Small States & Territories, Vol. 5, No. 1, 2022, pp. 71-86

Fighting one island to claim another: Mauritius' journey to international justice

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ABSTRACT: Islands make a remarkable contribution to understandings of decolonization, in particular where severance with former colonial powers was impeded by dependency. In their decolonization narrative, Mauritian politicians drove negotiations with the British imperial power but were hoodwinked by the detachment of the Chagos Archipelago, also known as the British Indian Ocean Territory, in 1965. Chagossian activists and a new generation of Mauritian politicians kept the Chagos Archipelago on the political agenda while varied economic and diplomatic relations allowed Mauritius greater freedom to exercise its sovereignty. Finally, in 2018, Mauritius contested the status of the Archipelago before the International Court of Justice. The case represents an episode of anti-colonial struggle where participants sought to reframe and officialise their shared island histories. The event also revealed broader shifts in global politics in which former imperial powers seem less likely to reap the benefits of the international institutions they designed.

Keywords: Mauritius, Britain, the Chagos Archipelago, islands, Indian Ocean, decolonization, sovereignty.

Introduction

On 12 March 1968, Sir Seewoosagur Ramgoolam, the leader of the Mauritian Labour Party, headed to Port Louis' racecourse to meet British colonial governor Sir John Rennie. Unlike most of their meetings, this was a very public affair. Ramgoolam stopped a few metres from a tall flagpole positioned a safe distance from the gathering crowd. He watched the British flag fall gently from the sky and the Mauritian flag of red, blue, yellow and green rise to take its place. Ramgoolam clasped Rennie's white-gloved hand in his, holding on for what felt like several seconds too long. Cheers and whistles erupted behind them as the photographers swooped in to shoot what became the iconic images of Mauritian Independence Day.

This symbolic moment marked Mauritius' transition from colony to post-colony; but it would not reverse the centuries of imperial policies shaping this small Indian Ocean island. I say island because this is how Mauritius is most commonly referred to but Mauritius is in fact a group of islands extending to Rodrigues, Agaléga, Tromelin, the Cargados Carajos Shoals and the Chagos Archipelago. The last of these, the Chagos Archipelago, is administered by the UK and known to it as the British Indian Ocean Territory, or BIOT for short. The UK claims fourteen 'Overseas Territories' across the Atlantic, Pacific, Antarctic, Caribbean and the Indian Ocean and has prioritised them in the post-Brexit Global Britain agenda (Foreign Affairs Committee, 2019). In a remarkable collision of British and US imperialisms, the UK operates a joint military base with the US on the Chagos Archipelago's largest islet, Diego Garcia. According to the UK, the US Naval Support Facility at Diego Garcia "helps keep people in

Britain and around the world safe" something that is "only possible under the sovereignty of the United Kingdom" (FCO Official Statement, 2019).

Three years before Mauritian Independence Day, Britain detached the Chagos Archipelago from Mauritius. Ahead of the US arrival on Diego Garcia, the UK forcibly removed over 1,500 people from the Chagos islands leaving them stranded for the most part in Mauritius. The people of the Chagos Archipelago protested their removal and their descendants have continued to demand adequate compensation and the right to return. Owing to the many constraints it faced as small island state negotiating first independence then post-colonial dependence, Mauritian state protestation was more ambiguous. Over time and as a result of a flexible approach to international relations and economic development, combined with closely-knit domestic politics that have kept Chagossian concerns on the domestic agenda, the Mauritian protest grew more confident. In July 2016, more than fifty years after the creation of BIOT, Mauritius requested an advisory opinion from the International Court of Justice (ICJ) "on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965".

Legal practitioners watched the ICJ proceedings closely and were quick to summarise the Court's findings (Allen, 2019; Bordin, 2019; Kattan, 2020; Rrecaj, 2020; Burri et al., 2021). They analysed the Court's decision to offer an advisory opinion, its robust nature, how it intersects with related legal instruments, and specifically how it dealt with self-determination as a customary norm in international law. Given the technical interests of their audience, these assessments do not investigate in any detail how Mauritian domestic politics interacted with the islands' global positioning to facilitate what can be read as an assertive challenge against a former colonial power. Nor do they engage with how the content of the legal proceedings enabled a reframing of Mauritius politicised decolonization narrative.

Historians have expressed skepticism about whether legal proceedings are ever capable of doing justice to history (Douglas, 2001; Wilson, 2011; Marrus, 2016; Gordon, 2017; Zammit Borda 2021). The question I am interested in is not one of the relative 'justice' meted out by the ICJ (or the broader question of whether courts are ever places that are amenable to that task), nor whether the history that was narrated there was accurate or inaccurate. Instead, I question the relationship between the historical narratives that were developed and deployed in the Court and what they mean for domestic Mauritian (and to some extent British) histories. Investigated in this way, the evolution and substance of the case reveals subtle shifts in the contemporary possibilities and limits of island decolonization.

