), it follows that this dispute shall be submitted to arbitration under Annex VII. Moreover, neither party has made a declaration under Article 298(1)(a)(i) excluding from compulsory procedures any disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles.
8. Accordingly, in conformity with Article 286, Mauritius submits this dispute with the United Kingdom to an arbitral tribunal constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1).

GROUND FOR RELIEF

9. The dispute between Mauritius and the United Kingdom relates to the interpretation and application of numerous provisions of UNCLOS, including but not limited to Parts II, V, VI, XII and XVI. In support of its claims, Mauritius also invokes other rules of international law not incompatible with the 1982 Convention, including but not limited to Chapter XI of the United Nations Charter and the principle of permanent sovereignty over natural resources. In accordance with Article 293, such other rules shall be applied by the Annex VII arbitral tribunal. These grounds will be set out in detail in Mauritius' written pleadings.
10. In accordance with the requirements of Article 3(b) of Annex VII, Mauritius appoints Judge Rüdiger Wolfrum as a member of the arbitral tribunal.

RELIEF SOUGHT

11. Mauritius requests the Annex VII arbitral tribunal to declare, in accordance with the provisions of UNCLOS and the applicable rules of international law not incompatible with the Convention that, in respect of the Chagos Archipelago:
 - (1) the 'MPA' is not compatible with the 1982 Convention, and is without legal effect; and/or
 - (2) the United Kingdom is not a 'coastal state' within the meaning of the 1982 Convention and is not competent to establish the 'MPA'; and/or
 - (3) only Mauritius is entitled to declare an exclusive zone under Part V of the 1982 Convention within which a marine protected area might be declared.

12. Mauritius reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests from the arbitral tribunal as may be necessary to preserve its rights under UNCLOS.

Mr Dhiren Dabee, Solicitor-General of Mauritius
Government of the Republic of Mauritius
Agent

20 December 2010

ANNEX 1



Last updated at 11:55 (UK time) 6 Apr

New protection for marine life

01 April 2010

Foreign Secretary David Miliband instructs the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area.

Foreign Secretary David Miliband today announced the creation of a Marine Protected Area (MPA) in the British Indian Ocean Territory. This will include a "no-take" marine reserve where commercial fishing will be banned.

The British Indian Ocean Territory (BIOT) consists of 55 tiny islands which sit in a quarter of a million square miles of the world's cleanest seas.

Announcing the creation of this MPA, David Miliband said:

I am today instructing the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area. The MPA will cover some quarter of a million square miles and its establishment will double the global coverage of the world's oceans under protection. Its creation is a major step forward for protecting the oceans, not just around BIOT itself, but also throughout the world. This measure is a further demonstration of how the UK takes its international environmental responsibilities seriously.

The territory offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change, which are core research issues for UK science.

I have taken the decision to create this marine reserve following a full consultation, and careful consideration of the many issues and interests involved. The response to the consultation was impressive both in terms of quality and quantity. We intend to continue to work closely with all interested stakeholders, both in the UK and internationally, in implementing the MPA.

I would like to emphasise that the creation of the MPA will not change the UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes and it is, of course, without prejudice to the outcome of the current, pending proceedings before the European Court of Human Rights.

Further information

The Chagos Islands have belonged to Britain since 1814 (The Treaty of Paris) and are constituted as the British Indian Ocean Territory (BIOT). Only Diego Garcia, where there is a military base, is inhabited (by military personnel and employees).

The idea of making the British Indian Ocean Territory an MPA has the support of an impressive range of UK and international environmental organisations coming together under the auspices of the "Chagos Environment Network" to help enhance the environmental protection in BIOT. Also, well over 90% of those who responded to the consultation made clear that they supported greater marine protection

Pollutant levels in Chagos waters and marine life are exceptionally low, mostly below detection levels at 1 part per trillion using the most sensitive instrumentation available, making it an appropriate global reference baseline.

Scientists also advise us that BIOT is likely to be key, both in research and geographical terms, to the repopulation of coral systems along the East Coast of Africa and hence to the recovery in marine food supply in sub-Saharan Africa. BIOT waters will continue to be patrolled by the territory's patrol vessel, which will enforce the MPA conditions.

