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Reviewing the Legality of the Sovereign Base Areas in Cyprus in Light of the Right to Self-Determination & the Process of Decolonization

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Abstract
Cyprus officially gained its independence from the United Kingdom on 16 August 1960, following the signing of the Treaty of Establishment. As a condition for its independence, the Republic of Cyprus was obligated to cede parts of its territory to the British for the creation of the Sovereign Base Areas (SBAs). While the legal status of the SBAs has been questioned, there has not been a formal challenge to their presence by the Republic of Cyprus. Nevertheless, in the aftermath of the 2019 Chagos Advisory Opinion, there have been increased discussions on if and how Cyprus could bring this issue before the International Court of Justice. The Court's ruling on the Advisory Opinion offered new insights on the evolving principles of self-determination, territorial integrity, and the process of decolonization, providing a set of legal tools that Cyprus could use to challenge the legal status of the SBAs. This study analyzes the implications of the Chagos Advisory Opinion, in addition to other ICJ jurisprudence, UN Resolutions, and state practice in evaluating the legality of the SBAs. The research concludes that the evolution of various principles of international law, topped with the Chagos Advisory Opinion, strengthens a hypothetical case against the SBAs, although the applicability to Cyprus is far more complex given the unique historical, political, and legal circumstances.

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1. Introduction

In 1878, the island of Cyprus was incorporated within the vast web of the British Empire[1]. Following decades of contentious British rule, calls for Cypriot independence became prevalent in the middle of the twentieth century. At the same time, however, growing intra-national conflicts between Greek and Turkish Cypriots complicated the issue of independence. While the United Kingdom (UK) was willing to enter into negotiations in order to grant Cyprus independence, there were prerequisites which influenced to a great extent the discussions that followed. The first condition, strictly set by the UK, was that any agreement leading to the independence of Cyprus would need to allow for the retention of territory on the island to establish military bases and maintain political and strategic advantages in the Eastern Mediterranean. Additionally, given the growing tensions between the two ethnic groups within Cyprus, it was decided that it was no longer simply an issue of post-colonial independence, but there was the risk of escalation into a broader international conflict involving Greece and Turkey. In order to minimize such risks, Greece and Turkey were brought into the fold from the onset of negotiations for Cypriot independence. After a series of intense discussions involving representatives from each of the four involved parties, which included representatives from both the Greek and Turkish Cypriot communities, the Treaty of Establishment was signed on 16 August 1960[2]. In addition to the formal establishment of the Republic of Cyprus (RoC), the Treaty also granted the territories of Akrotiri and Dhekelia to the UK for the establishment of British foreign military bases, under the official title of Sovereign Base Areas (SBAs)[3].

The continued existence of the SBAs into the twenty-first century has been understood by many as an archaic remnant of colonial legacies. Modern international law has, for a large part, been based on peoples' free will and the right to self-determination, particularly within the scope of decolonization. The presence of foreign military bases,

[1] 'Timeline: Cyprus' (13 December 2011) http://news.bbc.co.uk/2/hi/europe/1021835.stm accessed 4 June 2024.
[2] *Treaty Concerning the Establishment of the Republic of Cyprus* (16 August 1960) 382 UNTS 5476.
[3] ibid art 1.

within the context of decolonization, has been questioned in light of the recent developments in international law. A prime example was the case of the Chagos Archipelago, a dispute which eventually culminated in the ICJ giving an advisory opinion on the process of decolonization of Mauritius from the UK. As a result of the Advisory Opinion, the UN General Assembly adopted Resolution 73/295, which demanded the United Kingdom withdraw its colonial administration from the Chagos Archipelago[4]. The ruling by the Court provided insight on the principles of territorial integrity, self-determination, and the process of decolonization[5]. The Chagos Advisory Opinion provided legal explanation that also has implications for the case of Cyprus and the SBAs. Although the RoC has been cautious with regards to its public stance on the legal status of the SBAs, it did not hide its interest or participation in the 2019 advisory opinion. Given the Court's ruling, the question to be asked with regards to the case of Cyprus is: does the Chagos Advisory Opinion offer Cyprus a set of legal tools to challenge the legitimacy of the British SBAs? This question relates specifically to the issues addressed by the ICJ, as well as their general applicability to the international community. The objective of this research is to examine if there exist valid grounds for the RoC to challenge the legality of the SBAs through international law. In addition to analyzing and comparing the case of the Chagos Archipelago, the analysis will be based on other relevant ICJ rulings, UNGA resolutions, and the principles of international law that pertain to the process of decolonization.

Continued geopolitical tensions around the world, in combination with the exponential increase of global integration have increased the value of having foreign military bases in place. However, the evolution of international law has given rise to questions regarding the legality of such bases within the context of decolonization, or when they are in defiance of the right to self-determination. The significance of the research presented is pertinent not only to the case of Cyprus, but could be applied to any foreign military bases, whether they were acquired through a post-colonial independence agreement, the aftermath of an armed occupation, or even willingly ceded from one state

[4] GA Res 73/295, UN GAOR, 73rd sess, 83rd plen mtg, Agenda Item 88, Supp No 49, UN Doc A/RES/73/295 (24 May 2019, adopted 22 May 2019).
[5] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep.

to another.

This dissertation is split into four main parts. The first part focuses on providing an analytical description of the concept of foreign military bases throughout history as well as the establishment of the SBAs in Cyprus (Section 2). The second part discusses the questions relative to the legal status of the SBAs, and the principles of international law at play, particularly the right to self-determination (Section 3). Next, the third part outlines the ruling of the ICJ in its Chagos Advisory Opinion, the legal consequences of the case, and the implementation to the case of Cyprus and the SBAs (Section 4). Finally, the fourth part acknowledges the challenges that would be faced by a Cypriot challenge to the legality of the SBAs, taking also into consideration the difficulty of enforceability in the aftermath of the Chagos Advisory Opinion (Section 5). Nevertheless, the dissertation argues that the Chagos Advisory Opinion redefines the principles of territorial integrity and self-determination, thereby creating legal grounds for the RoC to challenge the SBAs.

2. Foreign Military Bases & the Case of Cyprus

a. The History of Trust Territories & Foreign Military Bases

i. League of Nations

The existence of foreign military bases and their relationship with the host states has been contentious in international law since the late nineteenth century. At this point in time the clashing sentiments were between administering states creating military bases for their own benefit and the right of the population of a non-self-governing territory to have it operate in favor of their interests[6]. The colonial European powers emphasized their obligation to benefit colonized populations in this respect. In the British context it was referred to as the ‘white man’s burden’; exemplified in Rudyard Kipling’s 1899 poem ‘The White Man’s Burden’ which framed imperialization as on obligation towards those to be conquered[7]. A treaty regarding the Congo signed in 1885 reflected this obligation assumed by European states, claiming that “the powers exercising rights of

[6] Aaron M Margalith, *The International Mandates* (Johns Hopkins Press 1930) 50–68.
[7] Ved P Nanda, 'New States and International Law. By R. P. Anand' (1975) 69(4) *American Journal of International Law* 918, 918.

sovereignty or influence in the said territories agree to protect the indigenous populations and to ameliorate their moral and material conditions of existence"[8].

The League of Nations extended and formalized this duty by ruling that countries acquiring territories from Turkey and Germany following World War I were not entitled to claim them as colonies[9]. The League established that the global community had a responsibility towards such territories and that the administering nations were under a 'sacred trust of civilization' to prioritize the welfare of the local population and assist them in attaining their right to self-determination. This concept was solidified in the formation of the system of "mandates":

> To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.[10]

ii. UN Charter & the Sacred Trust System

In its later rendition, the UN Charter reflects the evolution of international law, formalizing the right of peoples to self-determination, and outlines it as one of its core objectives. The status of self-determination within the Charter has often been misunderstood given that it is referred to as a 'principle' in Article 55. However, this line of argument can be dispelled immediately by taking into consideration the equally authoritative French version, in which self-determination is referred to using the word *droit* (right).

The Charter considers the right to self-determination as essential in order to safeguarding individuals and to "strengthen universal peace"[11]. It asserts that lasting peace is only be achieved through the fulfilment of people's right to self-determination.

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[8] General Act of the Conference of the Plenipotentiaries of Austria-Hungary and others respecting the Congo (signed 26 February 1885) art 6, 165 CTS 485 (Clive Parry ed, 1978).
[9] Margalith (supra n 6) 1–17.
[10] League of Nations Covenant 1920, art 22(1); F Israel, *Major Peace Treaties of Modern History 1648-1967* (1967) vol 2, 1274, 1283.
[11] United Nations, *Charter of the United Nations* (24 October 1945) 1 UNTS XVI, art 1(2).

In staying true to this objective, the Charter broadened the scope of the 'sacred trust' norm, extending it to all states that govern non-self-governing territories. This further affirms the argument that the Charter establishes the right to self-determination. On the other hand, the argument could be made that binding obligations were not imposed on Member States by the adoption of the UN Charter; in this light, it would be seen as merely a formalization that eventually led to the crystallization of the right[12]. Specifically, in Article 73, it states:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories.[13]

To enforce the obligation of 'sacred trust', the Charter introduced a set of guidelines similar to those found in the League of Nations' mandate system, referred to in this case as trusteeship. Nations were encouraged to put the non-self-governing territories which they were in control of within the oversight of a Trusteeship Council. The Charter mandated that a 'trustee state' "promote the political, economic, social, and educational advance of the inhabitants of the trust territories, and their progressive development towards self-government or independence"[14]. Therefore, states that accepted trusteeship were still required to adhere to the 'sacred trust' norm obligation under Article 73[15].

Emergence of the 'sacred trust' norm begs the question of whether an administering state is legally allowed to use a non-self-governing territory for its own military purposes. Practice under the UN Charter shows that the use of installations in non-self-governing territories for military or defensive purposes of the administering power is not permissible. The drafting history of the Charter's trusteeship provisions indicates a clear intention to prevent the establishment of such military bases. The

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[12] Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 43.
[13] United Nations, *Charter of the United Nations* (supra n 11) art 73.
[14] ibid art 75.
[15] James Summers, 'Decolonisation Revisited and the Obligation Not to Divide a Non-Self-Governing Territory' (2019) *Questions of International Law* 147.

drafters dismissed a suggestion that would have required administering states to obtain Security Council approval before establishing military bases. The rationale behind this proposal was the concern that such bases could be used to serve the interests of the administering state[16]. Those opposed to the proposal argued that trusteeship supervision was already under the jurisdiction of the Security Council[17]. It was therefore expected that the Security Council would prevent administering powers from stablishing military installments to serve their interests.

The concluding articles of the Charter do not explicitly address foreign military bases, but the intention was to allow them under two specific conditions. The first condition was regarding the defense of the non-self-governing territory, considering that the absence of defensive infrastructure in the mandate territories of the League made them vulnerable to Axis conquests[18]. The second condition was the required support of and involvement in international peacekeeping missions, given the expectation of non-self-governing territories to contribute to the objectives set forth in the Charter[19]. The General Assembly interpreted the 'sacred trust' principle in Article 73 as prohibiting military bases that are established to serve the interests of the administering state. Such bases are seen as conflicting with the duty to prioritize the interests of the local population and promote the peoples' right to self-determination:

> Member States shall oppose all military activities and arrangements by colonial and occupying Powers in the Territories under colonial and racist domination, as such activities and arrangements constitute an obstacle to the full implementation of the Declaration, and shall intensify their efforts with a view to securing the immediate and unconditional withdrawal from colonial Territories of military bases and installations of colonial Powers.[20]

The General Assembly has repeatedly criticized administering states for maintaining military bases in non-self-governing territories. It denounced South Africa

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[16] Lawrence Goodrich, Edvard Hambro and Anne Simons, *Charter of the United Nations: Commentary and Documents* (3rd edn, Columbia University Press 1969) 513.
[17] United Nations, *Charter of the United Nations* (supra n 11) art 83; Russell R, *A History of the United Nations Charter: The Role of the United States 1940-1945* (Princeton University Press 1958) 836.
[18] Hessel D. Hall, *Mandates, Dependencies and Trusteeship* (Stevens & Sons 1948) 69, 210.
[19] United Nations, *Charter of the United Nations* (supra n 11) art 83; Russell (supra n 17) 836.
[20] UNGA Res 35/118, 'Plan of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples' (11 December 1980) art 9.

for operating military bases in Namibia[21]. It also rebuked Belgium for deploying military personnel to Congo from its bases in the trust territory of Ruanda-Urundi. The General Assembly urged Belgium "to refrain from using the Territory as a base, whether for internal or external purposes, for the accumulation of arms or armed forced not strictly required for the purpose of maintaining public order in the Territory"[22].

The 'sacred trust' norm prohibits the establishment of military bases in non-self-governing territories that exclusively function to secure the interests of the administering state. This prohibition extends to bases intended not only for offensive operations but is also meant for the defensive interests of the administering state. Establishing bases in non-self-governing territories for the defensive operations of the administering state still constitutes a violation of the 'sacred trust' norm because it is not conducive to the local population's interests.

b. The Appearance of Foreign Military Bases in Cyprus: Sovereign Base Areas

i. History: Cyprus, Independence, and the Treaty of Establishment

Although Cyprus was still formally considered a territory of the Ottoman Empire by the end of the nineteenth century, the island was brought into the control of the British crown in 1878[23]. The UK officially annexed Cyprus in 1914, while Turkey renounced any claims to the island in 1923[24]. From 1955 and on, demands for self-determination by Cypriots grew stronger, leading the UK to consider how to best maintain its geostrategic advantages in the area. The notion of granting Cyprus independence, and some degree of self-determination, while still maintaining sovereignty over military bases on the island was considered for the first time in 1957 and became a consistent element in the subsequent discussions for Cyprus' decolonization. Besides insisting that British military interests be protected in any scenario, the UK emphasized that the 'Cyprus problem' was

[21] UN General Assembly Resolution 35/227A (6 March 1981) UNGAOR 35th Session Supp No 48, 40, para 21.