This article considers these legal perspectives alongside broader debates in decolonization and island studies. I draw on ICJ proceedings, UNGA debates, Mauritian political biographies and interviews to first trace the realities shaping how Mauritius as a small Indian Ocean island state engaged in global systems. Then I turn to the contest over the Chagos Archipelago – a fight between one large island group and one small island group over an even smaller set of islands – and how it reveals fundamentally different perspectives on shared island histories. A brief discussion of decolonization as a contested narrative and an ever-evolving act of protest follows. Finally, I reflect on what Mauritius journey to the ICJ tells us about changing global hierarchies.

Mauritius' room to manoeuvre in the post-colonial world

Imperial perspectives see islands for their instrumental and operational potential: cogs in a larger wheel, pearls on a string, stops between departure and destination. In contrast to this limited perspective, islands make a remarkable contribution to historical understandings of decolonization. Many island societies and economies, including on Mauritius and the Chagos Archipelago, arose from the colonial encounter. The Chagossians' ancestors settled the uninhabited Archipelago in the late eighteenth century, when they were brought largely from Africa as enslaved labourers to build and work on coconut plantations. Meanwhile, from the sixteenth century, Mauritius provided a safe harbour for ships and sailors darting across the precarious imperial world. Mauritius later became a petri dish for Britain's indentured labour experiment that began in 1834, the same year that slavery officially ended in the British Empire, and resulted in the relocation of hundreds of thousands of Indians to Mauritius (Carter, 1995; 1996). Indian indentured labourers, often working alongside emancipated slaves, toiled the rapidly growing sugar plantations that were integral to the British colonial economy. Later, distinctions between Mauritius' migrant labour communities shaped decolonization politics; they continue to define hyphenated identities and competing histories across the island today.

The development of ports and plantations on previously uninhabited Indian Ocean islands created "refuges" for Europeans seeking to impose and maintain control over African and Asian mainlands (Falola et al., 2019, pp. 14-18). The length and intimacy of the European relationship with these small islands (given their limited resources, hinterlands and population sizes) created a level of economic dependence that was near total and in many cases constrained anti-colonial agitation in contrast to the violent politics unfolding elsewhere in the Indian Ocean: mutinies in India, guerrilla war in Mozambique or open rebellion in Madagascar. Toyin Falola and colleagues have explained that this is why Indian Ocean islands "experienced some of the latest dates for formal independence, and account for the only remaining European outposts [in Africa] south of the Sahara: Mayotte, Réunion, and the Chagos archipelago" (2019, p.18).

For Mauritius, decades of negotiations preceded the lowering of the British flag in 1968, with delegations meeting several times in London and Port Louis to hammer out the details. According to biographical accounts, Ramgoolam and his Labour Party, inspired by their British Fabian and Indian anti-colonial contemporaries, drove the negotiations (Mulloo, 1968; 1980). The Mauritius Labour Party grew from the political activism of predominantly Indian indentured labourer descendants (Selvon, 2018). While it did at one time represent a radical form of politics, it became more moderate under Ramgoolam who himself had a reputation for warm relations with British colonial (and later post-colonial) authorities. As symbolic as the falling of British flag was, it did not equate to an emancipatory rupture with the imperial system. Decolonization for this small island state, was a process of elite bargaining that among other things led to an enduring relationship with Britain through the latter's continued administration of the Chagos Archipelago.

Following independence, despite widely held anti-BIOT sentiment in Mauritius, and the rapid growth of the US military presence on Diego Garcia serving as a stark reminder of the limitations on Mauritian sovereignty, Ramgoolam's post-colonial government adopted a policy of accommodation: as the leader of a small nascent island state with a relatively dense population, a mono-crop sugar economy vulnerable to global market shocks, and no military to protect its sprawling oceanic territory, Ramgoolam played it safe. He expressed publicly that a request for the return of the Chagos Archipelago would be a "cry in the wilderness" (Africa

Report, 1979, p. 53) and that without a substantial network of partners, Mauritius could not overcome the "special privilege" of Security Council members like the UK that placed the "the rest of the world at an unacceptable disadvantage" (UNGA, 1976, p. 592/78).

Ramgoolam's approach soon attracted criticism from a younger generation of Mauritian politicians who were committed to international non-alignment and the return of the Chagos Archipelago. Together these dissenting voices formed the Mauritian Militant Movement (MMM). The MMM gained ground among Mauritians who, unlike the political class that Ramgoolam embodied, could not locate their ancestry in India but instead identified with an Afro-Mauritian or Creole heritage. The MMM leadership generated close ties with Chagossian activists and in the relatively small world of Mauritian island politics pressured the existing government to hear Chagossian demands. Despite a landslide in the 1982 elections, the MMM government collapsed within a year. The succeeding coalition refrained from overtly antagonising Britain. As the then Prime Minister Anerood Jugnauth explained, as "a small country ... [Mauritius] cannot afford to have a big mouth" (1986, p. 1). However, the MMM continued to influence the government while in opposition and as a coalition partner in the 1990s and 2000s; and, sure enough, Mauritius' anti-BIOT messaging, aired primarily in and for international fora, became louder.

