

UNSC

United Nations Security Council



Topic 1: The Chagos Islands

Topic 2: The Kashmir Conflict



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Letter from the Head Chair

Dear Delegates,

My name is Basanti Mardemootoo, and I am currently a third year at the University of California, Davis double majoring in International Relations and Political Science and double minoring in Middle Eastern Southeast Asian Studies and War-Peace Studies. I am originally from the island of Mauritius (Indian Ocean). I have been involved in MUN for about six years now, during which I took part in a number of conferences, won awards and successfully established one of the first MUN clubs Mauritius had ever seen. Here at UC Davis, I've been on Secretariat as the Under-Secretary General of Delegate Preparations for the General Assembly and I am currently the President (Secretary General) of the organization.

For this conference I will be Head Chairing the United Nations Security Council which will be run as a specialized GA featuring both traditional General Assembly procedure in addition to small surprises here and there. The topics we are going to be discussing are very near and dear to me. The Chagos case is one that I've been connected to since the day I was born which was when my father became the official lawyer for the case. After two decades of fighting, this case is finally about to go to the United Nations and I chose this topic because I am interested to see how you think it is going to work out. In regards to the Kashmir Conflict – as a political science major, this conflict has got to be one of the most uncontested in terms of importance. With a complex history and ever so evolving present, this topic needs to be addressed.

I have been following the issues around the topics we will be discussing very carefully for the past couple of months, and I hope this topic guide gives you a better idea of the problems we have at hand and the possible solutions. My aim here is to give you as much detail as possible



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so that you are able to walk into committee prepared and confident in reaching a successful resolution(s) at the end of debate. There were various sources used in the making of this guide, all of which have been respectfully cited. If at any point you have questions regarding the topics, the topic guide, or the sources recommended, please feel free to contact me.

My Dais and I look forward to the lively, important debates that will be taking place at this conference with hopes that you, as delegates, will come out of it with a better understanding of these crucial global issues.

All the best,

Basanti Mardemootoo
Head Chair, UNSC, DMUNC XV
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About the Committee

What is the United Nations Security Council?

The Security Council is a special body of the United Nations that has 15 members – five of which are permanent and 10 of which are on rotation. The five permanent members are: United States of America, United Kingdom, France, China, and Russia. Currently the 10 other members in the council are: Bolivia, Egypt, Ethiopia, Italy, Japan, Kazakhstan, Senegal, Sweden, Ukraine and Uruguay.

The Security Council's main job is to maintain international peace and security by addressing urgent cases as they present themselves. They are also the main actors in deciding whether or not there is the existence of a threat to the peace or act of aggression. Their aim is to resolve conflicts through peaceful ways, advocating for negotiation and recommending way in which to work on settlements. Despite only happening in rare cases, the Council has the power of sanctioning on or more states and can also resort to the use of force if necessary.

In terms of procedural matters, every member state in the council has one vote. However, there are some special features. For instance, all permanent members can reserve the right to veto anything they deem unfit when addressing a certain issue. Furthermore, all member states are binded to the decisions made by the Council (unlike their dedication to the Charter or usual General Assembly Resolutions) The Security Council also acts as an advisory board about certain organizational appointments including Secretary-General and the addition of new members to the United Nations.



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Specialized GA – What to Expect

Procedure

This committee will run using the procedure associated with a General Assembly-style committee. That is – resolutions are the way in which we expect these problems to be solved through. The only exception to regular procedure will be that there will be a few crisis updates on occasion (but don't worry, everything will be explained)

Positions

The positions assigned will include the permanent five countries as well as the current member states that are in the Council. Additionally, the nations of India, Pakistan and Mauritius will be assigned due to their heavy involvement in these cases but the delegates representing these countries will not have voting rights during committee (this means that those assigned to this position will not be able to vote during voting bloc however you will be allowed to: make speeches/motions, vote on procedural matters, create your own resolutions and lead your own bloc).



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Topic 1: The Chagos Islands

Introduction

10, 264 miles away from California lies a group of small islands currently loaded with military equipment and personnel. Sandy beaches and coconut trees neighbor fighter jets and weapon warehouses. Known to be one of the most strategically positioned U.S. bases in the world, the Chagos Archipelago has more to it than meets the eye. To shed some light on just how important this base is, here are some extracts from a recent *The Guardian* article¹:

“It has been used by long-range US bombers in attacks on Iraq and Afghanistan, and would almost certainly be used in the event of any American air strikes on Iran's nuclear facilities, British officials say.”