Download the [full report](#) [PDF]



ANNEX 2

Le Matinal, (Port Louis / Mauritius, 2 December 2010)

Wikileaks: UK Foreign Office does not regret evicting Chagos islanders

More than 2,000 islanders were evicted during the Cold War to make way for a huge US military base. The islanders have fought a long battle to be allowed to return. British Foreign Office and American officials discuss plans to establish a marine park on Diego Garcia and the surrounding islands, which they say would effectively end the islanders resettlement claim.

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TAGS MARR, MOPS, SENV, UK, IO, MP, EFIS, EWWT, PGOV, PREL

SUBJECT: **HMG FLOATS PROPOSAL FOR MARINE RESERVE COVERING
THE CHAGOS ARCHIPELAGO (BRITISH INDIAN OCEAN TERRITORY)**

REF: 08 LONDON 2667 (NOTAL)

Classified By: *Political Counselor Richard Mills* for reasons 1.4 b and d

¶1. (C/NF) *Summary.* Her Majesty's Government (HMG) would like to establish a "marine park" or "reserve" providing comprehensive environmental protection to the reefs and waters of the British Indian Ocean Territory (BIOT), a senior Foreign and Commonwealth Office (FCO) official informed Polcouns [Political Counselor] on May 12. The official insisted that the establishment of a marine park -- the world's largest -- would in no way impinge on USG use of the BIOT, including Diego Garcia, for military purposes. He agreed that

the UK and U.S. should carefully negotiate the details of the marine reserve to assure that U.S. interests were safeguarded and the strategic value of BIOT was upheld. He said that the BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve. *End Summary.*

Protecting the BIOT's Waters

¶2. (C/NF) Senior HMG officials support the establishment of a "marine park" or "reserve" in the British Indian Ocean Territory (BIOT), which includes Diego Garcia, Colin Roberts, the Foreign and Commonwealth Office's (FCO) Director, Overseas Territories, told the Political Counselor May 12. Noting that the uninhabited islands of the Chagos Archipelago are already protected under British law from development or other environmental harm but that current British law does not provide protected status for either reefs or waters, Roberts affirmed that the bruited proposal would only concern the "exclusive zone" around the islands. The resulting protected area would constitute "the largest marine reserve in the world."

¶3. (C/NF) Roberts iterated strong UK "political support" for a marine park; "Ministers like the idea," he said. He stressed that HMG's "timeline" for establishing the park was before the next general elections, which under British law must occur no later than May 2010. He suggested that the exact terms of the proposals could be defined and presented at the U.S.-UK annual political-military consultations held in late summer/early fall 2009 (exact date TBD). If the USG would like to discuss the issue prior to those talks, HMG would be open for discussion through other channels -- in any case, the FCO would keep Embassy London informed of development of the idea and next steps. The UK would like to "move forward discussion with key international stakeholders" by the end of 2009. He said that HMG had noted the success of U.S. marine sanctuaries in Hawaii and the Marianas Trench. (*Note: Roberts was referring to the Papahānaumokuākea Marine National Monument and Marianas Trench Marine National Monument. End Note.*) He asserted that the Pew Charitable Trust, which has proposed a BIOT marine reserve, is funding a public relations campaign in support of the idea. He noted that the trust had backed the Hawaiian reserve and is well-regarded within British governmental circles and the larger British environmental community.

Three Sine Qua Nons: U.S. Assent...

¶4. (C/NF) According to Roberts, three pre-conditions must be met before HMG could establish a park. First, "we need to make sure the U.S. government is comfortable with the idea. We would need to present this proposal very clearly to the American administration...All we do should enhance base security or leave it unchanged." Polcouns expressed appreciation for this a priori commitment, but stressed that the 1966 U.S.-UK Exchange of Notes concerning the BIOT would, in any event, require U.S. assent to any significant change of the BIOT's status that could impact the BIOT's strategic use. Roberts stressed that the proposal "would have no impact on how Diego Garcia is administered as a base." In response to a request for clarification on this point from Polcouns, Roberts asserted that the proposal would have absolutely no impact on the right of U.S. or British military vessels to use the BIOT for passage, anchorage, prepositioning, or other uses. Polcouns rejoined that designating the BIOT as a marine park could, years down the road, create public questioning about the suitability of the BIOT for military purposes. Roberts responded that the terms of reference for the establishment of a marine park would clearly state that the BIOT,

including Diego Garcia, was reserved for military uses.