The small size of most island jurisdictions generally limits their resources, making them dependent on larger powers; to mitigate this handicap, Mauritius diversified its resources and relationships. The Mauritian government built ties with the European Union (EU), first through the Lomé Convention and then the Cotonou Agreement. Mauritian diplomats engaged dynamically with Africa supported by membership to the African Union (AU), the South African Development Community and the Common Market for Eastern and Southern Africa. Mauritius joined the Non-Aligned Movement (NAM) and also proactively supported regional initiatives like the Indian Ocean Zone of Peace and the Indian Ocean Commission, all the while pursuing bilateral ties with India. By drawing on a distinct Indian Ocean island identity as an ally of Africa and Asia, Mauritius built a remarkable portfolio of partners. The Mauritian economy remained extraverted but diversified from sugar to textiles, and then to tourism, fishing and financial services, attracting serious investment from the likes of Hong Kong, South Africa, India and later China. Eriksen argues that, as a small island state, Mauritius could flexibly adjust to changes in the global economy "much faster than larger [states could]" (2018, p. 132). It was also Mauritius' colonial legacy and its Indian Ocean location that facilitated access to European, African and Asian markets and granted it, as Ramgoolam himself said, "a certain freedom to manoeuvre" (Le Monde, 1976).

While the influence of the MMM alongside the diversification of resources and international partners made it more likely that the Chagos Archipelago could became a Mauritian policy priority, what really tipped the balance was the escalation of the Chagossian protest. In the 1990s, the Chagossian cause received considerable attention after newly released Colonial Office files revealed the violence of the Chagossian displacement. With new evidence at their fingertips and the media on their side, Chagossian activists brought a series of actions in UK courts in the early 2000s. The Chagossian cases shone a spotlight on Mauritian sovereignty or lack thereof. They also provoked the UK to declare a Maritime Protected Area (MPA) around the Chagos Archipelago in 2010. Shortly afterwards a WikiLeaks scoop revealed that US and UK officials saw the MPA as an effective way to preclude Chagossian resettlement (The Guardian, 2010). These events encouraged Mauritius to take legal steps of its own. In 2015, the proceedings Mauritius brought under the UN Convention on the Law of the Sea (UNCLOS) found the MPA to be unlawful. The UNCLOS arbitration award raised

thorny questions over the creation and continued UK and US use of BIOT that Mauritius' legal team then decided to put to the ICJ.

Contesting views of the Britain Indian Ocean Territory

Both Mauritius and the UK are sovereign island states, each with seats in the UN and independent diplomatic machineries. Unlike say neighbouring Réunion, Mayotte or even the Chagos Archipelago, Mauritius can challenge the UK in sovereign clubs and on the diplomatic circuits that they have both signed up to. This is exactly what happened when Mauritius wrote to the UN in July 2016 requesting an advisory opinion on the Chagos Archipelago. Mauritius sent their request while UK politics was in disarray: that same month, the UK Prime Minister David Cameron resigned following the results of the Brexit referendum. A reshuffle ensued and Boris Johnson assumed the role of Foreign Secretary. Johnson publicly articulated his 'Global Britain' agenda soon after and promoted British buccaneering as the tone of UK diplomatic relations. This did not intimidate Mauritius. Their letter to the UN was a formality, a first step in a much longer process, but it was also an act of defiance by a small island state that, through its economic prowess and diplomatic outreach, had already developed a reputation for winning against the odds. It was, after all, the 'tiger' of the Indian Ocean.

Mauritius lobbied hard to gather other UN member states behind them and in June 2017, the UN voted overwhelmingly to support the request (Resolution 71/292). The UNGA asked the ICJ for an advisory opinion on whether or not "the process of decolonization of Mauritius [was] lawfully completed when Mauritius was granted independence in 1968," and also to explain "the consequences under international law ... arising from the continued [UK] administration ... of the Chagos Archipelago". These questions were phrased around decolonization rather than sovereignty. The former is a key responsibility of the UNGA and therefore well within the ICJ's mandate to consider while the latter is the subject of an existing dispute between Mauritius and the UK and therefore arguably best left to the bilateral space (see Milanovic, 2019). These questions focussed the Courts' attention on the elite bargaining that led to the detachment of the Chagos Archipelago and Mauritian independence. Specifically, the Court needed to determine whether the Chagos islands were peripheral or integral to Mauritius before independence so that it could advise whether or not the UK had contravened the 1960 UN Declaration on Independence and its preclusion of any "partial or total disruption of the national unity and the territorial integrity of a country" (Resolution 1514 XV). The case therefore turned on the relationship between islands states, their claimed borders and competing frames of history that had the power to redefine them. Significantly, both India and the AU, alongside several other island states including Madagascar, Marshall Islands and Cyprus, filed written statements supporting Mauritius' position.