“Diego Garcia was used by the CIA as a refueling stop for flights secretly rendering terror suspects to jails, including a Libyan dissident flown to Muammar Gaddafi's Libya in an operation involving MI6.”

An issue of sovereignty, human rights and infringement of international law – the issues revolving around the Chagos Islands are not ones of small scale. After being legally detached from Mauritian sovereignty, the Chagos Islands have been in the joint possession of the United States (US) and the United Kingdom (UK) for defense purposes. Despite initially claiming that the islands were inhabited, the British took part in forcibly expelling the 2000 Chagossians who had been living on the islands for centuries so that the United States could establish their military base.

¹ Richard Norton-Taylor (2012) *Diego Garcia archives shed light on fate of deported Chagos islanders* <<https://www.theguardian.com/uk/2012/apr/18/archives-diego-garcia>>



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These same Chagossians, who have had their rights violated, have pleaded their case in front of the United Nations through the country of Mauritius and it is now up to us to review the evidence and come to a decision not only about the right of resettlement but also regarding sovereignty. There are three branches that need to be addressed: Sovereignty, Right of Return, International Law Violation. You are tasked with diving into the details of this complex battle and finding out how and what is to be done in order to rectify to wrongful actions that have been done by others.



Fig. 1. A group of Chagos islanders (Photo: David Levene)²

² Owen Bowcott (2014) *Chagos Islands dispute: court to rule on UK sovereignty claim* <
<https://www.theguardian.com/world/2014/apr/21/chagos-islands-diego-garcia-base-court-ruling>>



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Historical Background

The Treaty of Paris in 1814 stated that the islands were ceded to the United Kingdom by France, and were administered as a dependency from Mauritius but it wasn't until 1964 that discussions had started between the Governments of the United States of America and the United Kingdom over the possible establishment of American defense facilities in the Chagos Islands.³ Due to the purpose of the self-interested mission, both these governments had decided that once islands had been chosen for this purpose, the transfer or resettlement of those on the islands would be necessary.

By ensuring that the islands were separate dependent territories, the U.S. Government could be confident that the use of its new facilities would not depend on the goodwill and stability of Mauritius and/or Seychelles. On 8th November 1965 the British Indian Ocean Territory (BIOT) Order in Council (SI 1965/120) established a new colony, which included the Chagos Islands and other islands formerly part of the Colony of Mauritius and Seychelles.⁴ Thereafter, and between the years of 1967 and 1973, some 2,000 Chagossians were illegally removed from the Chagos Islands and shipped to Mauritius and Seychelles in conditions which amount to inhuman and degrading treatment.⁵ The islanders were removed unwillingly and without consultation. The U.K. and U.S. Governments and/or their agents physically forced the remaining Chagossians on the island of Diego Garcia, onto ships destined for the islands of Peros Banhos and Salomon. There were campaigns of threats conducted by the U.K. and U.S. military

³ Encyclopedia Britannica: *Treaties of Paris* <<http://www.britannica.com/event/Treaties-of-Paris-1814-1815>>

⁴ BIOT Laws - The Ordinances <<https://sites.google.com/site/biotgovernment/biot-government-royal-prerogative-orders-in-council/laws-of-the-biot>>

⁵ Norton-Taylor, R (2012) *Diego Garcia archives shed light on fate of deported Chagos Islanders*. <<http://www.theguardian.com/uk/2012/apr/18/archives-diego-garcia>>



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officers in order to scare the population. By 1973, the Chagos Archipelago had all its permanent inhabitants completely banished.

Throughout internal discussions about resettlement options for the Chagossians, memoranda from this period show that the U.K. Government was fully aware that it proposed to expel native islanders from their homeland, and insofar as they considered the legal rights of the islanders, showed determination to override such legal rights.⁶ In 1965, the Queen enacted the BIOT Order, empowering the Commissioner to ‘make laws for the peace, order and good governance of the territory’. Using the powers vested upon him, under Section 11 of the BIOT Order of 1965, the Commissioner enacted BIOT Ordinance of 1971. Section 4 of the 1971 Ordinance provided for the compulsory removal of all the inhabitants. Proceedings were brought by way of judicial review in the High Court in England in August 1998 by a Chagossian man named Olivier Bancoult. In the judicial review proceedings, the validity of the 1971 BIOT Immigration Ordinance was challenged and on the 3rd November 2000 the Divisional Court held that section 4 the Immigration Ordinance was beyond the legal authority of the BIOT Constitution.⁷ No power to award damages or compensation arose by reason of this unlawful administrative act, and the Divisional Court declined or had no power to award any restitutionary remedy. It was publicly announced by the then Foreign Secretary, Robin Cook, on the 3rd November 2000 will not be appealing the case.⁸

⁶ UK/US Agreements <<https://sites.google.com/site/thechagosarchipelagofacts/diego-garcia/us-uk-agreements>>

⁷ *Regina (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs and Another (No,1)* Divisional Court, Queen’s Bench Division, (2000) 123 ILR 555.