¶5. (C/NF) Ashley Smith, the Ministry of Defense's (MOD) International Policy and Planning Assistant Head, Asia Pacific, who also participated in the meeting, affirmed that the MOD "shares the same concerns as the U.S. regarding security" and would ensure that security concerns were fully and properly addressed in any proposal for a marine park. Roberts agreed, stating that "the primary purpose of the BIOT is security" but that HMG could also address environmental concerns in its administration of the BIOT. Smith added that the establishment of a marine reserve had the potential to be a "win-win situation in terms of establishing situational awareness" of the BIOT. He stressed that HMG sought "no constraints on military operations" as a result of the establishment of a marine park.

...Mauritian Assent...

¶6. (C/NF) Roberts outlined two other prerequisites for establishment of a marine park. HMG would seek assent from the Government of Mauritius, which disputes sovereignty over the Chagos archipelago, in order to avoid the GOM "raising complaints with the UN." He asserted that the GOM had expressed little interest in protecting the archipelago's sensitive environment and was primarily interested in the archipelago's economic potential as a fishery. Roberts noted that in January 2009 HMG held the first-ever "formal talks" with Mauritius regarding the BIOT. The talks included the Mauritian Prime Minister. Roberts said that he "cast a fly in the talks over how we could improve stewardship of the territory," but the Mauritian participants "were not focused on environmental issues and expressed interest only in fishery control." He said that one Mauritian participant in the talks complained that the Indian Ocean is "the only ocean in the world where the fish die of old age." In HMG's view, the marine park concept aims to "go beyond economic value and consider bio-diversity and intangible values."

...Chagossian Assent

¶7. (C/NF) Roberts acknowledged that "we need to find a way to get through the various Chagossian lobbies." He admitted that HMG is "under pressure" from the Chagossians and their advocates to permit resettlement of the "outer islands" of the BIOT. He noted, without providing details, that "there are proposals (for a marine park) that could provide the Chagossians warden jobs" within the BIOT. However, Roberts stated that, according to the HGM, s current thinking on a reserve, there would be "no human footprints" or "Man Fridays" on the BIOT's uninhabited islands. He asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents. Responding to Polcoun's observation that the advocates of Chagossian resettlement continue to vigorously press their case, Roberts opined that the UK's "environmental lobby is far more powerful than the Chagossians' advocates." (Note: One group of Chagossian litigants is appealing to the European Court of Human Rights (ECHR) the decision of Britain's highest court to deny "resettlement rights" to the islands' former inhabitants. See below at paragraph 13 and reftel. End Note.)

Je Ne Regrette Rien

¶8. (C/NF) Roberts observed that BIOT has "served its role very well," advancing shared U.S.-UK strategic security objectives for the past several decades. The BIOT "has had a great role in assuring the security of the UK and U.S. -- much more than anyone foresaw" in the 1960s, Roberts emphasized.

"We do not regret the removal of the population," since removal was necessary for the BIOT to fulfill its strategic purpose, he said. Removal of the population is the reason that the BIOT's uninhabited islands and the surrounding waters are in "pristine" condition. Roberts added that Diego Garcia's excellent condition reflects the responsible stewardship of the U.S. and UK forces using it.

Administering a Reserve

¶9. (C/NF) Roberts acknowledged that numerous technical questions needed to be resolved regarding the establishment and administration of a marine park, although he described the governmental "act" of declaring a marine park as a relatively straightforward and rapid process. He noted that the establishment of a marine reserve would require permitting scientists to visit BIOT, but that creating a park would help restrict access for non-scientific purposes. For example, he continued, the rules governing the park could strictly limit access to BIOT by yachts, which Roberts referred to as "sea gypsies."