All the Court proceedings are available from the ICJ's online archive (at www.icj-cij.org). They begin with written statements that position Mauritius and the UK relative to the disputed facts of the case and instruments of international law. Written comments then respond to these statements, as do several written interventions from interested UN member states. The debate unfolds before you with each pdf file, equivalent to several metres of paperwork. Transcripts of the Court hearings then review, refresh and animate the written submissions. The archive includes live video footage of these hearings so it is possible to watch the drama as it happened. These rich and lively legal sources illustrate a combative, high stakes arena in which several outcomes were possible.

For the Mauritian legal team, demonstrating that the Chagos islands were integral to Mauritius before independence would thwart UK claims while also impeding any (potential future) Chagossian claims to self-determination. Their argument aimed to normalise the existence of outlying islands in concepts of Mauritian nationhood by emphasising that Mauritian territorial integrity extended not only to the Chagos Archipelago but also to Rodrigues, Agaléga, Tromelin and Cargados Carajos (MWS, 2018, p. 2.3/23). The Mauritian submissions emphasised the "close and inextricable" bond between the island groups and highlighted "economic, cultural and social links", including a shared slave and colonial history, the development of similar Creole dialects and the existence of connective shipping routes (MWS, 2018, p.2.15/34). The Mauritian legal team complimented this socio-historical approach with evidence from British colonial officials who expressly recognised the Chagos Archipelago as part of Mauritian territory. While supporting their case, this latter approach perversely reaffirmed the lines that colonial powers have drawn around island states.

In contrast, the UK's written statement emphasised the distance between the Chagos Archipelago and Mauritius (UKWS, 2018, p. 2.2/19). The implication, paradoxically for a European power with several overseas territories, was that the 2,000km distance between Mauritius and the Chagos islands had a direct bearing on whether or not they could be considered a single unit. The UK argued that the Chagos Archipelago's alleged isolation justified their historical administrative approach which saw authority for the most part devolved to plantation managers working for private companies. Their principal assertion was that "The geographical reality provides an explanation of the history of the Chagos Archipelago, and the arrangements made for its governance over the last two centuries" (UKWS, 2018, p. 2.12/24). This argument presented the UK as having passively received a pre-existing "reality" rather than having actively pursued an empire that defined the administrative boundaries of geographies all over the world. If Britain did take an active role in defining parameters, the UK legal team conceded, it was quite superficial. Thus, in the UK view, the Chagos Archipelago – like any dependency in the British Empire – was subject to definitions decided in the imperial metropole and could be "detached or attached between one colony and another" at the stroke of a pen (UKWS, 2018, p. 2.15/24). The Chagos Archipelago was therefore administered only "very loosely" from Mauritius and the arrangement was "purely a matter of convenience" (UKWS, 2018, p. 2.17/25). This line of thought rationalised the UK interpretation of the Chagos Archipelago as peripheral to Mauritius but integral to Empire and Global Britain.

Glancing beyond the legal debate, it is clear that defining the borders of new nation-states was an ambiguous process that not least reflected ambivalences at the heart of the imperial metropole. Despite what Baldacchino has identified as the delusion "that an island and its habitat/habitants can be managed and moulded to one's desires," island states are not populated by passive and non-agentic citizens over which extra-regional powers can easily determine boundaries (2007, p. 165). The administrative status of the Chagos Archipelago shifted over time: it was both integral and peripheral to Mauritius and the British Empire depending on your vantage point. The Mauritian and UK statements offered to the Court obscure this textured reality in favour of quick legal wins.

Beyond the legal implications, the Mauritian and UK submissions betrayed distinctly different worldviews. In their brief histories of the Chagos Archipelago, the Mauritian timeline began six hundred years before the UK one, with tenth-century Arab sailors as opposed to sixteenth-century Portuguese explorers (UKWS, 2018, p. 2.9/23; MWS, 2018, p. 29/2.6). The Mauritian statements highlighted individuals such as "Diego García de Moguer" and

communities such as a "permanent settlement" of coconut plantation workers while the UK narrative referenced only nationalities (the "Portuguese") as playing a decisive role in the Archipelago's past (MWS, 2018, pp. 29-30/2.6-2.9; UKWS, 2018, p. 23/2.9). The differences in the Mauritian and UK framing remind us that the history of human activity on previously uninhabited islands does not begin with faceless European powers but with regional traders, individual explorers and slave communities. This island contest demonstrated therefore how islands are key sites for generating more inclusive histories of connection.

Decolonizing island spaces, then and now

The ICJ was being asked to determine if the "the process of decolonization" was complete when Ramgoolam and Rennie shook hands on that Port Louis racecourse in 1968. Despite the significance of that day, the advisory proceedings were actually far more concerned with the negotiations that preceded it, particularly those that took place at Lancaster House, a state mansion overlooking London's St James' Park, in September 1965. It was here that British and Mauritian delegations negotiated the future of the Chagos Archipelago.

