

ORAL ANSWER TO QUESTION

CHAGOS ARCHIPELAGO – MAURITUS SOVEREIGNTY

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Rt. hon. Prime Minister, Minister of Defence, Home Affairs, Minister for Rodrigues and National Development Unit whether, in regard to the sovereignty of Mauritius over the Chagos Archipelago and the so-called “Chagos Marine Protected Area”, he will state if Mauritius is in presence of an official copy of the Ruling delivered yesterday by the United Nations Arbitral Tribunal and of the statement made on the said Ruling by the United Kingdom Foreign and Commonwealth Office and, if so, indicate if -

- (a) copy thereof will be circulated, and
- (b) he proposes to carry out consultations with the Opposition before issuing any statement on the Ruling or deciding on the way forward.

The Prime Minister: Madam Speaker, I had already planned to make a statement this afternoon to inform the House that the award has been delivered in the case brought by Mauritius against the United Kingdom in respect of the Chagos Archipelago. I thank the hon. Leader of the Opposition for giving me an earlier opportunity to address this issue.

This award is an important milestone in the relentless struggle, at the political, diplomatic and other levels, of successive Governments over the years for the effective exercise by Mauritius of its sovereignty over the Chagos Archipelago. In this respect, I need not remind the House of my own initiatives, both as Head of State and Head of Government, to reaffirm the sovereignty of Mauritius over the Chagos Archipelago and to press for its early and unconditional return to the effective control of Mauritius.

Madam Speaker, in reply to part (a) of the question, as the House is aware, in pursuance of our ongoing struggle, Mauritius initiated on 20 December 2010 proceedings against the United Kingdom under the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the ‘Marine Protected Area’ (‘MPA’) which the United Kingdom purported to declare around the Chagos Archipelago in April 2010.

Since Mauritius and the United Kingdom did not agree on the means for the settlement of the dispute, it was submitted to arbitration in accordance with Annex VII to UNCLOS.

After lengthy written pleadings by the Parties and a hearing from 22 April to 09 May 2014 in Istanbul, Turkey, the Arbitral Tribunal set up under Annex VII to UNCLOS gave its Award on 18 March 2015. The Award is final and without appeal, and is binding on both Parties. It has been made public this morning and may be consulted on the website of the Permanent Court of Arbitration.

The Tribunal unanimously held that the 'Marine Protected Area' which the UK purported to declare around the Chagos Archipelago in April 2010 violates international law. This is a historic ruling for Mauritius. It is also the first time that the United Kingdom's conduct with regard to the Chagos Archipelago has been considered and condemned by any international court or tribunal.

Madam Speaker, the award is a resounding victory for Mauritius. In a closely-reasoned decision of over 200 pages, the Tribunal held unanimously that, in declaring the 'MPA', the United Kingdom violated international law. It ruled that the United Kingdom has breached its obligations under Articles 2(3), 56(2), and 194(4) of UNCLOS.

In reaching these conclusions, the Tribunal made a number of important findings. It considered in detail the undertakings given by the United Kingdom to the Mauritian Ministers at the Lancaster House talks in September 1965. The UK had argued that those undertakings were not binding and had no status in international law. The Tribunal firmly rejected that argument, holding that those undertakings became a binding international agreement upon the independence of Mauritius, and have bound the UK ever since.

It found that the UK's commitments towards Mauritius in relation to fishing rights and oil and mineral rights in the Chagos Archipelago are legally binding.

Moreover, the Tribunal also found that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding. This establishes beyond doubt that, in international law, Mauritius has real, firm and binding rights over the Chagos Archipelago, and that the United Kingdom must respect those rights.

The Tribunal went on to hold that the United Kingdom had not respected Mauritius binding legal rights over the Chagos Archipelago. It considered the events from February 2009 to April 2010, during which time the 'MPA' proposal came into being and was then imposed on Mauritius. The Tribunal stated that it, I quote –

“finds it difficult to reconcile this course of events with the spirit of negotiation and consultation or with the need to balance the interests at stake in the waters of the Archipelago.”

It considered that the United Kingdom, I quote -

“has not been able to provide any convincing explanation for the urgency with which it proclaimed the MPA on 01 April 2010.”

It held that, I quote -

“To the extent that the timing of the declaration of the MPA was in fact dictated by the electoral timetable in the United Kingdom or an anticipated change of Government, the Tribunal does not accept that such considerations can justify the disregard of the United Kingdom’s obligations to Mauritius. The absence of any justifiable rationale for the United Kingdom’s haste - which, the Tribunal notes, stands in sharp contrast to the absence of implementing measures following the MPA’s declaration - exacerbates the inadequacy of the prior consultation with Mauritius.”

The Tribunal also observed that the failure of the United Kingdom to balance its own rights and interests with those of Mauritius is to be contrasted with the approach adopted by the United Kingdom with respect to the United States. It noted that the record demonstrates a conscious balancing of rights and interests, suggestions of compromise and willingness to offer assurances by the United Kingdom, and an understanding of the United States’ concerns in connection with the proposed ‘MPA’. Those elements were noticeably absent in the United Kingdom’s approach to Mauritius.