BIOT: More Than Just Diego Garcia

¶10. (C/NF) Following the meeting with Roberts, Joanne Yeadon, Head of the FCO's Overseas Territories Directorate's BIOT and Pitcairn Section, who also attended the meeting with Polcouns, told Poloff [Political Officer] that the marine park proposal would "not impact the base on Diego Garcia in any way" and would have no impact on the parameters of the U.S.-UK 1966 exchange of notes since the marine park would "have no impact on defense purposes." Yeadon averred that the provision of the UN Convention on the Law of the Sea guaranteed free passage of vessels, including military vessels, and that the presence of a marine park would not diminish that right.

¶11. (C/NF) Yeadon stressed that the exchange of notes governed more than just the atoll of Diego Garcia but expressly provided that all of the BIOT was "set aside for defense purposes." (Note: This is correct. *End Note.*) She urged Embassy officers in discussions with advocates for the Chagossians, including with members of the "All Party Parliamentary Group on Chagos Islands (APPG)," to affirm that the USG requires the entire BIOT for defense purposes. Making this point would be the best rejoinder to the Chagossians' assertion that partial settlement of the outer islands of the Chagos Archipelago would have no impact on the use of Diego Garcia. She described that assertion as essentially irrelevant if the entire BIOT needed to be uninhabited for defense purposes.

¶12. (C/NF) Yeadon dismissed the APPG as a "persistent" but relatively non-influential group within parliament or with the wider public. She said the FCO had received only a handful of public inquiries regarding the status of the BIOT. Yeadon described one of the Chagossians' most outspoken advocates, former HMG High Commissioner to Mauritius David Snoxell, as "entirely lacking in influence" within the FCO. She also asserted that the Conservatives, if in power after the next general election, would not support a Chagossian right of return. She averred that many members of the Liberal Democrats (Britain's third largest party after Labour and the Conservatives) supported a "right of return."

¶13. (C/NF) Yeadon told Poloff May 12, and in several prior meetings, that the FCO will vigorously contest the Chagossians' "right of return" lawsuit

before the European Court of Human Rights (ECHR). HMG will argue that the ECHR lacks jurisdiction over the BIOT in the present case. Roberts stressed May 12 (as has Yeadon on previous occasions) that the outer islands are "essentially uninhabitable" and could only be rendered livable by modern, Western standards with a massive infusion of cash.

Comment

¶14. (C/NF) Regardless of the outcome of the ECHR case, however, the Chagossians and their advocates, including the "All Party Parliamentary Group on Chagos Islands (APPG)," will continue to press their case in the court of public opinion. Their strategy is to publicize what they characterize as the plight of the so-called Chagossian diaspora, thereby galvanizing public opinion and, in their best case scenario, causing the government to change course and allow a "right of return." They would point to the government's recent retreat on the issue of Gurkha veterans' right to settle in the UK as a model. Despite FCO assurances that the marine park concept -- still in an early, conceptual phase -- would not impinge on BIOT's value as a strategic resource, we are concerned that, long-term, both the British public and policy makers would come to see the existence of a marine reserve as inherently inconsistent with the military use of Diego Garcia -- and the entire BIOT. In any event, the U.S. and UK would need to carefully negotiate the parameters of such a marine park -- a point on which Roberts unequivocally agreed. In Embassy London's view, these negotiations should occur among U.S. and UK experts separate from the 2009 annual Political-Military consultations, given the specific and technical legal and environmental issues that would be subject to discussion.

¶15. (C/NF) *Comment Continued.* We do not doubt the current government's resolve to prevent the resettlement of the islands' former inhabitants, although as FCO Parliamentary Under-Secretary Gillian Merron noted in an April parliamentary debate, "FCO will continue to organize and fund visits to the territory by the Chagossians." We are not as sanguine as the FCO's Yeadon, however, that the Conservatives would oppose a right of return. Indeed, MP Keith Simpson, the Conservatives' Shadow Minister, Foreign Affairs, stated in the same April parliamentary debate in which Merron spoke that HMG "should take into account what I suspect is the all-party view that the rights of the Chagossian people should be recognized, and that there should at the very least be a timetable for the return of those people at least to the outer islands, if not the inner islands." Establishing a marine reserve might, indeed, as the FCO's Roberts stated, be the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the BIOT.