When the Mauritian delegation arrived in London that autumn, their Indian Ocean island had been a British colony for over 150 years. Its citizens had known universal suffrage for little over 15 of those years. In short, for all their political experience, the Mauritians who stepped up to the negotiating table did not represent a sovereign state; they were participants in an institutional process conceived by their British hosts. What the delegation did represent was several different Mauritian viewpoints. Like many of their island neighbours, not all Mauritians sought outright independence; there were varying degrees of autonomy on the table in the complex world of decolonization politics and, for some, maintaining administrative proximity to the colonial power was an attractive option.

In their statements to the ICJ, which were also statements to the world, the Mauritian legal team barely mentioned the diversity of Mauritian opinions on decolonization at the time; instead the delegation comes across as unified and supportive of Ramgoolam and his Labour Party (MWS, 2018, p. 61/3.9). While the Mauritian narrative skirted over the possible futures of the period, it also resonated with a present in which Mauritian ministers were attempting to unite various factions, including the Chagossian community, in another round of anti-colonial sparring. For the Mauritian political elite, the ICJ proceedings served as a new arena to officialise and emphasise the role Indo-Mauritians played in decolonization.

On the content of the Lancaster House negotiations, the Mauritian team argued that the British proposal to detach the Chagos Archipelago was folded into the decolonization debate, so much so that "independence was granted on the condition that Mauritian Ministers must "agree" to the detachment" (MWS, 2018, p. 63/3.14). They emphasised the unequal power dynamic between the colonial power on the one hand, and the colonised on the other and spotlighted chronic "uncertainty about whether Mauritius would be granted independence" at all (MOS, 2018, p. 27/6; MWS, 2018, p. 80/A).

The UK team argued that independence was inevitable long before the British flag was lowered in 1968. In their view, the Secretary of State for the Colonies was already "agreeable to granting independence" in 1965; so from this date Mauritius could not have been in any doubt over the sovereign future of the island (UKWS, 2018, p. 35/3.5). This reflects broader UK perspectives on decolonization that imagine a dignified and orderly retreat from imperial grandeur (Anderson, 2006, p. 5). Chiming with the received wisdom, the UK legal team argued

that "The clear policy of Britain from the late 1950s was to promote the independence for those of its dependent territories that wanted it ... recall[ing] Prime Minister Macmillan's celebrated [1960] "Winds of Change" speech ... It would have been inconceivable, we say, for a British Government, having announced its commitment to independence for its possessions in Africa, to reverse its decision" (UKOS, 2018, pp. 19-20/60). In the contemporary context of Global Britain, reassessing the colonial past to offer a more calibrated version of events, as governments in Germany, France and Belgium have already begun to do, was anathema to the UK legal team.

The UK team also argued that Mauritian consent for the detachment of the Chagos Archipelago was genuinely sought and received. Legally, this could absolve them of wrongdoing, and reputationally it might allow the British projection of fair play to persist. The UK legal team suggested that "the chronology of the events negates any claim that "duress" was exerted over Mauritian politicians" to secure their agreement to the detachment (UKOS, 2018, p. 15/41b), i.e. because the UK "position on independence was announced many weeks before Mauritius ... debated the issue of detachment of the Chagos Archipelago, the two could not be considered as influencing each other" (UKWS, 2018, p. 41/3.19). Their argument ignores the reality that independence had not yet been granted and was still the UK's gift to give (or withdraw).

These contrasting accounts of decolonization show how legal proceedings can be used to reframe or reinforce historical narratives in changing contemporary contexts. Regardless of their remedy, legal proceedings can be key sites of narration and by extension, protest. This was a process in which Mauritius was an equal state participant speaking with an active voice in a fresh round of negotiations. This contrasts starkly with the role of 1960s Mauritian politicians who had no independent authority and whose interventions are discussed predominantly second hand as they appear in colonial archives.

Activists can deploy myriad strategies to fight imperial trappings (e.g., Lutz et al., 2009; Nadarajah & Grydehøj, 2016). The legal activism that facilitated the ICJ-Chagos case offers a new avenue for others to explore; this was another method (albeit an expensive and state-led one) of publicising anti-imperial and anti-colonial grievances in a universal forum. Even if a court does not rule in your favour or a concrete legal remedy is elusive, moving a dispute from the bilateral to the courtroom can have advantages. Mauritius' written arguments committed a form of anti-colonial resistance to public record.