⁸ Ibid as 7.



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On 10th June 2004 the U.K. Government passed into law the British Indian Ocean Territory (Constitution) Order 2004 and the BIOT (Immigration) Order 2004.⁹ By declaring that no person has the right of abode in the territory, or the right to enter it except as authorized, these Orders ensure the abrogation of existing rights to live in the territory which the Chagossians possess. This provoked a further challenge by Mr. Bancoult (Bancoult (2)) in 2006 where the UK Divisional Court held the Orders to be irrational.¹⁰ In the Court of Appeal, the Orders were unanimously held to be a breach of a legitimate expectation created by the Foreign Secretary and an abuse of power. In 2008, the Secretary of State appealed to the House of Lords on the question on the validity of section 9 of the British Indian Ocean Territory (Constitution) Order 2004 but by the end of it they basically held that this was a matter of foreign policy and the judiciary should not interfere.¹¹ Furthermore, on the 1st April 2010, U.K. Foreign Secretary David Miliband announced the creation of a Marine Protected Area (“MPA”) in the British Indian Ocean Territory (“BIOT”). This will include a “no-take” marine reserve where commercial fishing will be banned.¹²

Indisputably, the need for a military base on Diego Garcia currently being used jointly by the United States and the United Kingdom has been the very *raison d'être* of the deportation. Additionally, the United Kingdom has systematically reiterated the fact that its obligations towards the United States arising from the bilateral treaties are binding and resettlement on Diego Garcia can therefore not be considered. However, it is important to clarify that

⁹ *British Indian Ocean Territory (Constitution Order)* Buckingham Palace, The Queen’s Majesty in Council (2004)

¹⁰ *R (Bancoult) v. Secretary of Foreign and Commonwealth Affairs (2006)* EWHC 1038 (Divisional Court)

¹¹ *UK Court of Appeal (2008) QB 365/ 3 WLR 955*

¹² Rincon, P. (2010) *UK Sets up Chagos Islands Marine Reserve*.
<<http://news.bbc.co.uk/2/hi/science/nature/8599125.stm>>



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resettlements on the Outer Islands can be envisaged irrespective of the presence of the military base on Diego Garcia. However, this was strongly opposed as it would give rise to issues such as surveillance, monitoring and electronic jamming devices which could expose military oppositions to risks. With this said, it cannot be dismissed that the UK –US agreement will lapse in 2016 which further highlights the pressing need for open dialogues with the Chagossians to prevent them from being wholly excluded from a process that involved their fundamental human rights and best interests. At the core, it is exactly this policy of concealment and lack of transparency that largely accounts for the failure to respect the fundamental human rights of the Chagossians.

On December 15 1970, the White House press statement stated that, ‘the population consists of a small number of contract laborers from the Seychelles and Mauritius engaged to work on the copra plantations.’¹³ In 2000, it was conspicuous that the United States highlighted the strategic importance of the Diego Garcia and the central role the base played in the defense activities and military operations of both governments. The position then endorsed was that despite arguments asserting that the presence of military bases in close proximity to civilian populations is a common occurrence, Diego Garcia’s main advantage is the fact that it is isolated which makes it unique. Consequently, the United States believed that the resettlement of a population would tamper with this isolation and operations, which must be conducted for security reasons, would be severely jeopardized.

¹³ Imbarlina, E (2013) *White House Recognizes, But Fails to Accept Responsibility for Chagossian Hardships*. <<http://jurist.org/datetime/2013/01/elena-landriscina-chagossian-displacement.php>>