[22] UN General Assembly Resolution 1579 (19 December 1960) UNGAOR 15th Session Supp No 16, 34, UN Doc A/4684.

[23] 'Timeline: Cyprus' (13 December 2011) (supra n 1); For a further historical account of the Independence of Cyprus and the Negotiations of the Treaty of Establishment see also: P Liacouras, 'Looking Back to See Forward: The 1959 Zurich and London Accords and the Constitutional Order of Cyprus' (2002) 10(1) *Études helléniques / Hellenic Studies* 47, 47–70.

[24] Treaty of Lausanne (adopted 24 July 1923, entered into force 6 August 1924) art 20.

not merely an issue of decolonization but also risked escalating into a broader international conflict between NATO allies Greece and Turkey[25]. Therefore, while any resolution required the consent of the Cypriots, it was perhaps even more important that it also appealed to the Greek and Turkish representatives.

In December 1958, following several unsuccessful British proposals, the foreign ministers of Greece and Turkey approached their British counterpart, indicating their willingness to negotiate a mutually acceptable solution for Cyprus[26]. With assurances that British military interests would be taken into consideration, the UK, informally, approved the start of Greco-Turkish negotiations[27]. Greek and Turkish representatives convened in Zurich in the first two weeks of February 1959 and came to a concession regarding the fundamental framework for the eventual Constitution of the Republic of Cyprus. On 12 February, this framework was presented to the UK, which conditionally approved it, provided that its military interests in Cyprus, as SBAs, were protected. Five days after the Zurich Agreement, the agreed terms were formally presented to the leaders from the Greek Cypriot and Turkish Cypriot communities during their visit to London[28]. These delegations were led by Archbishop Makarios and Dr Fazil Kutchuk, who soon after became the Republic's first president and vice-president, respectively. On 19 February 1959, the UK, the two Cypriot leaders, Greece, and Turkey, signed the Treaty of Establishment[29]. Negotiations to finalize the Constitution's details, including the size of the SBAs, the ramifications of the disillusionment of the UK military bases, and whether the UK owed financial compensation to Cyprus, continued after the treaty's signing and were completed successfully by July 1960. On 16 August 1960, the Republic of Cyprus gained its independence, and the SBAs were officially established[30].

The SBAs consist of two regions, Akrotiri and Dhekelia, which together cover

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[25] Alan James, 'The Making of the Cyprus Settlement, 1958-60' (2018) 10(2) *Cyprus Review* 11, 20.
[26] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, S.W.1, on Tuesday, 23 December 1958, at 10:30 a.m.' (Secret C.C (58) 87th Conclusions, 23 December 1958) 2.
[27] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, S.W.1, on Friday, 13 February 1959, at 11 a.m.' (Secret C.C (59) 9th Conclusions, 13 February 1959).
[28] Hubert Faustmann, *Divide and Quit? British Colonial Policy in Cyprus 1878–1960 Including a Special Survey of the Transitional Period: February 1959–August 1960* (Mannheim Mateo 1999).
[29] *Treaty of Establishment* (supra n 2)
[30] Hubert Faustmann, 'Independence Postponed: The Transitional Period in Cyprus 1959–1960' (2002) 14 *Cyprus Review* 99.

254 square kilometers, accounting for 3% of Cyprus' land area[31] (a total of which amounts to more territory than the entire island of Malta). Prior to the establishment of the SBAs in 1960, these areas were primarily rural lands populated by Cypriot farmers, much like the rest of Cyprus. Today, they function as military bases under the sovereignty of Britain, retained for military and defense purposes[32]. The SBAs operate on a budget of about £14.5 million annually; approximately 80% of this goes to salaries, and the remainder covers works services such as roads and other various civil expenditures[33]. The population of the territories is estimated at 18,200 residents. This consists of about 7,200 British military personnel, civilian staff, and their families, while the remaining population of 11,000 are local residents[34].

Although the SBAs are legally distinct from the surrounding territory, they depend heavily on administrative support from the Republic of Cyprus for their daily operations. The SBAs are governed by a combination of local ordinances issued by the SBA administrator, decisions by the secretary of state, former colonial laws of Cyprus that have yet to be repealed, and any UK Parliament Acts that apply specifically to the SBAs[35]. However, the administrator's ability to issue ordinances, which are the primary law making process in the SBAs, is constrained by a 1960 declaration known as 'Appendix O'. This declaration stipulates that the laws for the Cypriot population in the SBAs should closely mirror those of the Republic of Cyprus as much as possible[36]. The SBA administrator typically adheres to these guidelines, despite the fact that Appendix O is not considered to be legally binding according to British law. Laws affecting Cypriot civilians in the SBAs are aligned with those of the rest of the island[37]. SBA laws are applicable to all residents, including British personnel and the local population, and their

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[31] Constantinos Yiallourides, 'First Chagos, Then Cyprus? Cyprus Gains Legal Tool in ICJ Ruling on Chagos Islands' (12 March 2019).
[32] Iain Hendry and Susan Dickson, *British Overseas Territories Law* (2nd edn, 2018) 193.
[33] Institute of Island Studies, *Akrotiri & Dhekelia Overview* (University of Prince Edward Island, 2016) https://projects.upei.ca/testforneal/files/2016/11/Akrotiri-Dhekelia.pdf accessed 4 June 2024.
[34] City Population, *Akrotiri and Dhekelia: Areas, Garrisons & Villages* (2023) https://www.citypopulation.de/en/cyprus/cities/akrotiridhekelia/ accessed 20 July 2024.
[35] Hendry and Dickson (supra n 32) 369.
[36] *Declaration by Her Majesty's Government Regarding the Administration of the Sovereign Base Areas*, Appended to the *Treaty of Establishment* (Appendix O) s 3(2).
[37] House of Commons Foreign Affairs Committee, 'Overseas Territories: Seventh Report of Session 2007–08: Volume II' (6 July 2008) HC 26, 7.

enforcement is managed by the SBA administration[38]. In practice, however, the administrator often delegates most of his responsibilities and the execution of laws to Cypriot officials. There are also collaborative arrangements between the SBAs and the Republic of Cyprus concerning the judiciary[39]. While the SBAs have their own court system with jurisdiction over all civil and criminal matters occurring within their boundaries[40], cases involving Cypriot citizens within the SBAs are usually handled by Cypriot courts[41].

To maintain the operational effectiveness of the SBAs after the UK's withdrawal from Cyprus, the UK retained control over approximately 40 "British Retained Sites and Installations". These sites, covering over 100 square kilometers, are officially under the sovereignty of Cyprus, although it has been effectively suspended. In practical terms, Cypriot officials and citizens do not have access to these secure areas without explicit permission from the SBA administration[42]. Moreover, the UK has ensured the continuation of extensive rights across the entire island of Cyprus, even following the end of colonial rule. These rights include the ability to acquire additional small sites deemed necessary for the SBAs' effective operation, the authority to seize any ports across the island deemed insufficient for SBA needs, the permission to fly military aircraft within Cypriot airspace, and the right to conduct inquiries of any kind anywhere within the Republic[43]. While the UK is required to consult with the RoC before exercising these rights, the Republic's consent is not required, as the final decision rests with the British Crown. Furthermore, roads, ports, and other facilities within Cyprus can be used by British authorities for troop movements without consultation or notification[44]. Lastly, the UK retained the right to secure any additional resources it deems necessary for the

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[38] Institute of Island Studies (supra n 33).

[39] Nasia Hadjigeorgiou, 'Sovereign Base Areas' in *Max Planck Encyclopedia of Public International Law* (2022).

[40] *Ordinance to Provide for the Exercise of Jurisdiction by the Courts of the Republic of Cyprus and the Courts of the Sovereign Base Areas of Akrotiri and Dhekelia Respectively in Civil and Criminal Cases Affecting Cypriots* No 6 of 1960.

[41] *Declaration Regarding the Administration of the Sovereign Base Areas* (supra n 36) s 3(13).

[42] Costas M Constantinou and Oliver P Richmond, 'The Long Mile of Empire: Power, Legitimation and the UK Bases in Cyprus' (2005) 10 *Mediterranean Politics* 65, 70.

[43] ibid 71.

[44] *Treaty of Establishment* (supra n 2) annex B, pt II, s 4(1).

efficient operation of the SBAs, again following the consultation with the RoC[45]. Together, these rights create one of the most expansive and comprehensive frameworks for access and freedom of movement among foreign military bases worldwide[46]. The extension of these rights to the UK for the SBAs' functionality means that any debate regarding the legality of the SBAs also influences the discussion on whether and how these rights can be exercised.

ii. Description of the SBAs: Legality & Practice

Since 1960, the UK has consistently asserted that the SBAs constitute a UK-dependent territory. However, the Republic of Cyprus has used differing terminology for the classification of these territories throughout the years. In a 1991 ruling, the Cypriot Supreme Court interpreted the SBAs as a unique entity with a purely defensive nature[47]. However, more recently, various branches of the Cypriot government have referred to the SBAs as a "colonial remnant"[48]. This evolving view of the SBAs' legal status mirrors the situation with Mauritius in the 1970s and 1980s, in which it has become more approachable for Cyprus to officially recognize the colonial nature still present on the island. Thus, despite varying terminology, both states acknowledge the direct connection to Cyprus' colonial past that is represented in the continued presence of the SBAs.

The official British position is indicated in Article 1 of the Treaty of Guarantee:

> The territory of the Republic of Cyprus shall comprise the Island of Cyprus, together with the islands lying off its coast, with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom. These areas are in this Treaty and its Annexes referred to as the Akrotiri Sovereign Base Area and the Dhekelia Sovereign Base Area.[49]

Being in line with the Treaty, the UK considers the SBAs to be a dependent territory under its control. The Article's use of 'remain' implies an understood continuation from the period before 1960, during which the SBAs were clearly part of a colony, and the

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[45] ibid s 9(1).

[46] John Woodliffe, *The Peacetime Use of Foreign Military Installations under Modern International Law* (1992) 144–145.

[47] *Graham Thomas Preece v Estia Asfalistiki* (1991) 1 CLR 568 (RoC Supreme Court) (in Greek).

[48] RoC House of Representatives Resolution 174, 22 March 2012, 4 (in Greek).

[49] *Treaty of Establishment* (supra n 2) art 1.

years following independence in 1960[50]. SBA courts themselves have been consistent in maintaining the opinion that the SBAs are a UK-dependent territory[51]. The UK Supreme Court also firmly endorsed this position in 2018, when it reached a unanimous decision in R v Secretary of State for the Home Department:

> The Cyprus Act 1960 [which gave effect to the Treaty of Establishment] did not alter the status of the SBAs, but merely excluded them from the transfer of territory to the new Republic of Cyprus. … In the case of the SBAs, the only change which occurred in 1960 was that whereas they had previously been part of the UK-dependent territory of Cyprus, they were thereafter the whole of it.[52]

This conclusion is consistent with the general framework of British law. The territories of Akrotiri and Dhekelia are included within the list of the UK's 14 overseas territories in both the British Nationality Act 1981 and the British Overseas Territories Act 2002 (Schedule 6 and Section 1 respectively)[53]. Additionally, British scholars have determined that all British Overseas Territories, including the SBAs, meet the qualifications to be considered a colony under Schedule 1 of the Interpretation Act 1978[54].

Conversely, the Cypriot Supreme Court has referenced commitments made by the UK in Appendix O, and the Treaty of Establishment, which declare (respectively) the mission is "[n]ot to set up and administer colonies"[55], and "[n]ot to develop the Sovereign Base Areas for other than military purposes"[56]. In another instance, the Court subsequently ruled that

> there is no doubt that the Sovereign Base Areas are neither a state, nor a colony, but areas on the island of Cyprus over which the United Kingdom during the establishment of the Republic and for military and defence purposes only, retained its sovereignty, subject to the restrictions referred to in the above multilateral and bilateral documents [that is, the Treaty of Establishment and Appendix O].[57]

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[50] *Antoniades and Others v Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia* (Judicial Review 2 of 2013) (SBA Senior Judges' Court) 8.
[51] *Mentesh Aziz v The Queen* (Criminal Appeal 5 of 1998) (SBA Senior Judges' Court) 2.
[52] *R (on the application of Tag Eldin Ramadan Bashir and others) v Secretary of State for the Home Department* [2018] UKSC 45, 11.
[53] *British Nationality Act 1981*, c 61; *British Overseas Territories Act 2002*, c 8.
[54] Hendry and Dickson (supra n 32) 4.
[55] *Declaration Regarding the Administration of the Sovereign Base Areas* (supra n 36) s 1(2).
[56] *Treaty of Establishment* (supra n 2) art 2(i).
[57] *Graham Thomas Preece v Estia Asfalistiki* (supra n 47) 582.

Cypriot courts have upheld this interpretation in later decisions, and scholars have supported it in subsequent literature.

Although initially clearly stated, this stance has evolved over time. The House of Representatives of the Republic of Cyprus has passed four resolutions regarding the SBAs: Resolution 52 in 1979; 144 in 2005; 150 in 2007; and 174 in 2012. Resolution 52 did not address the SBAs' legal status but vaguely hinted at a future where Cyprus would be entirely demilitarized[58]. Resolution 144 refenced UN decisions on decolonization and self-determination and aligned with the Cypriot Supreme Court's view in the Estia case[59]. In contrast, Resolutions 150 and 174 explicitly criticized the colonial nature of the SBAs and omitted their *sui generis* status. Specifically, Resolution 150 asserts that "[t]he rights of the UK that stem from the Treaty of Establishment constitute remnants of colonialism"[60]. Resolution 174 similarly proclaims that maintaining the British bases "constitutes a blatant violation of fundamental rights of Cypriots and a mutilation of the territorial integrity and sovereignty of the Cypriot state"[61]. Resolutions from 2005 onwards have generally condemned the UK-dependent territories in Cyprus as inconsistent with international law. Additionally, former President Demetris Christofias, often advocated for the demilitarization of Cyprus, and opposed the continued presence of the British SBAs, referring to them as a "colonial bloodstain"[62].