Similarly, in 2001, the Permanent Court of Arbitration heard proceedings over the legality of the US annexation of Hawaii in 1898 (Dumberry, 2002). The tribunal concluded that it did not have jurisdiction over the dispute; but, even without a judgment, the proceedings reasserted and reinstated a national account of Hawaiian sovereignty. The Chagos ICJ proceedings, and the specific way in which Mauritius framed them around incomplete decolonization could inspire island activism closer to home in the unresolved dispute between Madagascar and France over the Scattered Islands (les Îles Éparses), for example. France separated Glorieuses, Juan de Nova, Bassas da India and Europa from Madagascar shortly before independence in 1960. As recently as 2019, French President Emmanuel Macron declared in an interview on the shores of Glorieuses "This is France ... France is an archipelagic country" despite a standing UN resolution requesting the islands be returned to Madagascar (RFI, 2019; Resolution 34/91, 1979).

Precedents and potential aside, it is also important to consider how international legal proceedings reinforce the western institutional frameworks that many activists seek to disrupt. The written arguments in the Chagos proceedings reduced the events of the past to adversarial statements, designed to fit the expectations of legal practitioners. Moreover, the submissions relied on (and therefore inadvertently endorsed as evidence) colonial administrative boundaries and records.

The Mauritian submissions to the ICJ can be read as a request for 'fuller' statehood according to the existing rules of the game rather than a repudiation of these rules or the way in which post-colonial states were forced to play within them. Mauritius seemed willing to accept some level of colonial inheritance – be that the borders that created the Chagos Archipelago as a dependency or the hierarchies within the UN system – to meet its broader goal of territorial decolonization. Some commentators therefore argue that the ICJ's approach did little to correct the Court's "continuing manifestations of inequity and injustice" including its complicity in perpetuating neo-colonial ambitions, imperial subjugation, oppression and domination (Bagchi, 2019; Zondi 2020). Thus, while seeking redress through international law can reimagine and reenergize decolonization, it is not methodologically decolonial.

Shifting the sands of time

The battle to define the Chagos Archipelago's status, the inevitability of independence and the dynamics of the 1965 agreement, was brought to life in the duelling legal teams' oral statements delivered to the Court in September 2018. It was through these verbal and political performances that both sides hoped to fix irreversible meaning to their shared island histories.

Former Prime Minister Anerood Jugnauth opened for Mauritius. He told the ICJ how he was "the only one still alive among those who participated" in the 1965 Lancaster House negotiations (MOS, 2018, p. 27/3). Drawing a direct line from then to the present he was "sorry to say that more than 50 years after ... the process of decolonization of Mauritius remains incomplete" (MOS, 2018, p. 27/4). After a series of interventions dealing with questions of international law, Philippe Sands QC delivered Mauritius' closing arguments. Sands is a professor of international law and an award-winning author. He has acted as Mauritius' counsel for over a decade. "Mr President, no country wishes to be a colony" he began, before reminding the court that even the former Foreign Secretary Boris Johnson "made that very clear" in his resignation letter to the Prime Minister over the UK-EU relationship. The UK, he asserted, "does not wish to be a colony, yet it stands before this Court to defend a status as colonizer of others" (MOS, 2018, p. 71/1-3). Sands then introduced Marie Liseby Elysé, a Chagossian woman who described her displacement in a pre-recorded video that transfixed the audience and transported them to the islands of the Indian Ocean. Hearing from Jugnauth and Elysé poignantly demonstrated, as Sands concluded, that the case concerns real islands, "real people, real lives, real facts, [and] real continuing consequences" (MOS, 2018, p. 75/5).

Of the half a dozen lawyers that offered statements on behalf of the UK only Solicitor General Robert Buckland QC engaged with the historical facts of the case. Taking the best approach available to him from a legal perspective, Buckland's primary goal was to persuade the Court not to offer an advisory opinion, a technical argument that left little room for the "real lives" that sat on the opposing benches. Because Buckland had to sing two songs at once (you should not offer an opinion but if you do, we were not at fault), it was harder to hear either one. In his review of the legal strengths of the UK's intervention Monaghan concludes that the UK's approach was firmly "grounded in the mindset of a colonial ruler" (2021, p. 157). After

the diversity and emotion of the Mauritian oral interventions, Buckland could have been perceived as detached or conservative; an image that played into stereotypes of colonial arrogance reinforced by the fact that no other senior politician turned up to plead the UK's case to the Court.

After several months of reflection, in February 2019, the Court published its opinion (agreed by 13 to 1, the lone dissenter being the US Judge Joan E Donoghue). The ICJ found that "the process of decolonization of Mauritius was not lawfully completed" at independence, that "the Chagos Archipelago was clearly an integral part" of Mauritius, and that Britain was "under an obligation" to "end its administration of the Chagos Archipelago as rapidly as possible" (ICJ, 2019, pp. 46-48/170-178). This was a significant moment for ambiguously administered islands everywhere.