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In 2003, the military base in Diego Garcia was used by the US for ‘Operation Iraqi Freedom’, the legality of which remains highly questionable.¹⁴ In 2004, the United States reiterated the aforementioned concerns and emphasized that these have become more serious since September 11, 2001. Again, the United States, maintained that the resettlement would severely compromise the military base on Diego Garcia. The United States approved the measures adopted by the Majesty in 2004 in preventing any attempt of resettlement. In 2008, the United States admitted that to the use of renditions flights. David Miliband (the then former Foreign Secretary of the UK) confessed that answers given by him in Parliament denying the use of rendition flights were untrue and misleading. Lord Hoffman in the House of Lords stated that, ‘On the 21 February 2008 the Foreign Secretary told the House of Commons that, contrary to previous assurances, Diego Garcia has been used as a base for two extraordinary rendition flights in 2002[...].’ There are allegations which the US authorities have denied, that Diego Garcia or a ship in the waters around it have been used as a prison in which suspects have been tortured. In 2010, a diplomatic cable published by WikiLeaks, from the FCO to the US State Department stipulated that, “establishing a marine park, would in effect put paid to resettlement claims of the Archipelago's former residents.”¹⁵

UN Involvement

This section of the topic guide will be looking at all the UN actions that related to this case. The first part will analyze the actions taken directly about this issue and the second will list all the relevant UN documents that were violated by the occurring on the Chagos islands.

¹⁴ Tucker, S (2010) *The Encyclopedia of Middle East Wars: The United States in the Persian Gulf, Afghanistan, and Iraq Conflicts*. Santa Barbara, California, U.S.A

¹⁵ WikiLeaks <https://wikileaks.org/plusd/cables/09LONDON1156_a.html>



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Action taken directly:

There has been virtually no past UN action on this issue – which is primarily why this is one of the topics this committee has to address. In 2015, the Permanent Court of Arbitration took on the case of Mauritius vs. United Kingdom and at the end of 2016, the Chagos issue was brought up at the General Assembly by Mauritius. Additionally, there has also been a resolution passed at the African Union which addresses it as well.

Permanent Court of Arbitration: Mauritius vs. United Kingdom

This case is important because it puts into question the plausibility of the actions taken by the United Kingdom over the Chagos Islands, especially in regards to their establishment of the marine park that was briefly mentioned above. The panel of judges found that “British and American defense interests were put above Mauritius’s rights”¹⁶ The ruling found that what the UK did was against the United Nations convention on the law of the sea (which is binding to its signatories). This came as a victory for the Mauritian government, however, no action can really be taken against the British at this point who have claimed to be willing to give back the islands once there is no need to establish defense in the area.¹⁷

¹⁶ Permanent Court of Arbitration (2015) *In the Matter of the Chagos Marine Protected Area Arbitration* <<http://www.pcacases.com/pcadocs/MU-UK%2020150318%20Award.pdf>>

¹⁷ Owen Bowcott (2015) *UN ruling raises hope of return for exiled Chagos islanders* <<https://www.theguardian.com/world/2015/mar/19/un-ruling-raises-hope-of-return-for-exiled-chagos-islanders>>



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African Union: Resolution on Chagos Archipelago Doc.EX.CL/901(XXVII)

In this resolution signed at a regional level, there was agreement over support for Mauritius' cause in the fight for sovereignty whereby the group of African Nations pledged their support to upholding international law and ensuring that rightful actions are taken.

Full resolution: <http://www.saflii.org/au/AURESOLUTIONS/2015/1.pdf>

United Nations General Assembly

During the 71st session of the United Nations General Assembly held in New York in September 2016, the nation of Mauritius took a stand and brought up the Chagos issue. The Prime Minister, Anerood Jugnauth, brought up the issue of sovereign over the islands stating that despite its independence – it has not been able to exercise its power over its own territories.

Link to full statement made by the Mauritian delegation:

https://gadebate.un.org/sites/default/files/gastatements/71/71_MU_en.pdf

List of UN documents that are in violation:

1. United Nations Convention of the Law of the Sea
2. United Nations Resolution 1514 (1960)
3. United Nations Resolution 2066 (1965)
4. United Nations Resolution 2232 (1966)
5. United Nations Resolution 2357 (1967)



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Analysis

This section will be split into four parts, looking into the status of the BIOT in International Law, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Secondly, looking at the International Convention on the Elimination of All Forms of Racial Discrimination in terms of its jurisdiction and the discrimination done to it.

a. Status of the BIOT in International Law

The Bancoult litigation provided official confirmation that the UK government quietly disregarded its obligations to the BIOT under the UN Charter. The U.K failed to disclose to the UN Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples that the territory was inhabited by a permanent population and was thus a non-self-governing territory under Chapter XI of the UN Charter under which administering States are under a duty to foster self-government in such territories.¹⁸ Customary International Law provides that the Chagossian societal group is a distinct people for the purpose of exercising the right of self-determination which therefore makes it so that the U.K is under the obligation to take all measures to progressively facilitate the exercise of this right.¹⁹

b. International Covenant on Civil and Political Rights

¹⁸ *Declaration on the Granting of Independence to Colonial Countries and Peoples*, United Nations GA Res. 1514 (XV), 14 December 1960, A/4494

¹⁹ *The Declaration on the Principles of International Law concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, GA Res. 2625(XXV), 24 October 1970, A/8082.