For the past 15 years, the UK and the RoC have consistently agreed on the legal status of the SBAs. Instead of being unique entities in international law with limited UK sovereignty, the SBAs are classified as a UK-dependent territory. This shift reflects a growing recognition among Cypriots that accurately labeling the SBAs is crucial to addressing their legality. As stated by the Cypriot Attorney General in the Chagos Advisory Opinion,

> the application of [the principles of decolonization] cannot be avoided by

[58] House of Representatives Resolution 52, 21 June 1979, 4 (Rep of Cyprus) (in Greek).
[59] House of Representatives Resolution 144, 30 June 2005, preamble (Rep of Cyprus) (in Greek).
[60] House of Representatives Resolution 150, 19 April 2007, preamble (Rep of Cyprus) (in Greek).
[61] RoC House of Representatives Resolution 174 (supra n 48) preamble.
[62] Helena Smith, 'Cyprus Elects its First Communist President' (*The Guardian*, 25 February 2008) https://www.theguardian.com/world/2008/feb/25/cyprus.greece accessed 12 June 2024.

attaching a different label- for example, by calling a given area a 'military base' as opposed to a 'colony', or by declaring that a given area is not a 'colony'.[63]

3. SBAs Under Scrutiny: Compatibility with International Law

a. Sovereignty of Host States

As the twentieth century went on, the relationship between host states of foreign military bases and administering states was further affected by the emergence of bilateral agreements. There were no longer states accepting trusteeship of non-self-governing territories. Former colonial subjects began earning their independence, and thus it was required for states to enter into bilateral agreements, or leases, in order to establish foreign military bases. These agreements were usually the result of initiatives by the administrative states. An agreement for the establishment of a military base serves as an instrument of international law that outlines the terms under which the territory can be used by the administrative state. It requires that certain aspects of sovereignty, such as the establishment of institutions or the enforcement of laws within the leased territory, be transferred from the host state to the administrative state. Host states consent to these limitations for various reasons. Historically, coercion by global powers was a common factor, which still occurs today. However, many host states now view foreign bases as advantageous, particularly for the protection they offer against external threats. Additional benefits might include financial compensation, boosting the local economy, or addressing domestic political needs. The rights conferred by a territorial lease agreement function to restrict the host state's legal actions concerning the territory for the lease's duration. These agreements can be put in place for a set number of years, an indefinite period which could be subject to conditional termination as a part of the agreement, or even perpetually. When such a lease agreement involves a military base, the scope of the beneficiary state's rights is typically extensive: the agreement often grants the beneficiary broad control over the area, including local jurisdictional authority. As a result, the beneficiary state's nationals will often form a significant percentage of the territory's

[63] International Court of Justice, *Oral Arguments in Chagos Archipelago Advisory Opinion, Public Sitting Held on 4 September 2018 at 3 p.m.*, Mr Clerides, 'Introduction' (4 September 2018) 5.

population[64].

A more extensive legal implication of foreign military bases may emerge when *de facto* effective control over the leased territory is transferred to an administrative state. The scope of the administrative state's rights become broad, and the host state is prevented from engaging meaningfully with the territory over a prolonged period. The transfer of authority can be emphasized by the lawful stationing of military personnel from the beneficiary state within the territory, potentially leading to the exclusion of the host state's military and other institutions. Although this transfer of control may be well intended -for instance, the agreement serves as the administrative state's acknowledgment of the host state's sovereignty and often includes responsibilities to reaffirm this, such as through financial compensation- it does pose challenging questions regarding the scope of sovereignty itself as a legal concept: Can the parameters of sovereignty be decided by individual states, intentionally declared temporary, suspended, shared between states, or even renounced by the state that holds it? If this is possible, what would be the response of international law? As put by Joseph Lazar:

> If a subject of international law is party to a 'lease' of territory, and such a party is endowed with 'sovereignty', does the 'sovereign' party preserve, by definition of 'sovereignty', all of its 'sovereignty' despite the lease? Or are its 'sovereign' characteristics subject to modification to the point of elimination? Is 'sovereignty' destructible by 'lease' or vice-versa?[65]

Leasing territory to an administrative state confirms that the host state has sovereignty over the specific area; however, it also creates the possibility that the nature of this sovereignty might be legally perceived as different from conventional sovereignty. The idea that territorial leases are effectively 'disguised cessions' was a common view among international law scholars in the early twentieth century[66]. This perspective diminished, as some leased territories eventually returned to their host states. There are concerns, however, about what happens if such a return never happens, leaving the host

[64] Michael J Strauss, 'Foreign Bases in Host States as a Form of Invited Military Assistance: Legal Implications' (2020) *Journal on the Use of Force and International Law* 2–3.
[65] Joseph Lazar, 'The Status of the Leasehold in International Law' (PhD thesis, University of Minnesota 1965) 57.
[66] Lassa Oppenheim, *International Law: A Treatise*, vol 1, ed Ronald P Roxburgh (3rd edn, Longmans, Green 1920).

state in a vulnerable position.

b. Are the SBAs Occupied Land?

Another legal consideration relative to the SBAs in Cyprus is the issue of occupation, and whether or not foreign bases are to be considered occupied territory. The host state may wish to end the presence of the beneficiary state's troops within its borders, whether because of souring of relations, or a simple change in policy. This particular situation raises concerns regarding the legal consideration of the territory as occupied, should the host state be unable to terminate the lease unilaterally (for instance, due to the *pacta sunt servanda* principle), and the armed forces of the beneficiary state continue to be present. These circumstances and consequent legal questions would be directly relevant to Cyprus' relationship with the UK and the SBAs, should the RoC begin to seriously consider taking legal actions against the ongoing presence of the SBAs on the island. International humanitarian law related to belligerent occupation typically applies to territories captured by an external state through armed confrontation, making it somewhat unbefitting to scenarios where the beneficiary state acquires a territory through relatively peaceful and consensual means to an unwanted presence.

Nevertheless, the scenario involves a foreign state exerting effective control and sovereignty over the leased territory, contrary to the (revised) wishes of the sovereign state. If this were to be considered legally analogous to belligerent occupation resulting from armed conflict, the manner in which control was established must either be disregarded as irrelevant or otherwise somehow equated with military occupation. Scholars, such as Adam Roberts, highlight the role of occupation law when it comes to foreign military forces present in host countries through terms of bilateral agreements:

> There are circumstances in which the stationing of foreign forces by agreement may bear some resemblance to a military occupation. This may be so in cases where the agreement was achieved through duress against the negotiators of the receiving State; where the agreement was concluded after an invasion and occupation had already begun; or where the foreign forces, whose functions were initially presented as limited, come to exercise much more extensive powers. To the extent that such situations do present the types of practical problems addressed in the law on occupations, then the provisions of this body of law may well be viewed as applicable.[67]

[67] Adam Roberts, 'What Is a Military Occupation?' (1984) 55 *British Yearbook of International Law* 249.

In applying this framework to the case of the RoC, the analogies are easy to discern. British forces had been present on the island in some form since it first fell under British control in 1878. British control remained strong and active in Cyprus until the island was granted its independence on 16 August 1960. The territories for the SBAs were transferred to the United Kingdom following decades of occupation, colonization, and armed struggle for independence. It is therefore not a stretch to think of them as a continuation of an armed occupation, and to apply the relevant international humanitarian law to the circumstances. More significantly, however, are the negotiations and the subsequent Treaty of Establishment that gave Cyprus its independence, but also granted the territories to the UK for their SBAs. As showcased in the previous sections, the processes through which the Republic of Cyprus was established, in particular the negotiations that took place, cannot be left without criticism. Greek and Turkish Cypriot representatives were excluded for a considerable amount of the discussions leading to the signing of agreements, and allowing Britain to retain pieces of its colonial territory was an unquestionable condition to granting Cyprus its independence.

Roberts goes on to observe that when external military forces are present in a state other than their own at its invitation and undertake certain administrative or leadership roles on the host state's territory, the situation may closely resemble a foreign occupation. This similarity suggests that the law of occupation might be relevant and applicable in such scenarios[68]. Although Roberts does not address foreign military bases by name, his interpretation is particularly relevant to leased territories for such installations. Additionally, the Definition of Aggression provided by the UN General Assembly could be relevant here, as it encompasses situations where foreign troops, initially present under an agreement, remain beyond its expiration or termination[69].

i. 2024 Palestine Advisory Opinion

In its recent Palestine 2024 advisory opinion, the ICJ offers an analysis which

[68] ibid.

[69] UNGA Res 3314 (XXIX) (14 December 1974) on the Definition of Aggression, art 3(e):" The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;".

bridges the gap between the aspects of international humanitarian law regarding occupation, and a people's right to self-determination. Firstly, the Court establishes the foundation that "[t]he fact that an occupation is prolonged does not in itself change its legal status under international humanitarian law"[70]. That is to say that the law of occupation does not allow for an alteration of its legal status based on the passage of time. Therefore the legality of an occupying Power's presence "consists of the exercise by a State of effective control in foreign territory"[71]. Moreover, in order to examine the permissibility of an occupation, such effective control must adhere to international law, including the prohibition of the threat or use of force, but also the right to self-determination.

Based on its analysis, the Court reached the conclusion that the extended duration of Israel's unlawful policies and practices relevant to its annexation and settlement of Palestinian Territories "obstruct the right of the Palestinian people freely to determine its political status and to pursue its economic, social and cultural development"[72]. These decades-long policies have deprived the Palestinian people of this right, and their continued enforcement further jeopardizes its potential future realization. Israel's practices and policies have resulted in "the fragmentation of this territory, [and] undermining its integrity"[73] in addition to violating the people's right to self-determination. Consequently, the ICJ found that Israel's actions breach its obligation to respect the right to self-determination of the Palestinian people. In this instance, the Court indicated that the relationship between the practices relating to occupation and the obligations owed to a people's right to self-determination operate hand in hand. The occupying Power must ensure that its policies and practices remain within the parameters of international law in order to maintain their permissibility.

Finally, the Court addressed the rationale used by Israel in an attempt to justify its acquisition of territory through the use of force. There was the clarification that the principles of international law are to be held up regardless of what may be occurring in a

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[70] *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem* (Advisory Opinion) [2024] ICJ Rep 109.
[71] ibid.
[72] ibid 242.
[73] ibid 256.

given area. Specifically, it was noted that the security concerns of Israel cannot "override the principle of the prohibition of the acquisition of territory by force"[74]. Following this reasoning, the Court observed that even the Oslo Accords (the pair of interim agreements between Israel and the Palestine Liberation Organization) "do not permit Israel to annex parts of the Occupied Palestinian Territory in order to meet its security needs"[75].

Although it may appear as a great leap to classify the British SBAs in Cyprus to occupied land for reasons set forth thus far, this legal reasoning may very well hold up and provide another set for valid arguments, should the RoC decide to challenge the territories' legality. Assuming the SBAs could be considered as occupied land, specific rules and obligations would then be applicable. The first matter at hand would be that Britain has arguably been in violation of the prohibition of the threat to use or use of force. In this instance, the separation and retention of Akrotiri and Dhekelia would be considered an occupation, and thus rendered illegal. There are two ways in which the SBAs could be interpreted as having been the result of the threat of or the use of force. One, given the events that led up to the signing of the Treaty of Establishment, the UK had at least the allusion to the threat of force entering the negotiations as the Colonial Power over the Colony seeking its independence. With troops already stationed on the island for decades, the dynamics between the negotiating parties in no way resembled those between two equal and sovereign states. If this were not enough, the continued presence of British troops on the island could be interpreted as a form of occupation. This is based on their presence being not only a result of the threat of force, but also a continuation of that threat.

Secondly, in a much more straightforward fashion, if the Republic of Cyprus were to explicitly vocalize that it no longer wants the SBAs present, it would be easy to consider them as part of an occupation. Taking this hypothetical a step further, the continuation of the SBAs' existence moving forward would be violating the prohibition of the use of force in order to be retained. Should the presence of the SBAs amount to the status of occupied territories, British security concerns in the area would not be a valid reason to prevail over the prohibition of acquisition of territory through the threat or use

[74] ibid 253.
[75] ibid 263.

of force.

The last connection to be made is that between the Oslo Accords and the Treaty of Establishment. Keeping in mind that the Treaty of Establishment is that which granted the territories for the SBAs to the UK, the Court's declaration that the Oslo Accords do not grant Israel the authority or right to annex territory within the Occupied Palestinian Territory could be relevant. If it were to be the case that the territories for the formation of the SBAs were taken via the violation of the prohibition of acquisition through the use of force, the Treaty of Establishment and the granting of the territories to the UK would cease to be valid.

c. Self-Determination: Its Significance to & Evolution in International Law

The right to self-determination is a principle of international law that would be crucial for Cyprus in constructing a legally viable case against the establishment and continued presence of the SBAs. It has been well established by the court in cases relating to military occupations or post-colonial independence, particularly from the middle-to-late twentieth century and on. Regardless, to make the principle applicable to the RoC and the SBAs, it must be proven that it has been a part of customary international law, and in place before the signing of the Treaty of Establishment in 1960. This can be inferred by the Court's reference to the right to self-determination, often mentioning that it has been set as customary international law, as well as various UNGA Resolutions that help track its development chronologically. Furthermore, the weight of the right to self-determination is another dimension vital to Cyprus' potential arguments. In the aftermath of recent cases before the ICJ that address the issue of self-determination, some judges believed that it was an opportunity for the Court to provide clarity on the peremptory nature of the principle. Specifically, certain judges have argued that the right to self-determination should be considered as a *jus cogens* norm. Although the case has only been made in judges' separate opinions, the foundation is present and would be pivotal in a case against the legality of the SBAs to successfully prove that the right to self-determination has become a *jus cogens* rule.

i. Relevant ICJ Cases

The 1975 Western Sahara Advisory Opinion is one of the earliest and most pivotal instances in which the ICJ itself deals with the right to self-determination, particularly in

a post-colonial setting. According to the Court, "the validity of the principle of self-determination [is] defined as the need to pay regard to the freely expressed will of the peoples"[76]. This finding was further supported in Judge Maharaj Nagendra's separate opinion, in which he clarifies that the obligation towards the right of self-determination is a necessary and indispensable requirement to the process of decolonization[77].