Accordingly, the Tribunal found that, in declaring the ‘MPA’, the United Kingdom had acted unlawfully and in disregard of Mauritius’ rights.

Madam Speaker, Mauritius had also asked the Tribunal to rule that the United Kingdom was not the “coastal State” for the purposes of UNCLOS, because the excision of the Chagos Archipelago from Mauritius was contrary to international law. Three members of the Tribunal found that they did not have jurisdiction to rule on that question; they expressed no view as to which of the two States has sovereignty over the Chagos Archipelago. However, and very significantly, two members of the Tribunal, namely Judges Wolfrum and Kateka,

held that the Tribunal did have jurisdiction to decide this question, and concluded that the United Kingdom does not have sovereignty over the Chagos Archipelago. They found that -

- (a) internal United Kingdom documents suggested there was an ulterior motive behind the 'MPA' and noted the disturbing similarities and common pattern between the establishment of the so-called "BIOT" in 1965 and the proclamation of the 'MPA' in 2010;
- (b) the excision of the Chagos Archipelago from Mauritius in 1965 shows a complete disregard for the territorial integrity of Mauritius by the United Kingdom;
- (c) UK Prime Minister Harold Wilson's threat to Premier Sir Seewoosagur Ramgoolam in 1965 that he could return home without independence if he did not consent to the excision of the Chagos Archipelago amounted to duress;
- (c) in 1965, Mauritian Ministers were coerced into agreeing to the detachment of the Chagos Archipelago, and that this detachment violated the international law of self-determination, and
- (d) the 'MPA' is legally invalid.

This is a highly significant moment. It is the first time ever that any international judge has looked at the legal merits of this issue. Indeed, Judges Wolfrum and Kateka have unequivocally affirmed the sovereignty of Mauritius over the Chagos Archipelago. They have also gone on to find that the United Kingdom had acted in bad faith in declaring the 'MPA' in 2010.

Madam Speaker, it is significant that the Tribunal's Award also determined that, I quote -

"The United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago."

The result of the Tribunal's decision is that, to use the very words of the Tribunal, I quote -

“It is now open to the Parties to enter into the negotiations that the Tribunal would have expected prior to the proclamation of the MPA, with a view to achieving a mutually satisfactory arrangement for protecting the marine environment, to the extent necessary under a “sovereignty umbrella”.

I am tabling copies of the Award and of the Dissenting and Concurring Opinion by Judges Kateka and Wolfrum.

Madam Speaker, as at the time of the drafting of this reply, we have not come across any official statement made by the British side on the Award. I am, however, informed that in an article published in *‘The Guardian’* of yesterday, comments were made by a spokesperson of the Foreign and Commonwealth Office on the Award.

Madam Speaker, in reply to part (b) of the question, my Government will study the Award with all the care it deserves, with the assistance of our local and external legal teams. In the coming period, we will define the steps that will now need to be taken to give effect to the sovereignty of Mauritius over the Chagos Archipelago, explicitly recognised by two of the arbitrators and denied by none of the other three. We will also consider the steps that need to be taken to give effect to all our rights over the Chagos Archipelago, including those relating to fisheries, and oil and minerals, which the Tribunal has unanimously affirmed.

As I had mentioned in my reply to the PNQ on 26 February 2015, in keeping with the bipartisan approach we have always adopted on issues of national importance, the hon. Leader of the Opposition would be consulted at the appropriate time.

I propose to chair a committee, which will consider the best way forward. I am formally inviting the hon. Leader of the Opposition, as well as a representative of each political party represented in this House, to form part of this committee. The committee will be assisted by our local and external legal teams, as and when required.

May I also add that this victory today is a victory for Mauritius as a whole, including those of our fellow countrymen who are of Chagossian origin. It is a victory for the nation and the people of Mauritius.

Madam Speaker, I take the opportunity, finally, to thank our team in Mauritius led by our agent, Mr Dheerendra K. Dabee, Solicitor-General, and our external legal team led by Professor Philippe Sands QC for their excellent work and their dedication.

Our friends in Africa, Asia, Latin America and the rest of the world have over the years consistently supported us in our efforts to effectively exercise our sovereignty over the Chagos Archipelago. In fact, during his recent visit to Mauritius, Prime Minister Modi reaffirmed India's support for Mauritius on this matter. We are thankful for this international solidarity and have no doubt that all our friends will rejoice in this victory, which some might compare to the victory of David over Goliath. We are confident that we can continue to rely on their staunch support in the pursuit of our ongoing and just fight.

Mr Bérenger: Madam Speaker, I thank the Rt. hon. Prime Minister for providing us with an official copy of both rulings; the unanimous and the minority ruling of the Tribunal. But I am a bit surprised because, as the Rt. hon. Prime Minister just said, 'The Guardian' of this morning quotes an official reaction from the Foreign and Commonwealth Office yesterday afternoon, as soon as the ruling was out, and we are still not in presence of any official communiqué, any official statement. Can I ask the Rt. hon. Prime Minister whether our Mission in London has tried to obtain a copy of any official reaction yesterday afternoon from the Foreign and Commonwealth Office on that? Because it is important for us to have the official text and not just what 'The Guardian' has simply produced.