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In 1976, the UK government ratified the International Covenants on Human Rights (which went into effect the very same year. However, the declaration of territories affected by this covenant did not include the BIOT. The U.K, therefore adopted two strategies to avoid having to apply this covenant on the BIOT. Firstly, they used the obvious - the BIOT was not included in the declaration therefore whatever any of the covenants say, the BIOT is safe from scrutiny. This defense, in itself, is a clear offence to this universality of the covenant's application under Article 2(1) which states that Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁰ Secondly, the UK government led the Committee to believe that, as the Chagossian people were not in occupation of the territory when the covenant went into force, the U.K could not be responsible for the acts of involuntary displacement that were carried out between 1965 and 1973.²¹ Nevertheless, Article 14(2) of the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts 2001 anticipates that the maintenance of any legislative measures violative of the Covenant would attract responsibility because it would be evidence of the continuing character of a breach of an international legal obligation.²²

Despite the fact that the legality of the U.K's actions in regards to the Chagossians were successfully in terms of this covenant, it can be used as an advocate for self-determination and

²⁰ International Covenant on Civil and Political Rights 1966, 999 UNTS 171
<<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>

²¹ Article 40: International Covenant on Civil and Political Rights 1966, 999 UNTS 171
<<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>

²² *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries* (2001)
<http://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf>



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sovereignty over natural resources. The 2008 Feasibility Report alluded to the amount of natural resources available in the Chagos Archipelago that could be used in a sustainable manner by the resettled Chagossian community.²³ In the context of the right to self-determination in this covenant, Article 1(1) acknowledges that ‘all peoples [are entitled to] freely determine their political status and freely pursue their economic, social and cultural development’. Followed by Article 1(2) which declares that such ‘peoples may, for their own ends, freely dispose of their natural wealth and resources ... In no case may a people be deprived of its own means of subsistence.’ and finally, Article 1(3), that confirms that State parties are in charge of promoting the idea and application of this right in conjunction with the UN Charter. When these provisions are combined with the customary international law obligation to foster self-determination in all its forms, the UK government is obligated to progressively facilitate the economic development of this dependent people in the event of resettlement. Therefore, it would be required to ensure that an equitable share of any such revenues is directed towards the resettled Chagossian people.

c. International Covenant on Economic, Social and Cultural Rights

The fact that the UK government, signed and ratified the International Covenants on Human Rights makes it an obligation for the state to contest to the contents of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the territory. The usage of this covenant focuses primarily on the resettlement of the outer Chagos Islands. It states that the U.K would have ‘a legal commitment to securing adequate and improving standard of living, especially in the domains of employment, welfare provision, housing, healthcare, education and

²³ Feasibility Report (2008) <http://chagos-trust.org/sites/default/files/images/evaluation_howell_june08.pdf>



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cultural expression.²⁴ With this obligation in mind, it is possible to state that there is a breach of the Covenant if the Chagossian people were allowed to resettle this remote archipelago with its non-existent infrastructure and with no public money being made available, would be illegal under these principles. The UK government has recognized the interdependence of the International Covenants and that economic and social rights are not inferior to civil and political rights. Although, unlike the previous covenant analyzed there is no right to enforce a right, a penalty, or to make another court order to impose its will. For instance, in General Comment 9, the Committee indicated that: ‘... Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies, must be available to aggrieved individuals or groups, and appropriate means for ensuring government accountability must be put in place.’²⁵ It is important to note that the U.K has not included the ICESCR into English law, but the government is still very much bound by the legal obligations contained the covenant.

d. International Convention on the Elimination of All Forms of Racial Discrimination

In 1969, the UK government ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the treaty came into force in that year. Article 6 of this covenant requires that the State is party to ‘... assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination ...’.²⁶ The temporal argument used by the UK government in an effort to avoid scrutiny by the Human Rights

²⁴ *International Covenant on Economic, Social and Cultural Rights (1966)*

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>>

²⁵ *Ibid* as 22. General Comment No. 9, 3 December 1998, E/C.12/1998/24; 6 IHRR 289 (1999)

²⁶ *International Convention on the Elimination of All Forms of Racial Discrimination (1965)*

<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>



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Committee could have no application in the present context as a considerable number of Chagossians were still in occupation of the BIOT in 1969. Accordingly, the Convention applies to the BIOT and, as Article 6 makes clear, the remedies available for breaches of the Convention are not restricted to judicial remedies. Article 1(1) of ICERD provides:

In this Convention, the term ‘racial discrimination’ shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.²⁷

Under this Article, any refusal to provide public funding for the purpose of resettlement would block the Chagossian people’s Convention rights. Furthermore, under Article 5, Chagossians are entitled not to be discriminated against in the recognition and provision of a wide range of rights, including: the right to ‘freedom of movement and residence within the border of the State ... and to return to one’s country’²⁸; rights to housing; health care; work; social services; and education.