Fast forward to 2019, when the ICJ again was called upon to consider the scope and effect of the right to self-determination in the Chagos Advisory Opinion. It was referred to throughout the Court's ruling and outlined a detailed analysis of the principle in the context of decolonization. In its initial finding, the Court indicated that by the time of its adoption, Resolution 1514 had been crystalized as customary international law[78]. Secondly, the Court considered that the right to self-determination is inseparable from the notion of territorial integrity. This is much more visible in the context of decolonization given that there is the opportunity for the colonial power to use its authority in order to undermine the territorial integrity of its former subject, as was done by the UK in Mauritius (and Cyprus as this dissertation argues). Specifically, the ICJ offered the clarification that "the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory"[79].

Most recently, the ICJ grappled with the issue of the scope and effects of the right to self-determination in the 2024 Palestine Advisory Opinion. What differentiates this ruling, with regards to self-determination, from the Chagos Advisory Opinion is that it examines the principle through the lens of annexed and occupied territories. This offers another dimension to the case of the RoC against the legality of the SBAs, assuming it is successfully argued that they constitute UK occupied territories of Cyprus. In its ruling, the Court considers that an occupying Power (presently Israel) is obligated "not to impede the Palestinian people from exercising its right to self-determination, including its right to an independent and sovereign State, *over the entirety of the Occupied Palestinian*

[76] *Advisory Opinion on Western Sahara* (16 October 1975) [1975] ICJ Rep 12, 59.
[77] *Western Sahara, Advisory Opinion* (16 October 1975) [1975] ICJ Rep 12, 81 (Separate Opinion of Judge Nagendra Singh).
[78] *Chagos Advisory Opinion* (supra n 5) 150.
[79] ibid 160.

Territory [emphasis added]"[80]. Additionally, it was clarified that annexing large parts of the Occupied Palestinian Territory is in violation of the principle of territorial integrity and therefore an obstruction to the realization of the right to self-determination[81]. Finally, the Court found that the right to self-determination included "the right to exercise permanent sovereignty over natural resources, which is a principle of customary international law"[82], and "the right of a people freely to determine its political status and to pursue its economic, social and cultural development"[83], both of which were violated due to the annexation of the Occupied Palestinian Territories.

ii. Subsequent UN Practice: UNGA Resolutions

The cases that have been brought before the Hague that address the right to self-determination offer considerable insight and analysis into the evolution of the principle, and its effects in the context of decolonization and occupied territories. However, for the case of the Republic of Cyprus against the SBAs, the obstacle still remains in proving that the right to self-determination existed in customary international law prior to the signing of the Treaty of Establishment on 16 August 1960. The presence of customary international law is affirmed on the basis of state practice and an acceptance of that practice as an obligation to international law (*opinio juris*)[84]. While it is largely difficult to identify a specific date as to when a rule became customary international law, the adoption of the various resolutions relative to the right to self-determination reflect the belief that the custom already existed by the middle of the twentieth century. The first significant adoption by the UNGA was that of Resolution 545 in 1952. The significance of the resolution is that it signaled the UNGA's decision to include the right to self-determination in the two International Covenants on Human Rights that were in the drafting stages at the same time[85]. Resolution 545 certainly is indicative of substantial moral and political backing for the right, however, that is not to say that it is also

[80] *Legal Consequences of Israel in the Occupied Palestinian Territory* (supra n 70) 237.
[81] ibid 238.
[82] ibid 240.
[83] ibid 241.
[84] International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries* (2018) UN Doc A/73/10, 125.
[85] GA Res 545 (VI) (5 February 1952).

indicative of *opinio juris*[86]. Therefore, given that there was little to no state practice in the lead up to the adoption of the resolution, it is improbable that this argument would withstand scrutiny. A more precise pinpoint for the creation of the right to self-determination would be 1957. During the period between 1950 and 1957, the UNGA adopted 8 resolutions that referenced the right to self-determination[87]. The secretary-general, in the reports from the General Assembly's 12th and 13th sessions, noted that the resolutions simply reaffirmed the existence of the right to self-determination, emphasizing that its status as a fundamental right by the General Assembly had been acknowledged in past sessions[88].

Furthermore, the General Assembly adopted Resolution 1188 on 11 December 1957, with 65 votes in favor, 13 abstentions, and no votes against it. In its first paragraph, the resolution reaffirms that member states are required to promote and facilitate the right of peoples to self-determination in the Non-Self-Governing Territories which they administer[89]. Abstaining states generally did not dispute the recognition of self-determination as a right but rather objected to the paragraph's limitation, which recognized as right holders only the peoples of Non-Self-Governing Territories [90]. Member states had widely acknowledged the fundamental right to self-determination by 1957. Any remaining conflicts of interpretation pertained mainly to the extent of the right beyond decolonization efforts. This perspective was echoed in Judge Robinson's separate opinion, in which he noted that between 1957 and 1960, when 18 countries (including Cyprus) gained independence, it was done by exercising their right that already existed in international law[91].

Proving that the right to self-determination became customary international law

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[86] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep, Written Statement of the Kingdom of the Netherlands (27 February 2018) para 3.6.
[87] Nasia Hadjigeorgiou, 'Decolonizing Cyprus 60 Years after Independence: An Assessment of the Legality of the Sovereign Base Areas' (2022) 33(4) *European Journal of International Law* 1125, 1128.
[88] UN Secretariat, *Repertory of Practice of UN Organs on Article 1(2) of the UN Charter* (1955–1959), Supp no 2, vol I, Arts 1(2), 41–42, 51–52.
[89] UNGA Res 1188 (XII) (11 December 1957).
[90] *Chagos Advisory Opinion* (supra n 5).
[91] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 17 (Separate Opinion of Judge Robinson).

prior to the adoption of Resolution 1514 is crucial for Cyprus to challenge the legality of the SBAs' creation. Although this argument is theoretically sound, identifying a specific moment of crystallization before 1960 is challenging. One viable alternative Cyprus might be able to propose is 11 December 1957. Resolution 1188 could be seen as a significant milestone, though it was not highlighted in the Chagos case. This lack of emphasis likely stemmed from the ICJ's focus on Resolution 1514, given the case's specific facts, which rendered other resolutions less relevant.

iii. Self-Determination as a Peremptory Norm

During the proceedings of the Chagos Advisory Opinion, a number of participating States, importantly, including Cyprus, recognized the peremptory nature of the right to self-determination in their written statements submitted to the Court[92]. Moreover, reflecting the opinion of the entirety of its member states, the written statement of the African Union claimed that "the right of peoples to self-determination – first expressed in the nineteenth century– is a cardinal principle in modern international law, regarded as jus cogens"[93]. Other participating States did not express an opinion regarding the normative status of the right to self-determination, although the dismissal of this question is not to say that they opposed it. Nevertheless, although the Court classified the right to self-determination as an obligation *erga omnes*, it did not weigh in on whether or not the right constituted a peremptory norm from which no derogation is allowed. The ICJ reconfirmed its rulings in the East Timor Case and the Wall Advisory Opinion that "respect for the right to self-determination is an obligation *erga omnes*" and that "all States have a legal interest in protecting that right"[94].

The cornerstone of the ICJ's findings in the Chagos Advisory Opinion was that the process of decolonization of Mauritius was not completed in accordance with the right of peoples to self-determination, and that "the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing

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[92] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep, Written Statement of the Republic of Cyprus (12 February 2018) 4, para 3.
[93] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep, Written Statement of the African Union (1 March 2018) para 69.
[94] *Chagos Advisory Opinion* (supra n 5) 180.

international responsibility of that State"[95]. The Court concluded that the United Kingdom had an obligation under international law to quickly end its administration of the Chagos Archipelago, and that "all Member States must co-operate with the United Nations to complete the decolonization of Mauritius"[96]. Although the Court was clear regarding the qualification of the right to self-determination as an *erga omnes* obligation, the term "peremptory norm" or "*jus cogens*" were not to be found in the Advisory Opinion. Nevertheless, Judges Trindade, Robinson, and Sebutinde in their separate opinions were disapproving of the ICJ's refusal to refer to the right to self-determination as a peremptory norm.

Judges Trindade and Robinson, in their joint declaration, publicized their belief that the Court should have placed a greater emphasis on the role of previous General Assembly resolutions in the consolidation of the right to self-determination unto that point. Additionally, since the question of *jus cogens* was prevalent during the proceedings, the ICJ should have provided some sort of clarification regarding the peremptory nature of the right of peoples to self-determination[97]. In the separate opinion of Judge Robinson, there is a detailed analysis of the *jus cogens* element present in the right to self-determination[98]. He concludes this analysis, finally, explicitly expressing his stance that "the Court's case-law, State practice and opinio juris, and scholarly writing are sufficient to warrant characterizing the right to self-determination as a norm of jus cogens"[99].

Judge Sebutinde in her separate opinion was not only regretful that the Court did not seize the opportunity to acknowledge the right to self-determination as a peremptory norm, but was also adamant in her argument that "[c]haracterizations of the right to self-determination as a peremptory norm stretch back many decades and are now far too common to ignore"[100]. Her view is surmised in claiming that the Court,

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[95] ibid 177.
[96] ibid 182.
[97] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Joint Declaration of Judges Cancado Trindade and Robinson) [2019] ICJ Rep 260.
[98] *Chagos Advisory Opinion* (Separate Opinion of Judge Robinson) (supra n 91).
[99] ibid para 50.
[100] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 17 (Separate Opinion of Judge Sebutinde).

> fails in the Opinion to recognize that the right to self-determination has evolved into a peremptory norm of international law (jus cogens), from which no derogation is permitted and the breach of which has consequences not just for the administering Power concerned, but also for all States.[101]

The recognition of the right to self-determination being owed *erga omnes* was echoed again by the Court in its 2024 Palestine Advisory Opinion[102]. The ICJ, however, went a step further and provided evidence that the principle has developed into a *jus cogens* rule. Citing its 2019 Chagos Advisory Opinion, it was echoed that the "right to self-determination is a fundamental human right"[103]. As a more in depth analysis was provided, the Court specified that it is a fundamental human right, and that "in the context of decolonization, the General Assembly has repeatedly emphasized the significance of the right to self-determination as an 'inalienable right'"[104]. Considering the analysis of the facts by the ICJ, it was explicitly stated in the ruling that "in cases of foreign occupation such as the present case, the right to self-determination constitutes a peremptory norm of international law"[105].

Obligations *erga omnes* and *jus cogens* norms both are reflective of the fundamental values of the international community; however the two principles are distinct in nature. To clarify this distinction, Judge Robinson explained that "while a *jus cogens* norm will always result in an obligation *erga omnes*, an *erga omnes* obligation will not always reflect a norm of *jus cogens*"[106]. In particular given this differentiation as well as the recognition from participating States, the Court ought to have analyzed whether or not the right to self-determination constitutes a peremptory norm. Due to the agreement among judges, scholars, and the overall sentiments of the international community, the ICJ missed a credible opportunity to provide such an analysis, and in light of the proceedings and the separate opinions that followed, the peremptory nature of the right to self-determination holds water, especially regarding cases of decolonization.

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[101] ibid para 25.
[102] *Legal Consequences of Israel in the Occupied Palestinian Territory* (supra n 70) 232.
[103] ibid 233.
[104] ibid.
[105] Ibid.
[106] *Chagos Advisory Opinion* (Separate Opinion of Judge Robinson) (supra n 91) para 77.

The VCLT is meant to account for existing peremptory norms of international law but more uniquely to envisage the emergence of new *jus cogens*. Should the international community accept a new rule as peremptory, the ILC is bound to consider the legal effects it would have on already existing treaties. Even treaties legally valid at the time of their signature are subject to compliance with new legal situations in instances involving *jus cogens*. This is encapsulated in Article 64 where "[i]f a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates"[107]. It is also a clarification of the traditional intertemporal law doctrine, providing that the "durability and stability of a time-honored legal title are outweighed by the present-day concept of indispensable fundamental legal rules and the overriding interest of the international community as a whole"[108].

With regards to the legal consequences, it is that the particular treaty, or treaty provision, becomes void and ceases to produce any legal effect following the formation of a normative conflict. Scholarship and jurisprudence regarding Article 64 and the intertemporal law doctrine, according to which all legal actions must be solely interpreted in light of the law contemporary to it. The more progressive understanding of the provision was showcased by the joint declaration of Judges Shi and Koroma in the 2007 Genocide case before the ICJ. It was emphasized that "in some respects the interpretation of a treaty's provision cannot be divorced from developments in the law subsequent to its adoption"[109].

Following the separate opinions from Judges Trindade, Sebutinde, and Robinson in the Chagos Advisory Opinion, it was evident that there was a missed opportunity to clarify the normative status of the right to self-determination. According to the latter two, the Court ought to have not only taken the opportunity but were adamant that the right to self-determination should have been elevated to a peremptory norm, particularly in the context of decolonization.

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[107] *Vienna Convention on the Law of Treaties* (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, art 64.
[108] Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (2nd edn, Springer 2018) 1122.
[109] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro)* (Joint Declaration of Judges Shi and Koroma) [2007] ICJ Rep 279, para 2.

Recent developments in international law have also signaled that the right of self-determination has acquired the status of a *jus cogens* norm. In 2022, the International Law Commission included in its non-exhaustive list of peremptory norms the right to self-determination[110]. Additionally, in the 2024 Palestine Advisory Opinion, the Court again emphasized the significant role of the right to self-determination in such cases, describing it as an "inalienable right" highlighted in previous UNGA resolutions[111]. Taking into consideration the developments of the recent ICJ advisory opinions, as well as the surrounding scholarship around them, there is ample evidence to suggest that the right to self-determination has become a *jus cogens* norm, at least in the context of decolonization. This would effectively nullify the provisions in the Treaty of Establishment which cede the territories to the UK for the creation of the SBAs.