Lentz and Lowe have argued that independence loses impact if it is narrated in terms of European timetables and cooperation or collaboration with indigenous elites (2018, p. 2). For many small island jurisdictions, where the colonial encounter was prolonged and intimate, decolonization was the result of unromantic legal reforms and cyclical negotiations. For Mauritius, if independence as a mnemonic moment was low on impact before the case, it certainly was not afterwards. Anti-colonial narratives, as Motha (2020) argues, rely on a certain romanticism and must be retold and celebrated. A courtroom is a formative and decisive environment in which to achieve this. Heim rightly observes that decolonization "cannot be reduced to a moment of constitutional transition when one flag is lowered and another raised" but is "a process of ongoing negotiation within western-style institutional frameworks" (2017, p. 917); Mauritius revisited their independence story and wove a contemporary legal contest through it to create a captivating tale of anti-colonial struggle past and present. Not only did Mauritius retell their story, but they also forced Britain to revaluate their own and in-turn helped to decentre enduring imperial histories of the Indian Ocean. Even at its most basic, the advisory proceedings allowed otherwise hidden information to be bandied about in open court for the world to see.

It is, in many respects, the distinctly Indian Ocean and island context that enabled this reframing. By debating timelines of the past in the present before an international court, the adversarial performances of the Mauritian and UK legal teams are a searing reminder of how constitutional transition is characterised by ongoing renegotiations that constantly re-appropriate the institutional frameworks available to them. Whereas Ramgoolam may have felt powerless to demand the return of the Chagos Archipelago in the immediate post-colonial period, successive Mauritian governments situating themselves as the island of choice between Africa and Asia have generated close relationships particularly with the AU, the NAM, and India, that in turn have given them a greater voice and confidence in multilateral forums like the UN. This has allowed Mauritius to reopen the archives, legalise and ultimately shift the tone of its decolonization narrative.

Reflections in the present

The case did more than address BIOT's status or reframe Mauritian and British island decolonization narratives. It reflected a point in time when the geopolitical order shifted. It made an intervention in international law with wide implications not least for the Chagossians. However, given the reliance on colonial evidence, the apathy of the UK response in addition to the limited implications for the US military facility, it also demonstrated the limitations of challenging an imperial power through western-institutional frameworks.

Hofmeyr (2010, p. 721) has argued that the Indian Ocean offers a "a privileged vantage point from which to track a changing world order" permitting us "to look back to the lingering effects of the cold war and forward to ... a "post-American" world" in which India and China "squabble" for global dominance. The contest over the Chagos Archipelago, which is a story of a small resilient island navigating broader geopolitical trends, distils the significance of this Indian Ocean lens. When the UNGA approved the request for an advisory opinion Mauritius was flanked by AU and NAM members while many EU states who might have been expected to support post-referendum but pre-exit UK abstained, including France, Germany, Spain, Denmark, Belgium and the Netherlands. The following year, the UNGA dealt the UK another blow by throwing their support behind India's candidate to the ICJ's panel of judges. As a result, the UK judge lost his seat, marking the first time since the Courts' inception in 1946 that the UK was not represented. Britain was starting to look quite isolated while Mauritius was reaping the benefits of its global relationships. These relations have grown from strength to strength; the first few months of 2021 alone saw a free-trade agreement with China come into effect (the first of its kind) and a state visit by Indian External Affairs Minister Subrahmanyam Jaishankar (complete with a series of bilateral agreements) (Mauritius Chamber of Commerce and High Commission of India, Port Louis).

The contingent timing of the Chagos contest facilitated the resolution of controversial questions of international law, specifically, around the nature of self-determination which the opinion suggested be applied exclusively to contexts of decolonization. Legal practitioners have raised concerns over how this "shrinking" of self-determination will impact movements in Spain (Catalunya) or Ukraine (Crimea) and even the UK given ongoing Scottish and Argentinian protests (Klabbers, 2019). Disconcertingly, during the proceedings, Mauritius presented itself as the champion of Chagossian self-determination, with the clear provision that Chagossians are considered Mauritian nationals and their rights to self-determination are therefore captured under Mauritius' attendant rights. Island "smallness" promotes close-knit networks of mutual obligation that can close the gap between politicians and those they seek to represent as Jugnauth and Elysé's courtroom interventions illustrate. Elysé's testimony and her presence in the courtroom alongside nearly a dozen other representatives of the Chagossian community communicated to the Court and the world a united Mauritian-Chagossian front. While (some) Mauritian politicians have had close relationships with Chagossian activists for decades, the united image at the Court that day belied a much more complicated reality characterised, as others have shown, by "numerous controversies, divisions and disagreements" (Vine and Jeffery, 2009, p. 206). The recognition of permanent Mauritian sovereignty over the Chagos Archipelago is unlikely to engender Chagossian resettlement prospects, in part because the Mauritian government supports the maintenance of US facilities on Diego Garcia. The case does little to facilitate Chagossian demands for compensation and for those Chagossians seeking self-determination, the advisory opinion in effect reaffirmed one form of dominance (British) with another (Mauritian).