It is suggested that no other such group has been systematically uprooted from the ancestral homelands in violation of the rights contained in ICERD. In its 2003 concluding observations on the UK’s 16th and 17th periodic reports, ICERD noted that the UK government had not provided information on the implementation of ICERD in the BIOT. It therefore requested that the UK government include information in its next report on the measures taken to ensure the adequate development and protection of the Chagossian people’s rights under the

²⁷ Ibid as 24.

²⁸ Ibid as 24.



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Convention.²⁹ This request indicates that the Committee views resettlement as a necessary condition for compliance with the Convention. Moreover, ICERD's specific reference to Article 2(2) in this context indicates that it considers that 'special measures' would be required in order to avoid a situation of discrimination.³⁰ In the circumstances, it is difficult to see how the UK government's obligations to the BIOT under ICERD could be discharged without the development of a publicly funded resettlement programme.

Potential Solutions

Given that this is the Security Council, the main aim of giving a solution is to make a decision over what the problem is. If the following questions are answered, you're good to go:

1. Who has sovereignty?
2. Do the Chagossians have the Right to Return?
3. Has there been a violation of International Law?

Questions to Consider

4. Who are the key players in this issue?
5. What are the consequences of deporting an entire population?
6. Who has sovereignty over the Chagos Islands?
7. How does international law play into this?
8. Are their ulterior motives involved in this discussion?

²⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination regarding United Kingdom, 10 December 2003, CERD/C/63/CO/11 at para. 26. The requirement to submit periodic reports is contained in Article 9, ICERD.

³⁰ International Convention on the Elimination of All Forms of Racial Discrimination (1965)
<<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>>



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9. Should the Chagossians be given the 'Right to Return'?
10. How is enforcement lacking on UN resolutions that have been violated?



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Topic 2: The Kashmir Conflict

Introduction

70 years, three wars and 70,000 deaths later, India and Pakistan are still in conflict with each other over the area of Kashmir that finds itself on the border of the two countries. India and Pakistan hold different stances, both of which bring in past UN actions as decisive factors. India holds firm that UN Resolution 1172 which was passed back in 1948 accepts India's stand in the conflict whereas Pakistan is currently arguing that India has not acknowledged the resolutions passed here, at the Security Council and at the United Nations Commission present in the respective countries. A conflict of this complexity which includes the involvement of several militant groups as well as China can no longer be ignored. This committee will be reviewing all of its past decisions on the conflict, assessing the current situation and reaching a solution on how to peacefully bring this seven-decade old conflict to an end.

Historical Background

Conflict History

The dispute in Kashmir started up in 1947 when there was a partition of the Indian sub-continent that led to the creation of two countries – India and Pakistan. Each state associated themselves with the two countries with little conflict but the area of Kashmir rose concerns when it was realized that they could either be part of India or part of Pakistan due to its geographical location. Making the issue more complex was the area's cultural make-up. The leader of Kashmir, Maharaja Hari Singh, was Hindu but the citizens of the area were predominantly of Muslim faith. Unable to make the decision of who to side with, Singh decided to remain neutral and keep the area sovereign.



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This endeavor was halted when Pakistan approached the leader and asked for a decision to be made. In hopes of stopping any possible unrest, Singh reached out to the Indian government for military assistance and fled to India where he signed the Instrument of Accession (of Kashmir to India) on October 26th 1947. This led to the first war fought between Pakistan and India over the area. India plead its case at the United Nations which resulted in the demand of a plebiscite, in other words, the direct voting of all members of parliament on the issue. Pakistan, however, ignored the mandate and continued creating unrest. In 1949, a ceasefire was reached whereby 65% of the Kashmiri territory would fall under Indian control and the remainder given to Pakistan. After this point there was a back and forth of war and ceasefires³¹. Fighting broke out in 1965 but a ceasefire was established a couple of months right after. In 1971, there was another war that came from the creation of Bangladesh. It was caused by conflict in East Pakistan which led to a swarm of refugees crossing over to India. The government of India officially declared war after Pakistani Air Force planes were found guilty of striking Indian airfields. In 1972, both Indira Gandhi and Zulfikar Ali Bhutto met up to reiterate that they wanted this conflict to end peacefully. The result of this meeting was the Simla Agreement³². This Agreement included a commitment on behalf of both countries to undertake bilateral negotiations to ensure that peace is kept between the two nations. Additionally, it included clauses outlining a geographic line which could not be breached in the region of Kashmir which was essential to both sides knowing where the limit is. However, these efforts were cut short by the shift in governments in both India and Pakistan. Indira Gandhi declared a national state of