4. Chagos Advisory Opinion: Conclusions Relevant to Cyprus

The UN General Assembly requested that the Court address two key questions in the Chagos Advisory Opinion[112]. The first question had to do with the process of decolonization that occurred in Mauritius following its independence in 1968. The matter of concern was whether the process of decolonization was completed in a lawful manner, particularly because the Chagos Archipelago had been retained as a colonial territory under the control of the UK and separate from the territory of Mauritius. Secondly, the Court was asked to determine what were the legal consequences of the UK's uninterrupted control over the Chagos Archipelago.

Addressing these issues required the Court to offer an explanation on the extent of the right to self-determination on the decolonization process of Mauritius. The ICJ articulated its explanation through four key points: the first point was that the right to self-determination had been crystalized as customary international law by December 1960[113]; second, that upholding the territorial integrity of a non-self-governing territory is

[110] International Law Commission, *Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens)* (2022) UN Doc A/77/10, Annex.
[111] *Legal Consequences of Israel in the Occupied Palestinian Territory* (supra n 70) 233.
[112] UNGA, 'Request for an Advisory Opinion of the International Court of Justice on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (22 June 2017) UN Doc A/71/PV.88.
[113] *Chagos Advisory Opinion* (supra n 5) 150.

essential for the proper exercise of the right to self-determination in accordance with international law[114]; third, the peoples of non-self-governing territories have the right to exercise self-determination over their territory as a whole, and any detachment of a part of that territory by the colonial or administering power is a violation of this right, unless it reflects the free and genuine will of the people[115]; and lastly, that in order to assess if such free and genuine will was expressed by the people, heightened scrutiny is required, particularly when a new colony is maintained from the a separated part of a non-self-governing territory[116].

a. Self-Determination as Customary International Law

The initial conclusion by the ICJ which found that by December 1960 the right to self-determination was already considered to be customary international law was grounded in the UN General Assembly Resolution 1514 (XV). The Resolution was adopted with 89 votes in favor, 9 abstentions, and none against. According to the Court, it was declaratory in nature, effectively signaling that the right to self-determination had already been established[117]. The ICJ further supported this conclusion by noting that 28 non-self-governing territories gained independence in the 1960s, a trend clearly linked to the adoption of Resolution 1514[118]. Additionally, the advisory opinion referenced earlier resolutions as well as the UN Charter itself, with the Court emphasizing their importance in evaluating the development of the right to self-determination, *opinio juris* and state practice had been confirmed and consolidated over time[119].

b. Self-Determination and Territorial Integrity

The second conclusion by the ICJ was that the right to self-determination encompasses the right to territorial integrity, and therefore extends to the entirety of a non-self-governing territory. This finding stemmed from Resolution 1514, which states in paragraph 6 that "[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and

[114] ibid 160.
[115] ibid 157-160.
[116] ibid 172.
[117] ibid 152.
[118] ibid 150.
[119] ibid 142.

principles of the Charter of the United Nations". The Court's finding implicitly repudiated the claim made by the UK that it was within the rights and authority of a colonial power to modify a colony's territory before its independence[120] and affirmed that the well-being of the colonized population should take precedence over any financial or military interests of the colonial power[121].

c. Free and Geuine Will of the People

The ICJ's third finding, also derived from Resolution 1514, indicated that for the right to self-determination to be fulfilled, its practice "must be the expression of the free and genuine will of the people concerned"[122]. The Court went on to explain that at the time of negotiations during which the Council of Ministers agreed to the detachment of the Chagos Archipelago, Mauritius was a colony under the control and authority of the UK. Taking the Constitution of Mauritius, which was in force at the time, the representatives of the people had no power to take real legislative or executive actions; "that authority [was] nearly all concentrated in the hands of the United Kingdom Government and its representatives"[123]. It was not possible to consider this a legal international agreement given that Mauritius was seen "agreeing" to cede a territory to the UK which was under the authority of the latter. The conclusion therefore was that the Lancaster Agreement in which the Council of Ministers agreed to the detachment of the Chagos Archipelago, the detachment was not based on the free and genuine will of the Mauritian people[124].

d. Heightened Scrutiny Test

Having understood the critical role that consent has in fulfilling the decolonization process, the ICJ arrived at its fourth conclusion in the Chagos Advisory Opinion. In this part, it was explained "heightened scrutiny" was required to determine if

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[120] United Kingdom of Great Britain and Northern Ireland, 'Written Comments on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (International Court of Justice, 2018) 4.44.
[121] Stephen McCorquodale, Matthew Robinson, and Rebecca Peart, 'Territorial Integrity and Consent in the Chagos Advisory Opinion' (2020) 69 *International and Comparative Law Quarterly* 221, 227.
[122] *Chagos Advisory Opinion* (supra n 5) 157.
[123] UNGA, 'Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States' (1964-1965) UN Doc A/5800/Rev.1, 352, para 154.
[124] *Chagos Advisory Opinion* (supra n 5) 172

the detachment of a portion of a non-self-governing territory to form a new colony was completed with the free will of the people[125]. The Court, however, did not specify the precise conditions that trigger this heightened scrutiny. It could be inferred from previous remarks that simply the presence of a dependency relationship between the two parties could require heightened scrutiny. It was implied as such in the Advisory Opinion, which bluntly explained that

> it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter.[126]

This perspective was nevertheless not unanimous among the judges. In her separate opinion, Judge Julia Sebutinde, argued that the people's free and genuine will was not necessarily compromised by the colonial status of Mauritius in and of itself[127]. Instead, she suggested that the need for heightened security was warranted because the UK had already made administrative and legal decisions regarding the separation of the Chagos Archipelago having not consulted with Mauritius.

The ICJ's invocation of the heightened scrutiny test in the Chagos Advisory Opinion clearly contemplated a broader set of circumstances that could compromise consent. The two tests set forward differ in their foundational principles. One based on the VCLT for agreements between states and the other developed by the ICJ in the Chagos Advisory Opinion[128]. Treaties operate within the framework of the principle of *pacta sunt servanda*; meaning that participating states are assumed to be equal and sovereign parties. However, agreements between a state and a non-self-governing territory, often related to the independence of the latter, the guiding principle is not neutral. Rather, the aim is centered on accomplishing complete decolonization. As a result, the determination of whether the heightened scrutiny test is met cannot rely solely on procedural standards. Instead, it requires a thorough evaluation of the circumstances

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[125] ibid 172

[126] ibid 142.

[127] *Chagos Advisory Opinion* (Separate Opinion of Judge Sebutinde) (supra n 100).

[128] Fajdiga et al., 'Heightened Scrutiny of Colonial Consent According to the Chagos Advisory Opinion: Pandora's Box Reopened?' in Thomas Burri and Jean Trinidad (eds), *The International Court of Justice and Decolonization: New Directions from the Chagos Advisory Opinion* (Cambridge University Press 2021) 207, 209.

which, taken separately or cumulatively, may impede the free and genuine consent of a colony[129].

e. Separate Opinions of Judges Gaja and Robinson

Judge Patrick Robinson held a different view, believing that the atmosphere of intimidation and coercion present during the meeting between the British Prime Minister and the Mauritian Premier undermined the possibility of obtaining free consent. Additionally, the Court's recounting of events suggests that the need for heightened scrutiny could have been triggered by the UK's use of the promise of full independence as leverage to convince the Mauritian premier to consent to the separation of Chagos[130]. Ultimately, the rationale for the Court's adoption of this heightened scrutiny test is reflected in the separate opinion of Judge Giorgio Gaja in which he explains that an administering state has an obligation to the peoples of the Non-Self-Governing Territory to promote its best interests and well-being[131]. Engaging in actions such as separating a territory to create a new colony, establishing a military base, or displacing the native population contradicts this responsibility. If the legality for these actions depends on the consent of the population, it becomes crucial to verify -and thus scrutinize critically- whether that consent was indeed freely given.

f. Connecting the Advisory Opinion to the Case of Cyprus

The following section examines the application of the legal principles from the Chagos case to the establishment of the SBAs in Cyprus. A comparison is warranted because, in both instances, a British military base, which still exists today, was established by separating a portion of a colony prior to its independence. However, it is important to recognize that there are notable differences in how these separations occurred. These distinctions suggest that, while the Republic of Cyprus may face greater challenges than Mauritius in contesting the legality of its territorial separation, it is not an impossible task. This section highlights four key differences.

Firstly, while Mauritius gained independence in 1968, when the right to self-

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[129] ibid 220.

[130] *Chagos Advisory Opinion* (Separate Opinion of Judge Robinson) (supra n 91) 94-112.

[131] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (Advisory Opinion) [2019] ICJ Rep 1 (Separate Opinion of Judge Gaja).

determination was largely accepted, the Republic of Cyprus was established four months before the adoption of Resolution 1514, in August 1960. Secondly, the separation of Chagos from Mauritius happened without consulting the local population, whereas the creation of the SBAs followed extensive negotiations which were also followed by a general election. Thirdly, Mauritians consented to the detachment of Chagos and negotiated their independence without third-party support, meanwhile for the RoC, Greece and Turkey played an active role in the negotiations surrounding its independence and the establishment of the SBAs. Lastly, the UK's adoption of Appendix O ensures that Cypriot residents within the territories of the SBAs are subject to laws that resemble those of the RoC. Not only is there no similar legislation applicable to the Chagos Archipelago, but the process of its department involved the displacement of approximately 2,000 Chagossians, a situation not paralleled in Cyprus[132].

i. The Establishment of the SBAs in Light of Resolution 1514

Resolution 1514 and the principle of *uti possidetis* establish a presumption that a newly independent state's borders shall mirror those of the former colonial land. This is not to say, however, that there is an inherent legal issue with a state transferring part of its territory for any given purpose. A state still retains the right to alter its borders and transfer parts of its territory to a third state or even a former colonial power. The rationale being that the legal authority to make such changes to the territory rests in the state's ability to exercise its right to self-determination. However, this assumes that the newly established state acted voluntarily in deciding to alter its borders. If negotiations leading to this decision occurred while the state was still a colony, it is essential to apply the heightened scrutiny test to determine whether the decision truly reflected the peoples' free and genuine will.

ii. Cypriot Consent to the Establishment of the SBAs

This perspective highlights another key difference between the case of Cyprus and that of Mauritius. Unlike the separation of the Chagos archipelago, which occurred without a referendum or general election, the establishment of the SBAs had some degree of implied endorsement in Cyprus. First, the Treaty of Establishment was signed by

[132] *Chagos Islanders v United Kingdom* App no 35622/04 (ECtHR, 11 December 2012) 1.

representatives from both the Greek Cypriot and Turkish Cypriot communities. Second, the claim could be made that when the Cypriot electorate voted in the country's inaugural democratic elections (which took place about 10 months after the treaty was signed, and eight months before independence) there was indirect support for the establishment of the SBAs.

This suggests that while Mauritius could relatively easily argue that the separation of Chagos did not reflect the free and genuine will of its people, proving the same for Cyprus would be more challenging. However, despite the endorsement of Cypriot representatives and the general elections, a detailed analysis reveals there is no convincing evidence of the free and genuine will of the people required by the heightened security test. The creation of the SBAs was never seriously debated, as the UK had already tied the independence of the RoC to the retention of territory for military purposes from the beginning. The UK's assertiveness and regular announcements about establishing military bases in Cyprus, even before gaining Cypriot consent, are noteworthy. This was showcased on 26 July 1957, where communications from the UK to the United States revealed:

> Her Majesty's Government have not made up their minds for or against any particular solution. It must be understood, however, that they could not regard any solution as acceptable which did not - (i) allow them to retain their minimum essential military facilities under British sovereignty.[133]

This document also specifically referenced Akrotiri and Dhekelia as the initial sites under consideration for these military facilities.

In February 1958, during discussions between the Greek, Turkish, and British governments about the "Cyprus problem", the UK Secretary of State for Foreign Affairs reported to the Cabinet that he had made it clear that Britain would retain British bases under its sovereignty on the island, a position that both the Greek and the Turkish Ministers accepted. The report also indicated that while the UK government had acknowledged that it recognized the right to self-determination and its willingness to settle the Cyprus issue, it set the retention of bases necessary to meet the defensive and

[133] 'Cabinet Paper: Cyprus: Note by the Prime Minister' (TOP SECRET, C. (57) 178, 26 July 1957) 2.

strategic requirements of the British military as a fundamental condition for any kind of settlement[134]. When the foreign ministers of Greece and Turkey presented the Zurich Agreement in London in February 1959, they explicitly acknowledged they were prepared to fully concede the British requirements for the establishment of military bases within territories under British control[135]. There was even a memorandum by the British Minister of Defense a year after the signing of the Treaty of Establishment which explicitly reiterated that a critical condition of the London Agreements, and the subsequent Treaty of Establishment, was that the UK retain two areas to use as military bases under their full sovereignty[136]. This evidence suggests that the Cypriot representatives did not sign the Treaty in accordance with their own free and genuine will, as it was under the condition that territory be ceded for the creation of the SBAs[137].

Furthermore, none of the candidates contested the provisions of the Treaty of Establishment at that tim e[138]. The Communist Party, which had considerable support among the Greek Cypriot population, had members who were willing to accept the Treaty of Establishment temporarily, and even others who sought to outright overturn it[139]. However, there was a ban on the Communist Party, preventing it from participating in elections. This ban was lifted only seven days ahead of the elections, on 4 December 1959.