The advisory opinion illustrated that former imperial powers can no longer accrue the benefits of post-colonial systems of unequal integration uncontested: it was after all offered against the wishes of a permanent member to the UN Security Council. But it has at least one glaring limitation: it is not binding. The UK considered the contents, remarked that it did "not share the Court's approach," then squirreled the advisory opinion away in the House of Commons library; it literally shelved it (FCO Official Statement, 2019).

In May 2019, the UNGA supported a motion endorsing the advisory opinion and setting a six-month deadline for the Chagos Archipelago to be reunified with Mauritius by 116 votes to 6 (Australia, Hungary, Israel, the Maldives, the US, and the UK were against) (Resolution 73/295). "Even we didn't expect support for the UK to go into single figures," Jagdish Koonjul, the Mauritian ambassador to the UN commented (The Guardian, 2019). Tens of Members of Parliament petitioned the UK Prime Minister to act on the ICJ's ruling, "If we are to realise the ambition of "Global Britain" then we must live up to our international obligations" they argued (inews, 2020). But the UK has not announced when, or whether, it will return the Archipelago to Mauritius; as such, it is already in violation of its obligations under the UN Charter to conduct its affairs in compliance with international law. In February 2021, the International Tribunal for the Law of the Sea (ITLOS) reaffirmed the opinion during a dispute over the Maldives and Mauritius' maritime boundary, but the UK still refused to budge.

Thus, despite the clever use of various international institutions - ICJ, UNGA, ITLOS - the shared decolonization of British, Mauritian and Chagossian islands remains ongoing. As Motha (2020) reminds us "It is not an absence of law or relevant norms to govern international conduct that was a problem in 1965 ... Then, as now, the violence flows from the UK's refusal to submit to these international legal norms". Arguably then, the case serves to highlight global hierarchies in which international law continues to be determined "on the basis of *state practice* of certain powerful states alone" (Bagchi, 2019). In contrast, as Mauritius' Indian Ocean neighbour Seychelles poignantly remarked, small island states do "not have the luxury of selecting which of the opinions of the ICJ to uphold and which to disregard" (UNGA, 2019).

Conclusion

Mauritius' smallness and islandness created a moderate decolonization politics that rolled into post-colonial dependency and later facilitated economic and diplomatic diversity. The road to independence was shaped by politicians who were mindful of Mauritius' economic dependency and keen to avoid a decolonial rupture. While Mauritius' limited resources reflect small island vulnerabilities, the country's economic diversification into export processing, tourism, fishing and particularly financial services, is characteristic of small island resilience. Building on a history of accommodative politics, Mauritian politicians traded on their Indian Ocean location and their island boundedness to fashion the island as a bridging hub between Africa and Asia. The strength and diversity of Mauritius' relationships facilitated its room to manoeuvre in international spaces, inviting broad support when they finally approached the UN to arbitrate their claims to the Chagos Archipelago. The Mauritian approach was also shaped by close-knit domestic politics that felt the impact of Chagossian activism. It was therefore both shifting global and local contexts that enabled this small island state to redefine the terms of the Chagossian contest, fitting it squarely within the parameters of the ICJ.

The questions referred to the ICJ provoked a review of the timetables and relationships that shaped UK's transfer of power to Mauritius and the detachment of the Chagos Archipelago in the late 1960s. Mauritius went on to seize its own history, emerging as a triumphant anti-colonial hero and painting the UK as a bullying imperial villain. The courtroom serves as a powerful arena to contest history. Unlike the historian of empire, lawyers are not (and are not obliged to be) alert to the intricate historical period that shapes the facts of a case. They are often more concerned with linear historical narratives premised on contemporary understandings of power relations, i.e. what aspects of the past can be selected to gain purchase in the present. The ICJ submissions offer a snapshot of a narrative that has evolved over time: a form of remembering like other popular performances of the past – including Independence

Day celebrations – that are not occasions for nuanced accounts, but rather require condensed standardised narratives, with powerful tropes and images. These are not benign narratives; they have very real repercussions for the status of British, Mauritian and Chagossian islands.

If timing is everything, one of the things that has shifted in the several decades since Mauritius' independence is Global Britain's increasing isolation on the world stage. This reality created the conditions in which Mauritius could contest decolonization and officialise a unifying narrative that folded Chagossian concerns into a national agenda. As a sovereign state Mauritius was able to flex its international muscle, demonstrating how small island countries continue to shape the processes that define their relationships to imperial powers. The case offers a new precedent with which to fight the history wars contributing to subtle shifts in global hierarchies the world over.

Acknowledgements

I am grateful to SST editors and the anonymous reviewers for their comments and to Matt Craven whose critical feedback and rigorous discussion was invaluable. Many thanks also to Wayne Dooling for his encouragement and to John Parker for being there every step of the way.

Disclaimer

This research has been funded by the Consortium for the Humanities and the Arts South-East England (CHASE) as part of the UK Arts and Humanities Research Council (AHRC) Doctoral Training Partnership.

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