The Prime Minister: We are not in a hurry to make public comments, Madam Speaker. Insofar as any expression on the part of the Commonwealth Office or UK External Affairs is concerned, we have had no official copy so far.

Mr Bérenger: Madam Speaker, on the first issue, it is a fact that the Rt. hon. Prime Minister has said that the Tribunal has ruled that the UK acted illegally in setting up the MPA - Marine Protected Area. It has ordered, in fact, the UK - London - to renegotiate with Mauritius the setting up of such a MPA. But, in the reaction from the Foreign and Commonwealth Office, as reported by 'The Guardian' of this morning - until we have an official document - London was cheeky enough to declare itself 'pleased' with certain aspects of the ruling, and has tried to downplay terribly the impact of the ruling, indicating that they are prepared only to discuss our fishing rights in the Chagos Archipelago. As I have said, we want to have the official statement. But have we already protested on the basis of what they are doing, trying to downplay completely the importance of that ruling, and limiting whatever discussion there will be on fishing rights in the Chagos Archipelago, full stop?

The Prime Minister: Could we expect anything else from them, anything contrary from the stand they have been taking all along, from the time they excised part of our

territory? They are the culprits, and we know - last time when I answered a question here - that their philosophy is, might is right, and this is on what they are relying. But I hope finally justice will prevail and we will get our full sovereignty for the Chagos Archipelago.

Mr Bérenger: On the same issue, Madam Speaker. There are going to be general elections in the UK on 07 May; in six weeks' time. Will the Rt. hon. Prime Minister agree with me that it is necessary to get in touch right now, after this ruling, with both the outgoing Prime Minister and the outgoing Leader of the Opposition, to prepare the ground for substantial discussions after 07 May, especially so, that the Chagos Archipelago in 1965 was supposedly detached from Mauritius whilst the Labour Government was in power in London?

The Prime Minister: Insofar as their interests are concerned, Madam Speaker, I am sorry to say there is no difference between Labour and Conservative.

Mr Bérenger: In fact, maybe the Labour Government was worst in London than the Conservative Government. If I can move on to the fundamental issue of sovereignty, Madam Speaker, I agree fully with the Rt. hon. Prime Minister that *c'est un grand pas en avant* because two of the judges, UN judges, concluded that Mauritius has sovereignty, as the Rt. hon. Prime Minister said, over the Chagos Archipelago, being given that, I quote –

“in 1965, Mauritian Ministers were coerced into agreeing to the detachment of the Chagos Archipelago, and that this detachment violated the international law of self-determination.”

Will the Rt. hon. Prime Minister agree with me that the other three concluded that they did not have jurisdictions to pronounce themselves to take a stand on sovereignty, but it is also very important that none of them said that UK has sovereignty over the Chagos Archipelago?

The Prime Minister: Yes, I said so in my reply. This is a fact and we know that the whole transaction that took place was under duress, and we also know that from the very beginning the excision was illegal. I said so some time back when I answered a question over here.

Mr Bérenger: I am sure that the Rt. hon. Prime Minister will agree with me, with this ruling in our hands, the question is: from now on where do we go? And I am sure that the Rt. hon. Prime Minister will agree with me that there are key strategic decisions to be taken

without losing time: whether with this ruling, two UN Judges pronouncing themselves for the first time in favour of our sovereignty, what line of action are we going to take, are we going to try and bring London to agree to go to the International Court of Justice, or instead are we going to take new diplomatic initiatives, possibly including the initiatives which we took in 2000/2005 on the issue?

The Prime Minister: I cannot answer this right now. I have said there is going to be a Committee which will decide what line we are going to follow, but, definitely, we are going to stand firm and we are going to fight against the United Kingdom to retrieve our territory.

(Interruptions)

Mr Bérenger: I welcome the Rt. hon. Prime Minister's decision to chair a Committee - a political Committee with the required experts - on the issue. Therefore, I welcome that, I thank him for that. I welcome that totally, but will he agree with me that there is no time to waste? The UK reacted immediately yesterday afternoon in a nasty way. There is, therefore, no time to waste. And will he agree with me that this Committee, which he is going to chair, should get to work as soon as possible?

The Prime Minister: Certainly, we will do that. We are also in a hurry.

Mr Bérenger: My last question, Madam Speaker. I heard the Rt. hon. Prime Minister thank Professor Philippe Sands, the leader in our legal team, and the local people concerned also, the Solicitor-General and others. Indeed, this is a historic ruling, an important milestone - to pick up the words which the Rt. hon. Prime Minister has used. Therefore, can I suggest - he has thanked Professor Philippe Sands and the others - that the House expresses its thanks and conveys its thanks to Professor Philippe Sands and to his team for the fantastic work done; that therefore the House should - not just the hon. Prime Minister - thank them and address our thanks to them.

The Prime Minister: Well, the House is joining me to thank everyone who has helped in this matter.

Madam Speaker: Time is over! Hon. Jhugroo, I am sorry, the last question usually rests with the hon. Leader of the Opposition.