Consequently, those opposing the establishment of the SBAs effectively had no candidate to support in the elections. Newspapers from the lead up to the general elections indicate that there was considerable opposition among the electorate to the formation of the SBAs. One example came from Cypriot newspaper *Charavgi*, which published a list of 15 reasons not to vote for Archbishop Makarios on the day of the general elections. The first reason listed was "BECAUSE he signed without the will and

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[134] 'Cabinet Paper: Cyprus: Memorandum by the Secretary of State for Foreign Affairs' (SECRET, C (58) 43, 17 February 1958).
[135] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, S.W.1, on Thursday, 12 February 1959, at 11:15 a.m.' (Secret, CC (59) 7th Conclusions, 12 February 1959) 1.
[136] 'Cabinet Paper: Cyprus: Memorandum by Minister of Defence' (Secret, C. (60) 44, 7 March 1960) 1.
[137] Faustmann, 'Independence Postponed' (supra n 30) 110–113.
[138] ibid.
[139] ibid 103.

approval of the people the ignominious Zurich-London Agreements"[140].

Lastly, it is important to highlight that the general elections occurred on 13 December 1959, while negotiations in the aftermath of the Zurich-London Agreements extended until July 1960. During this seven month span, key decisions regarding the future and governance of the SBAs were made. These discussions revolved around the total expanse of the SBAs[141], the legal effects of Appendix O, and the steps to be followed should the SBAs no longer be needed by the UK[142]. In January 1960, the negotiations became so contentious that the Undersecretary of State for the Colonies, Julian Amery, was forced to organize a subsequent conference in London involving representatives from the UK, Greece, Turkey, and Cyprus to address the disputes[143]. In April 1960, the British Cabinet directed Amery to schedule an informal meeting with Archbishop Makarios. Amery was tasked with ensuring that Makarios understood that if he did not accept the proposal regarding the size of the SBAs, the UK would end negotiations and consult with the Greek and Turkish Governments to examine other means of settling the 'Cyprus problem'[144]. The fact that the UK felt it was in a position to apply such pressure on Archbishop, especially 4 months following the elections, indicates that the detachment of territories for the establishment of the SBAs was not an outcome of a voluntary and equal negotiating dynamic between the relevant parties. Therefore, although it may seem at first that the negotiations were expressive of the free will of the Cypriot people, and that the consent for the separation of the SBAs was given voluntarily, the reality suggests a more complex situation. The case may not be as clear-cut as the one presented by Mauritius in the case of Chagos, but there is enough evidence to deem that the detachment of the territories was not entirely voluntary and in accordance with the heightened scrutiny test.

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[140] *Charavgi* (Cyprus, 13 December 1959).

[141] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, SW1, on Tuesday, 9 February 1960, at 10:30 a.m.' (Secret, C.C. (60) 6th Conclusions, 9 February 1960) 1.

[142] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, SW1, on Tuesday, 8 March 1960, at 11 a.m.' (Secret, C.C. (60) 15th Conclusions, 8 March 1960) 2.

[143] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, SW1, on Monday, 18 January 1960, at 5 p.m.' (Secret, C.C. (60) 2nd Conclusions, 18 January 1960) 1.

[144] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, SW1, on Tuesday, 5 April 1960, at 10:15 a.m.' (Secret, C.C. (60) 24th Conclusions, 5 April 1960) 2.

iii. Third Parties' Involvement in the Negotiations: Greece and Turkey

Greece and Turkey's involvement in the negotiations for the independence of Cyprus could be viewed as a key distinction between the case of Akrotiri and Dhekelia and the detachment of Chagos. While independence typically resulted from negotiations between the colonizers and the colonized, there is a possibility that third states could also represent the interests of the colonized. Greek and Turkish representatives acted in this role during the discussions in Zurich and London. Unlike Mauritius, which faced the UK alone, Cyprus had the backing of two powerful states that were significant British allies. However, a closer look at the facts indicates that instead of supporting the interests of Cyprus, the involvement of Greek and Turkish diplomats led to Cypriots being excluded from negotiations, only to have to endorse the Treaty of Establishment without meaningful participation.

Negotiations for the Treaty of Establishment took place first in Zurich from 5 to 11 February 1959, then in London from 16 to 19 February 1959, and continued through follow-up committees up until July 1960[145]. The Zurich negotiations were conducted exclusively between the Greek and Turkish delegations, without any Cypriot involvement. Only once the British approved the Zurich Agreement, which was contingent upon the UK's condition that they retain territories under their sovereignty in the form of military bases, were the Cypriot representatives invited to the negotiations in London[146]. This delay was not accidental, but rather a deliberate strategy aimed at reducing the leverage in the negotiations of the Cypriot representatives. As a report to the UK Cabinet most bluntly accounted on 12 February 1959:

> It would be preferable that definitive heads of agreement between the three Governments [the UK, Greece and Turkey] should have been initiated before the discussions were widened to include the representatives of local Cypriot communities, who might otherwise endeavour to bring pressure to bear on the [UK] Government to modify the substance of the proposals.[147]

Another clear indication that Greek Cypriots were unaware of the negotiations

[145] 'Cyprus' (Cmnd 1093, July 1960) Part I, Presented to Parliament by the Secretary of State for the Colonies, the Secretary of State for Foreign Affairs, and the Minister of Defence by Command of Her Majesty.
[146] 'Conclusions of a Meeting of the Cabinet' (supra n 27) 1.
[147] 'Conclusions of a Meeting of the Cabinet' (supra n 135) 1.

conducted in their absence is that, when Archbishop Makarios and his advisors reviewed the Zurich Agreement for the first time on 16 February 1959, they rejected it by a vote of 25 to 2[148]. When Archbishop Makarios attempted to question certain aspects of the agreement made in Zurich -though these did not include anything regarding the SBAs[149]- he was informed that those agreements were final and non-negotiable[150]. The objective of the London Conference was to build upon the Zurich Agreements[151], and any refusal to accept the already agreed upon terms meant that the negotiations for independence would be halted[152]. Despite Makarios' protests about the process and the exclusion of Cypriots from the negotiating table, his objections were dismissed[153]. Although Makarios generally worked closely with the Greek government, this was not the only time he had objected Greece representing Greek Cypriots. Reports from 1955 show Makarios arguing that the solution to the question of Cyprus' independence is not an issue of political nature, to be resolved between British, Greek, and Turkish diplomats, but an issue of self-determination which should concern only the Cypriot people and the British government[154].

17 February 1959, in a meeting between the Greek Prime Minister and the British Cabinet, the Greek PM received unanimous authorization to bypass Archbishop and sign the agreements, even if the Archbishop continued to reject them[155]. This led to a series of questioning by Makarios, signaling his continued opposition to the involvement of the third states was voiced by the Archbishop even throughout the negotiating process. The next day, at the plenary session of the Cyprus Conference in London, Makarios stated:

> [T]here appeared to be a misunderstanding. He [the Greek PM] was being represented as rejecting the Zurich Agreements. But the Conference had surely

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[148] Makarios Drousiotis, '50 Years since the Signing of the Zurich-London Agreements: Five Seconds that Decided Cyprus' Future' (*Cyprus Mail*, 22 February 2009) https://www.makarios.eu/cgibin/hweb?-A=3285&-V=english accessed 5 June 2024.
[149] ibid.
[150] ibid.
[151] *Summary Record of the Second Plenary Session of the Cyprus Conference Held at Lancaster House, 7 p.m., 18 February 1959*.
[152] 'Conclusions of a Meeting of the Cabinet' (supra n 144) 2.
[153] ibid.
[154] Anthony Eden, *Full Circle: The Memoirs of the Rt. Hon. Sir Anthony Eden* (1960) 399–400.
[155] Dimitrios S Bitsios, *Cyprus: The Vulnerable Republic* (1974) 102–104.

> been called so that he could express his views, not so that he should be presented with a *fait accompli*. Was it forbidden to discuss detailed points in the Zurich Agreements? Must everything which had been agreed between the Three governments be accepted word for word, without any discussion or amendments?[156]

In response to the Archbishop's remarks, the Turkish foreign minister asserted that the Archbishop was false in assuming that the Zurich Agreements provided a starting point which could be taken and further negotiated[157]. The Treaty of Establishment was signed just a day after this exchange. Therefore, while the involvement of Greek and Turkish delegations might initially indicate that Cyprus' right to self-determination was better safeguarded compared to Mauritius, a detailed examination reveals that the situation was quite the contrary.

iv. Vienna Convention on the Law of Treaties: Articles 51 & 52

According to Articles 51 and 52 of the 1969 Vienna Convention on the Law of Treaties (VCLT), an international agreement is considered invalid if a state's representative was coerced into signing it, or if the state itself was threatened or subject to the use of force[158] respectively.

The primary focus of Article 51 is to protect the freedom of consent. Through the coercion of the representative, they effectively function as an instrument of the coercing state, and no longer express the genuine will of the represented State. Although the Article does not provide a conclusive definition of coercion, it could be inferred through the wording in the Convention as well as general principles of law. Coercion can be understood to be:

> [T]he procurement of consent through acts or threats, which induce such fear in the representative, that he or she feels compelled to express the represented State's consent to be bound by the treaty in a manner which he or she would not have done without such compulsion.[159]

Given that the subject of Article 51 is the coerced representative, it is required that

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[156] *Summary Record of the Second Plenary Session* (supra n 151).
[157] ibid.
[158] *Vienna Convention on the Law of Treaties* (supra n 107)
[159] Dörr and Schmalenbach (supra n 108) 862.

the coercive act or threat be aimed at the representative's private capacity and not his or her official function as an agent of his or her State. Such acts or threats must have an effect on the representative's life, physical well-being, or professional or personal reputation. In accordance with Article 44 of the VCLT, even if the coercion of the representative is relative to a specific clause of the treaty, a violation of Article 51 would lead to the invalidation of the treaty as a whole[160]. The principle enshrined in the article is also a reflection of customary international law. This is based on state practice prior to the adoption of the Convention, as well as the broad support the provision received at both Vienna Conferences[161].

The applicability of Article 51 to the case of Cyprus and the Treaty of Establishment with the UK would be in relation to the negotiations of Archbishop Makarios and Dr. Fazil Kutchuk on behalf of the RoC. The coercion displayed by the representatives of the UK, but also carried out by the Greek and Turkish delegates, directly forced the Cypriots to sign the Treaty through explicit and implicit threats to their personal spheres. The threat at hand was that by not agreeing to the ceding of territory for the SBAs, or by going against the closed negotiations between the Guarantee Powers (the UK, Greece, and Turkey), there would not be independence for the island of Cyprus. The pressure felt by Makarios and Kutchuk, much like any Cypriot at the time, was to accept the given terms or remain under the colonial rule of the UK. While this may not be enough of an effect on the Cypriot representatives' personal well-being, and therefore not be covered by Article 51, it is their reputation that is the subject of the threat. Having ascended as the representatives of Greek and Turkish Cypriots, not only in the light of independence efforts but also boiling intra-national conflict, the reputations of Makarios and Kutchuk were very much on the line. Failing to secure independence would be damaging to the professional and personal image of the delegates, particularly among their national community within the island which they were chosen to represent.

As opposed to Article 51, Article 52 is centered on one State coercing another through the threat or use of force, based on its prohibition found in Article 2 paragraph 4 of the UN Charter. It does not procure the invalidation of a treaty as a result of unlawful

[160] ibid 867.
[161] ibid 868.

hostilities, rather, the aggressor State is "prevented from lawfully harvesting the fruits of his unlawful conduct prohibited by Art 2 para 4 UN Charter"[162]. The threat or use of force covered here is addressed to a state organ or a state representative in his or her official capacity. Such treaties are often seen being the result of geopolitical occurrences such as colonialism, hegemony, or imperialism.

The limitations of the Article can be applied to any aspect of the treaty making process, from the adoption of the treaty text to its entry into force. The provision aims at protecting the principle of free consent and ensuring that the coercing State is unable to gain contractual advantage through its unlawful threat or use of force. According to Sadurska, a threat of force can be understood as a "message, explicit or implicit, formulated by a decision maker and directed to the target audience, indicating that force will be used if a rule or demand is not complied with"[163]. Moreover, the protection that Article 52 establishes for coerced States does not fade with the passage of time, as the forced State reserves the right to invoke the nullity of the treaty because of the threat or use of force at any time. Even the execution of the treaty is of no legal significance, so long as the threat or use of force remains present and prevents the exercise of free will of the coerced State[164]. Given that the foundation of Article 52 is the universally recognized prohibition against the threat or use of force in Article 2 paragraph 4 of the UN Charter, the customary nature of the provision is not challenged. This was also confirmed through international jurisprudence in the ICJ Fisheries Jurisdiction Case[165].

Lastly, the Convention's non-retroactivity is established in Article 4. Therefore if the threat or use of force procures the conclusion of a treaty prior to the Convention entering into force in 1980, Article 52 is not applicable. However, the provision's customary equivalent from the UN Charter would invalidate a forced treaty if it had been concluded after the Charter entered into force in 1945.

This is particularly relevant for the case at hand regarding Cyprus and the Treaty of Establishment, which finds itself having been concluded in 1960; therefore being

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[162] ibid 872.
[163] Rita Sadurska, 'Threats of Force' (1988) 82 *American Journal of International Law* 239, 364.
[164] Dörr and Schmalenbach (supra n 108) 889-890.
[165] *Fisheries Jurisdiction (United Kingdom v Iceland) (Jurisdiction)* [1973] ICJ Rep 3, para 24.

covered by the provisions of the Charter, and subsequently by Article 52[166]. With regards to applying the content of the provision to the case of Cyprus and the signing of the Treaty of Establishment, it would be necessary to display that the coercive methods of the UK against Cyprus amounted to the threat or use of force. During the negotiations, the UK was explicit in making independence conditional on the retention of military bases on the Island, and that the Cypriots were to accept the terms as given to them from the Guarantee Powers following the Zurich and London Agreements. Therefore it was a choice between agreeing or remaining under colonial rule. It has come to be understood that the practice of colonialism is in violation of the prohibition of the use of force. To threaten that in order for a new State to be freed from its colonial occupation it must agree to a set of terms, in a take it or leave it fashion, fully undermines the principle of free consent.

5. Challenges to the Case of Cyprus

Even if it were found that the establishment of the SBAs violated the right to self-determination, the Republic of Cyprus may be hindered from challenging their legality at this point in time due to its actions since 1960. Over the past 64 years, Cyprus has refrained from contesting the legal status of the SBAs in any international forums, has signed agreements with the UK to ensure the effective operation of the territories, and has cooperated with and supported the SBA administration. Consequently, the UK might contend that, even if the RoC did not willingly agree to the SBAs' establishment during the negotiations in 1959 or 1960, its subsequent behavior should be considered as implied consent after the fact and prevent it from challenging their legal status in 2024. The following section examines the four criteria necessary for a successful estoppel defense, as established in the Chagos Marine Protection Area Arbitration Award by the Arbitral Tribunal. While it may appear that the UK has a solid basis to argue that the RoC cannot challenge the legal status of the SBAs, the matter is much more nuanced than it initially seems.

International arbitration has applied estoppel since the nineteenth century. Specifically, the ICJ has referenced the doctrine, or has had it addressed in the

[166] Dörr and Schmalenbach (supra n 108) 894.

submissions to the Court from participants in over 30 cases [167]. However, the Court has generally taken a cautious approach when hearing arguments of alleged estoppel, and applies a high threshold[168]. Scholars argue that claims relying on this doctrine require a higher evidentiary threshold compared to other defenses before international courts and tribunals[169]. Although there has been some debate regarding the requirements for a successful estoppel defense[170], the Arbitral Tribunal established four conditions that provide an accurate reflection of the current practice of the law[171].

An estoppel defense would be the United Kingdom's expected arguments to a formal challenge of the SBAs by Cyprus. However, even if such a challenge was successful, there would be challenges faced regarding the enforceability of a ruling on the UK, and successfully removing British bases from the island. This assumption is evident on the response of the United Kingdom in the aftermath of the Chagos Advisory Opinion. British policy, combined with its official stance in opposition to the UN General Assembly, are indicative of the difficulties present in enforcing a ruling of decolonization. After more than five years since the Court's Advisory Opinion, no agreement has been reached; although recent announcements have been made that negotiations have resumed and a treaty for the transfer of sovereignty of the Chagos Archipelago to Mauritius should be expected soon.

a. Cypriot State Practice in the Aftermath of the Treaty of Establishment

The two first components for a valid estoppel defense require that "a state [in the case at hand, Cyprus] has made clear and consistent representations by word, conduct, or silence" and that "such representations were made through an agent authorized to speak for the State with respect to the matter in question"[172]. It is evident that various statements made by Cypriot officials could suggest an acknowledgment of the SBAs'

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[167] Yilin Kaijun, 'A Re-Examination of Estoppel in International Jurisprudence' (2017) 16 *Chinese Journal of International Law* 751, 752.
[168] Ian Sinclair, 'Estoppel and Acquiescence' in Vaughan Lowe and Malgosia Fitzmaurice (eds), *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings* (CUP 1996) 104, 116.
[169] Andreas Kulick, 'About the Order of Cart and Horse, among Other Things: Estoppel in the Jurisprudence of Investment Arbitration Tribunals' (2016) 28 *European Journal of International Law* 107, 124–125.
[170] ibid.
[171] Kaijun, 'A Re-Examination of Estoppel' (supra n 167) 752.
[172] *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* [2015] PCA 18 March.

legality. For example, after the rare incident of unrest in Akrotiri against the SBA authorities, stemming from a 2001 decision to construct high-frequency antennas close to residential areas, then-President Glafkos Clerides firmly stated that the Government has had no intention to formally question the legality of the SBAs[173]. Moreover, by entering into agreements with the UK aimed at addressing issues not initially anticipated by the Treaty of Establishment, Cyprus has in a way inadvertently affirmed the legal status of the SBAs in a highly definitive manner.

For Example, the two governments have entered into a memorandum of understanding allowing individuals rescued by SBA vessels within the Areas' territorial sea to seek asylum within the Republic of Cyprus[174]. Additionally, in 2014 the UK and the RoC negotiated and adopted the Non-Military Development Agreement (2014 Agreement). While the accord was reached in 2014, it took 8 years of complex negotiations for the new measures to take effect. The agreement enabled property owners in the SBAs to submit planning applications to develop properties just as they are able to anywhere else on the island, whereas previously there were tight controls on non-military development in these territories[175]. The agreement's preamble referred to the *Exchange of Notes Concerning the Administration of the SBA* (Appendix O) and highlighted "the strong wish of the Governments to work closely together"[176]. In 2022, the agreement between the UK and the Republic of Cyprus was dubbed as being "another step out of the shadow of [Cyprus'] colonial past"[177].

A more notable piece of international agreement is Cyprus' Act of Accession to the European Union, and specifically Protocol no. 3. This stipulated that the SBAs would remain outside the EU but would become a member of the European Customs Territory so that they would be able to adhere to the Treaty of Establishment and prevent the

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[173] R Clogg, 'The Sovereign Base Areas: Colonialism Redivivus?' (2015) 39 *Byzantine and Modern Greek Studies* 138, 148.
[174] Memorandum of Understanding Relating to Illegal Migrants and Asylum Seekers (20 February 2003) 10.
[175] Helena Smith, 'Deal Allows Cyprus to Develop Land in British Sovereign Base Areas' (*The Guardian*, 9 May 2022) https://www.theguardian.com/world/2022/may/09/deal-allows-cyprus-to-develop-land-in-british-sovereign-base-areas accessed 20 July 2024.
[176] *Declaration Regarding the Administration of the Sovereign Base Areas* (supra n 36).
[177] ibid.

formation of any forms of border controls between the SBAs and the Republic[178]. In its preamble, Protocol no. 3 affirmed the legitimacy of the SBAs by stating that "the accession of the Republic of Cyprus to the European Union should not affect the rights and obligations of the parties to the Treaty of Establishment"[179]. In the aftermath of Brexit, the Protocol to the Withdrawal Agreement replaced Protocol no. 3, effectively preserving the existing arrangement present in the SBAs[180].

In contrast to the situation in 1959 and 1960, when the Republic of Cyprus was on the brink of gaining its independence, their subsequent entry into international agreements was undoubtedly done voluntarily as a sovereign state. Throughout the negotiations leading to these agreements, Cyprus did not utilize the opportunity to directly question the legal status of the SBAs or raise any concerns about it. This approach starkly contrasts with Mauritius' stance on the Chagos Archipelago, which started challenging the legal status of its separation as early as 1980[181].

b. The Effects of Cypriot Practice on the UK

In accordance with the third criterion established by the Arbitral Tribunal, "the State invoking estoppel [presently, the UK] was induced by such representations to act to its detriment, to suffer prejudice or to convey a benefit upon the representing State"[182]. The condition is comprised of two distinct requirements[183]. The first being that representations prompted a change in the conduct of the UK relative to the SBAs. This was further clarified in the ICJ's decision in Pedra Banca/Pulau Batu Puteh, which explained that in order to rely on the defense of estoppel, the party must prove, *inter alia*, that it has taken distinct actions directly because of the opposite party's statement[184].

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[178] Act Concerning the Conditions of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia and the Adjustments to the Treaties on which the European Union is Founded (Protocol no 3) [2003] OJ L236/940.

[179] ibid.

[180] Protocol Relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, attached to the 2019 Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [2019] OJ C384 I/1.

[181] *Chagos Advisory Opinion* (supra n 5) 46.

[182] *Chagos Marine Protected Area Arbitration* (supra n 172) 438.

[183] Kaijun, 'A Re-Examination of Estoppel' (supra n 167) 768.

[184] *Sovereignty over Pedra Branca/Pulau Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, 23 May 2008, [2008] ICJ Rep 228.

However, it remains unclear what specific actions the UK has taken. The UK created the SBAs in 1960 and has maintained its administration continuously since then. There are no particular actions linked directly to any specific representations made by the Republic of Cyprus that the UK could highlight.

The second requirement is that the UK must have been negatively affected in some way because of the RoC's representations[185]. However, the UK has not suffered any detriment from Cypriot statements. Quite the opposite, the goals of the agreements and memoranda agreed between the Republic of Cyprus and the UK have been to facilitate the effective operation of the SBAs (a duty legally assigned to the UK), typically by assigning certain obligations to Cyprus.

Additionally, the Treaty of Establishment does not include provisions for reimbursing the Republic of Cyprus for the monetary costs of assisting the SBA administration. Despite this, the UK agreed to provide an annual grant, with its amount subject to renegotiation every five years[186]. The absence of a sunset clause for this grant payment, similar to the lack of a termination clause for retaining the territory of the SBAs, indicated a connection between the two; hence, while not explicitly stated, the Treaty of Establishment implies compensation for maintaining the Areas. The UK has acknowledged that the grant was initially understood to be a compensation for the retention of the SBAs, though this was not admitted to the Cypriots at the time[187]. While the UK fulfilled the £12 payment due before 1965, it has not negotiated or paid any additional amounts under this grant since then. The issue of the UK's non-compliance with its financial commitments has been highlighted by the House of Representatives in each of the four resolutions, in interviews of the Speaker with the Parliamentary Assembly's special rapporteur, in direct communication with the UK, which has persistently refused to make additional payments[188]. Consequently, it is evident that the

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[185] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria)*, Preliminary Objections, Judgment of 11 June 1998, [1998] ICJ Rep 57.

[186] *Financial Assistance to the Republic of Cyprus: Exchange of Notes between the Representative of the United Kingdom Authorised to Sign the Treaty of Establishment and Archbishop Makarios and Dr Kutchuk* (16 August 1960) at A(c).

[187] *Foreign and Commonwealth Office 46/1017, Importance of Military Facilities in Cyprus to the UK: Note by the Foreign and Commonwealth Office*, Doc WSC6/548/4, 6 September 1973.

[188] Andreas Constandinos, 'Britain, America and the Sovereign Base Areas from 1960–1978' (2009) 21 *Cyprus Review* 13, 22–25.

UK has not only failed to sugar detriment from the RoC's statements and actions but has actually benefited from them over the years.

c. Cyprus' Accommodating Stance

The Arbitral Tribunal's final criterion requires that the state's reliance on the representation be "legitimate", meaning that it must be a statement which the State had a rightful expectation to depend upon[189]. Pan Kaijun comments that, while this requirement is not novel, it confirms that if one state makes "clear and consistent representations" it is difficult to see why the other state cannot justifiably rely on them[190]. Cyprus presents a case that highlights this difficulty. After the outbreak of inter-communal violence in 1963 and the subsequent removal of Turkish Cypriots from government, the Republic of Cyprus has consistently negotiated with Turkey, Turkish Cypriots, or both, aiming to resolve the Cyprus issue. For these negotiations to succeed, which might lead to amending, or even ending the Treaty of Establishment, the consent of Greece, Turkey, and the UK is required. Cyprus has been transparent about its reliance on the UK to achieve a fair resolution to the Cyprus problem, necessitating good relations with the UK. For example, President Glafkos Clerides, after publicly affirming the RoC's support for the SBAs' ongoing presence, candidly stated that the Republic of Cyprus is not in a position to launch new legal or diplomatic disputes[191]. He further explained that it is of greater concern to focus on the issue of the Turkish occupation in the northern part of the island, and on the process of accession to the European Union[192].

The UK Government has effectively understood and leveraged the political dynamics surrounding the RoC's view and response to the SBAs. In May 1971, UK Prime Minister Edward Heath remarked that, although the unresolved Cyprus issue posed certain financial burdens and political disadvantages, it was not significantly harmful to the UK's interests[193]. This perspective had been expressed more directly a few months

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[189] *Chagos Marine Protected Area Arbitration* (supra n 172) 438.
[190] Kaijun, 'A Re-Examination of Estoppel' (supra n 167) 772.
[191] Christos Kyriakides, 'Britain in Cyprus: Colonialism and Post-Colonialism: 1878–2006' in Hubert Faustmann and Nicos Peristianis (eds), *Britain in Cyprus: Colonialism and Post-Colonialism, 1878–2006* (Mannheim Mateo 2006) 511, 519.
[192] ibid.
[193] Constandinos, 'Britain, America and the Sovereign Base Areas' (supra n 188) 19.

earlier when Julian Amery, the British Minister for Public Works, wrote to Defence Secretary Lord Carrington, asserting that there should likely be little concern regarding the retention of territories and operation of the SBAs so long as the inter-communal tensions between Greeks and Turks continue[194].

The ongoing political situation on the island alone does not justify dismissing any estoppel claims made by the UK. However, there are reasons to question whether the UK can legitimately depend on the RoC's cooperative attitude towards the SBAs. In February 1964, shortly after the outbreak of inter-communal violence, Spyros Kyprianou, then Cyprus' Minister of Foreign Affairs and later its President, argued at the UN Security Council that the 1960 Treaty of Guarantee signed before Cyprus gained independence was incompatible with the principle of self-determination and infringed upon Cyprus' sovereignty[195].

This view was echoed by Rosalyn Higgins, who noted that the 1960 agreement merely approached actual Cypriot independence[196]. The UK anticipated this concern and advised Cyprus to join the UN before seeking Commonwealth membership to avoid potential challenges to its sovereignty[197]. Although Kyprianou did not specifically address the SBAs in his UN submission, a successful challenge to the Treaty of Guarantee could have impacted the SBAs, as Article III of the Treaty of Guarantee commits Greece, Turkey, and the UK to respect the territorial rights set forth in the Treaty of Establishment. British diplomats were aware of the potential implications and suggested deferring any objections to the Treaty of Guarantee until the inter-communal conflict was resolved[198]. Now, over six decades later, the Cyprus issue remains unresolved, and the events of 1964 continue to impact the circumstances. The RoC's reluctance to challenge the SBAs' legality may be partly due to the UK's encouragement. Thus, it might be unjust for the UK to now claim it has the right to rely on representations made following this deferment.

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[194] ibid 18.
[195] *Security Council Official Records*, 1098th meeting, 27 February 1964, pp 86–113.
[196] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963) 34.
[197] 'Conclusions of a Meeting of the Cabinet Held at 10 Downing Street, S.W.1, on Tuesday, 28 July 1960, at 11 a.m.' (SECRET, C.C. (60) 47th Conclusions) 28 July 1960, 6.
[198] *Security Council Official Records* (supra n 195) 27.

d. Enforceability: The Example of the Chagos Advisory Opinion

The final obstacle for the Republic of Cyprus challenging the legality of the SBAs, and likely the most difficult to overcome, would be enforcing a ruling upon the UK. The example can be taken from the Chagos Advisory Opinion and how it was received by the UK. The ruling was met by the British with tempering realism in the face of advancing decolonization. Despite the ruling in Mauritius' favor, its former colonial ruler has attempted to maintain its control over the Chagos Archipelago through any institution possible. As various parties have attempted to put the relevance and applicability of the Advisory Opinion to the test, so too have the British insistently opposed it. These legal battles have unfolded both domestically and internationally. More than five years since the Court's ruling, British control over Chagos has remained virtually unchanged[199]. Even following the announcement of an agreement to finally hand sovereignty over the Chagos Islands to Mauritius, the presence of foreign military bases on the archipelago will remain in place[200]. Assuming the challenge to the legality of the SBAs in Cyprus is made through a request for an advisory opinion on the decolonization process, similar issues regarding enforceability could arise, potentially rendering any ruling in Cyprus' favor meaningless.

i. United Kingdom Domestic and Foreign Policy

The issue of the Advisory Opinion was brought up in the House of Commons the day after the ruling was issued. In questioning the Government's planned course of action, Labour MP Helen Goodman asked if there were plans to follow the guidelines of the ICJ and cede the Chagos Archipelago back to Mauritius. In response, Sir Alan Duncan, Minister of State for Europe and the Americas explained:

> [Y]esterday's hearing provided an advisory opinion, not a judgment. We will of course consider the detail of the opinion carefully, but this is a bilateral dispute, and for the General Assembly to seek an advisory opinion by the ICJ was therefore a misuse of powers that sets a dangerous precedent for other bilateral

[199] Jack Detsch, 'Diego Garcia: How the U.S. and U.K. Protect Their Military Base' (*Foreign Policy*, 30 May 2024) https://foreignpolicy.com/2024/05/30/diego-garcia-us-uk-chagos-military-base/ accessed 27 August 2024.

[200] Andrew Harding, 'UK Will Give Sovereignty of Chagos Islands to Mauritius' (BBC News, 3 October 2024) https://www.bbc.com/news/articles/c98ynejg4l5o accessed 4 October 2024.

disputes.[201]

The UK Government's official response to the Advisory Opinion was presented to the House of Commons almost 3 months later and reflected Sir Duncan's initial reaction. The statement emphasized the bilateral nature of the dispute, the fact that advisory opinions are widely considered a non-binding court ruling, and the important role that the defense facility in Chagos has in ensuring the safety of Britain and the world[202].

Despite the ongoing negotiations regarding the sovereignty of the Chagos Archipelago between the UK and Mauritius, Britain has remained consistent in treating the advisory opinion as not having any legally binding effect. Negotiations regarding the sovereignty of Diego Garcia, the largest island in the archipelago which holds a joint UK-US military base, began in early 2023. However, by December 2023 Britain abandoned the discussions, citing concerns that ceding Chagos would be a detriment to British and American defense interests in the Indo-Pacific. As it stands, the UK has a lease agreement with the US for the island until 2036[203]. This was followed by British Foreign Secretary David Cameron announcing that the UK will cease efforts to resettle former inhabitants of the Chagos Islands[204]. While there were seven rounds of negotiations[205], Britain had not presented itself eager to bring the discussions to a conclusion. The formal stance of the government since the Chagos Advisory Opinion was a desire and willingness to resolve the outstanding sovereignty dispute, but officials, such as Foreign Secretary David Cameron often questioned this stance: "We [Britain] have to think very carefully about the effect of concluding a negotiation that changed the nature of our arrangements"[206]. Refusal to comply with the ruling of the 2019 advisory opinion has also been present in the international legal scene and has not been limited to British domestic and foreign policy.

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[201] United Kingdom, Parliamentary Debates, House of Commons, 26 February 2019, vol 655, col 144.
[202] United Kingdom, Parliamentary Debates, House of Commons, 30 April 2019, vol 659, col 4WS.
[203] Detsch, 'Diego Garcia: How the U.S. and U.K. Protect Their Military Base' (supra n 199).
[204] Patrick Wintour, 'Chagos Islanders Stunned as David Cameron Rules Out Return' (*The Guardian*, 26 January 2024) https://www.theguardian.com/global-development/2024/jan/26/chagos-islanders-stunned-as-david-cameron-rules-out-return accessed 27 August 2024.
[205] Rohit Sinha, 'What is Holding Back the UK-Mauritius Negotiations?' (*Observer Research Foundation*, 14 September 2023) https://www.orfonline.org/expert-speak/what-is-holding-back-the-uk-mauritius-negotiations accessed 19 September 2024.
[206] ibid.

ii. In the Face of the United Nations General Assembly

As a result of the advisory opinion, the UNGA passed Resolution 73/295; it was adopted with 116 states voting in favor, six against (one of which was the UK), and 56 abstentions[207]. Taking into consideration the ruling of the Court, Resolution 73/295

> [d]emands that the United Kingdom of Great Britain and Northern Ireland withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months from the adoption of the present resolution, thereby enabling Mauritius to complete the decolonization of its territory as rapidly as possible …[208]

British Permanent Representative Karen Pierce in her statement just before the vote expressed a mixture of regret and resistance to the Resolution, encapsulating the UK's involvement throughout this dispute:

> [T]he United Kingdom is not in doubt about our sovereignty over the British Indian Ocean Territory. It has been under continuous British sovereignty since 1814…
> I need to take a moment to reject unconditionally the allegations that the United Kingdom was engaged in crimes against humanity. This is a very serious allegation; it is not to be used lightly. It is a gross mischaracterisation of the United Kingdom's position and, once again, I reject it without qualification.[209]

UK Permanent Representative Pierce outlined three arguments for opposing the UNGA resolution. First, she argued that the Court should not adjudicate a bilateral sovereignty issue without both parties' consent. Second, the resolution "goes beyond the advisory opinion" with the imposition of a six-month timeframe for sovereignty transfer and by urging states and organizations to act in such a way that could have serious implications for the secure and effective operation of the defense facilities. Lastly, the permanent representative highlighted that, although advisory opinions may sometimes carry weight, "they are not legally binding" like a judgment in a contentious case[210].

The deadline set by the UNGA for 22 November 2019 passed without any action

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[207] UN General Assembly Official Records, 73rd Session, 83rd Plenary Meeting, UN Doc A/73/PV.83 (22 May 2019) 25.
[208] GA Res 73/295 (supra n 5) para 3.
[209] *UN General Assembly Official Records* (supra n 207) 10.
[210] ibid 11.

or response from the UK. Mauritian Prime Minister Pravind Jugnauth interpreted the UK's silence as resistance and unwillingness to comply. He criticized the UK government's defiance of the Court and its blatant disregard for the ruling and subsequent UNGA Resolution 73/295, stating that it undermines the UK's established commitment to a rules-based order[211].

The UN Secretary-General issued a report to the GA on 18 May 2020, inviting all states to submit any relevant information concerning the implementation of the Resolution 72/295[212]. Among the respondents were Mauritius and the UK. In its response, Mauritius brought up again its concern regarding the UK's resistance to implementation and how this was conflicting with its relationship to UN bodies:

> Despite the best efforts of the Republic of Mauritius, it is to be noted that the United Kingdom has shown no willingness whatsoever to engage with Mauritius to implement the advisory opinion … and General Assembly resolution 73/295 … the United Kingdom has opted to challenge both the International Court of Justice and the General Assembly. Mauritius considers this attitude by the United Kingdom is at odds with its efforts to promote itself as a country that is respectful of the international rule of law and United Nations institutions.[213]

On the other hand, the UK maintained its previous position prior to the ICJ proceeding as well as before the UNGA at the time of the resolution:

> Despite clear reservations, the United Kingdom participated fully in the advisory proceedings in good faith and out of respect for the International Court of Justice. However, we do not share the Court's approach and have made known our views on the content of the opinion, including the insufficient regard for significant material facts and legal issues.[214]

Although the ICJ ruled in favor of Mauritius in its 2019 advisory opinion, the UK had persistently ignored the Court's orders. The legal procedure was seemingly just the first obstacle for Mauritius, which was followed by the even bigger hurdle to overcome, that of enforceability. More than five years have gone by and there is no estimate as to

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[211] 'Mauritius Condemns UK Position on Chagos', *Africa Times* (online, 22 November 2019) https://africatimes.com/2019/11/22/mauritius-condemns-uk-position-on-chagos/ 29 August 2024.
[212] *Report of the Secretary-General*, 74th sess, Agenda Item 86, UN Doc A/74/834 (18 May 2020) 3.
[213] ibid 13
[214] ibid 15

when the sovereignty of the Chagos Archipelago will be ceded to Mauritius. This strategic delay by the UK shows the uphill challenge Cyprus would face, should it formally question the legality of the SBAs, even if the Court does rule in its favor.

iii. Eventual 2024 UK-Mauritius Agreement

After years of negotiations, and a change in government from the Tories to Labour, it was finally announced by Britain that it would be giving up sovereignty of the Chagos Islands. The announcement on 3 October 2024 specified that the agreement has not yet been finalized, but the transfer of control to Mauritius will take place as soon as the formal treaty is concluded[215]. While this is an important development towards falling in line with international law, and specifically with UNGA Resolution 73/295, it still has its caveats. Firstly, the agreement is certainly a step in the right direction, however there is no certainty as to when the treaty will be completed, and sovereignty officially handed to Mauritius. More importantly, the agreement was subject to conditional requirements, much like Mauritius' independence in 1965. In the present case, the preservation of the joint UK-US military base on the island of Diego Garcia was considered to be "a key factor enabling the deal to go forward"[216]. Britain has been able to ensure that the operation of the military base on the island will remain under its administration for at least 99 years[217]. The significance of the announcement and pending treaty agreement should not be understated. However, the fact that the foreign military base on the largest island in the archipelago will remain in place for (at least) the next century, and that this was a crucial condition in the negotiations advancing, dampens the excitement over the transfer of sovereignty.

6. Conclusion

The continued existence of the British SBAs in Cyprus, established under the 1960 Treaty of Establishment, represents a critical intersection between colonial-era territorial arrangements and the evolution of international law. As this dissertation has

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[215] Markus Gehring, 'Freedom for Chagos Islands: UK's Deal with Mauritius Will Be a Win for All' (*The Conversation*, 3 October 2023) https://theconversation.com/freedom-for-chagos-islands-uks-deal-with-mauritius-will-be-a-win-for-all-240590 accessed 4 October 2024.

[216] Harding, 'UK Will Give Sovereignty of Chagos Islands to Mauritius' (supra n 200).

[217] Gehring, 'Freedom for Chagos Islands' (supra n 215).

demonstrated, the principles of self-determination, territorial integrity, and the process of decolonization have developed significantly since the SBAs were established. These developments have led to an understanding of the facts that would be able to challenge the legality of these types of arrangements in the present day.

The Chagos Advisory Opinion of 2019 by the ICJ has proven to be a pivotal legal tool, reaffirming the right to self-determination, the principle that territorial separation from a colony must respect the genuine and freely expressed will of the people. This ruling serves as a potential basis for Cyprus to argue that the SBAs infringe upon its right to full sovereignty and self-determination. Despite the UK's claim to legitimacy based on historical agreements, the global legal framework has shifted, increasingly emphasizing the need for post-colonial arrangements to conform to modern standards of international law. The Court's opinion adds further weight to the argument that international law, particularly in the context of decolonization, must prioritize the rights of formerly colonized peoples over agreements that were established under specific and different geopolitical and legal contexts

This dissertation has argued that, while the Republic of Cyprus has yet to formally contest the legality of SBAs, the legal foundations laid by the Chagos case provide Cyprus with a viable pathway to challenge the continued presence of British military forces on the island. The parallels between the Chagos Archipelago's situation and that of the SBAs highlight that territories retained under colonial agreements without the express consent of local population, may no longer be justifiable under contemporary legal standards. Moreover, the legal stance that historical agreements cannot override the evolution of international law, specifically with respect to self-determination and the free and genuine expression of consent, strengthens the argument for Cyprus to challenge the present arrangement created by the Treaty of Establishment. It is foundational that this principle has been echoed in ICJ rulings and UN resolutions.

However, the practical obstacles Cyprus faces in mounting such a challenge cannot be overlooked. The Republic of Cyprus' long-standing cooperation with the UK, coupled with the geopolitical importance of the SBAs, complicated any potential legal or diplomatic challenge. The SBAs serve as significant strategic assets for the UK, and any contention to their status would need to consider the broader implications for the relations

between Cyprus and the UK, as well as regional security concerns. Moreover, even if a legal victory were to be achieved, the enforcement of any ruling may prove to be more difficult in light of the UK's strategic interests and its political influence on the global stage. Cyprus would need to navigate the broader legal and political landscape cautiously, as any attempt to reclaim full sovereignty over the SBAs would likely face great resistance from the UK.

In conclusion, while the Chagos Advisory Opinion offers a promising legal avenue for Cyprus to challenge the SBAs, the success of such a challenge depends not only on the strength of the legal arguments, but also on the political and diplomatic strategies that accompany them. As international law continues to evolve in favor of decolonization and an expanding interpretation of self-determination, the RoC must carefully weigh the legal, political, and practical implications of contesting the SBAs. This dissertation has demonstrated that the principles reaffirmed by the ICJ in the Chagos case could form the basis of a compelling legal argument, but the ultimate resolution of this issue may lie as much in the realm of international diplomacy following the courtrooms of The Hague. Cyprus' claim against the UK, should it be pursed, would stand as a testament to the dynamic and evolving nature of international law, where the remaining legacies of colonialism continue to be re-evaluated under the principles of sovereignty, territorial integrity, and self-determination.

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