³¹ The Telegraph (2001) *A Brief History of the Kashmir conflict* < <http://www.telegraph.co.uk/news/1399992/A-brief-history-of-the-Kashmir-conflict.html> >

³² Ministry of External Affairs (1972) *Simla Agreement, July 2, 1972* <<http://mea.gov.in/in-focus-article.htm?19005/Simla+Agreement+July+2+1972>>



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emergency right before losing the elections and Zulfikar Ali Bhutto was overthrown and hanged after which Pakistan was under the military rule of Gen Zia ul Haq. Towards the end of the 1990s, both India and Pakistan tested nuclear weapons but tensions were relatively calm as when efforts were made to ease transportation needs between Lahore and New Delhi. Tensions rose again in 1998/9 as cross-firing took place in Kargil leading to a death toll of about 30,000. Following a five-man suicide squad attack on the Indian parliament in December 2001, the two countries amassed nearly one million troops along their 1,800-mile border

Terrorists and Insurgents

Pakistan's General Zia, inspired by the technique used by the USSR in Afghanistan started another wave of unrest by sending trained Islamic militants into Kashmir in the late 1980s. This mimicked the Mujahadeen in the Middle East. Although the Jammu and Kashmir Liberation Front (JKLF) depicted very strong support for the Pakistani government, the goal of the front was to create an independent state out of Kashmir.³³ Through the 1990s, violence rid the area and insurgency groups became the norm.³⁴

Terrorists/Insurgent Groups³⁵:

- **Lashkar-e-Taiba:** This group was originally formed in the 1980s as means by which to ease the introduction of foreign militants against the Russians during the Afghan war.

They are one of the only groups of the time that still have a dominant position today.

³³ Susmit Kumar (N/A) *History of the Kashmir Conflict* < <http://www.susmitkumar.net/index.php/history-of-kashmir-conflict>>

³⁴ Susmit Kumar (N/A) *History of the Kashmir Conflict* < <http://www.susmitkumar.net/index.php/history-of-kashmir-conflict>>

³⁵ BBC (2012) *Who are the Kashmir militants?* < <http://www.bbc.com/news/world-asia-18738906>>



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They abide by hardline Islamist ideology and similarly to ISIS, prescribe a global Islamic agenda. Furthermore, they are not friendly to the local inhabitant. They are believed that have bases in other regions of both Pakistan and India

- **Hizbul Mujahideen:** This group was formed at the end of 1980s and had a switch in ideology from originally fighting for independence to fighting for accession to Pakistan. They are closely linked to Pakistan's religious political party: Jamaat-e-Islami. Unlike Lashkar-e-Taiba, Hizbul Mujahideen have the support of local Kashmiri Muslims and are widely respected in the area. They have now mostly been confined to a few select areas so they are not as big of a threat than in previous years
- **Harkat Ul Mujahideen:** Being one of the later groups to join the Kashmiri conflict, Harkat Ul Mujahideen come into the scene during the 1990s. Their leader has influenced in Kashmir as the group quickly became unpopular after publicizing their harsh tactics. They were the group accused of performing the first act of terrorism in the Indian portion of Kashmir
- **Jammu and Kashmir Liberation Front:** Formed in the 1980s, the JKLF are very popular with the indigenous groups within the Kashmir area. They are known for having declared war with India in the 1980s as a result of their bomb attack on Srinagar

UN Involvement

Unlike the Chagos islands, the Kashmiri Conflict has been somewhat at the forefront of UN efforts since the outbreak of war in the late 1940s. Known to be a key mediator in this conflict, the UN has been known to have ruled on the topic various times in different ways



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(including through the Security Council). Here is a list of the important things done by the UN and what they entail:

Security Council

1948:

- Resolution 38
- Resolution 39 of the Security Council
 - The issue was originally brought by India
 - Establishment of the United Nations Commission for India and Pakistan (UNCIP)
 - Their main aim is to look into the conflicts that break out between the two countries and the act was a mediator during talks between the nations.
 - Establishment of the United Nations Military Observer Group for India and Pakistan
- Resolution 47
- Resolution 51

1951:

- Resolution 91

1965:

- Resolution 221

1971:

- Resolution 307

United Nations Commission for India and Pakistan (UNCIP)³⁶

This commission was created by the United Nations Security Council to help mediate the disputes between India and Pakistan. The aim was to help them achieve an agreement over Kashmir and fighting originally broke out in 1947. This commission was ended in 1950 by Resolution 90 and was replaced by a UN Special Representative whose aim was to demilitarize the areas involved.

³⁶ National Defense and the Canadian Forces (N/A) *Details/Information for Canadian Forces Operation United Nations Commission for India and Pakistan* < <http://www.cmp-cpm.forces.gc.ca/dhh-dhp/od-bdo/di-ri-eng.asp?IntlOpId=263&CdnOpId=311>>



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United Nations Military Observer Group for India and Pakistan³⁷

This was created by a group of unarmed military observers in 1949. The organization has been instrumental in helping mediate several agreements which have taken place through the years. The Pakistani authorities still continue to lodge complaints with the organization about ceasefire violations, however, the government of India has not done so since 1972 and has confined the jurisdiction of UN observers. With this said, they do allow and help with accommodation, transport and other facilities. The group has stayed in action despite the ending of the UNCIP because their mandate had no end-date and stipulates that the group can only be dissolved if a decision by the Security Council is created to do so.

Current Situation

The conflict in Kashmir is still very much active. For the sake of timeliness, the following timeline will start in September 2016 and will lead up to February 14th 2017:

September 2nd 2016:

- Curfew is in order after 300 protesters and law enforcement agents were injured in unrest that broke out across the region
- Pakistani troops violated the ceasefire in place by using small arms in a certain area within the Jammu district

³⁷ UNMOGIP (N/A) *UNMOGIP Background*
<<http://www.un.org/en/peacekeeping/missions/unmogip/background.shtml>>



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September 5th 2016:

- Death toll of clashes gets up to 74 with an estimate of 10,000 citizens being injured
- 100 additional protesters were injured in other areas of the region

September 6th 2016:

- Pakistani troops violate ceasefire for the second time by using small arms again but this time in the Poonch District

September 18th 2016:

- 18 army personnel are killed after militants attack an infantry in the Baramulla District
- It was reported that at least 4 militants were killed in this clash

September 25th 2016:

- The official curfew was lifted in all areas of the region but there were still restrictions in place throughout most districts as a precautionary measure

September 28th 2016:

- Exchange of heavy fire between the Pakistani and Indian military forces

October 2nd 2016:

- Mass migration (about 12,000 people) takes place with people moving to safer areas as unrest continues to intensify

October 18th 2016:

- Mass arrest takes place – Indian police take in 122 people from across Kashmir in its attempt to stop those who are not conforming their public order

October 19th 2016:

- Over 12 protesters are injured during clashes in the Pulwama villages



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November 2016:

- Continuous evolution of conflict between both parties with significant death tolls on both the Pakistani and Indian sides of the military

January 12th 2017:

- Several intelligence agencies identified 12 active terror launch pads with over 300 terrorists in Pakistan that have reportedly set up reception locations in the Kashmir area

Possible Solutions

There are a couple of possible solutions that have been expressed by the international community on how exactly to deal with the continuous conflict in Kashmir. Here are two of the most talked-of one's:

- Line of Control and the Status Quo: There is currently a Line of Control that divides the region of Kashmir which makes up the status quo of the conflict. A key possible solution that has been promoted and argued for by many is to formalize this status quo -turning it into the border between India and Pakistan. India has been one of the biggest proponents of this plan but it has faced some serious backlash from both Pakistani and Kashmiri natives. Although this Line of Control was established by the Simla Agreement laid out above, it is important to note that the situation has changed and if this is the chosen solution that this committee chooses to go with - there ought to be a re-evaluation of what the Line of Control is as well as what geographic and cultural markings should be taken into consideration.



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Fig.2. Description of Line of Control³⁸

- Independence: Another ‘simple’ option would be to give Kashmir independence and detach it from both Pakistan and India. Despite the fact that there is a possibility for the region to sustain itself, it would be very hard for a new country to develop with hostile neighbors on both sides of the border
- Other possible solutions: The BBC released an assortment of solutions that aim at answering the question pertaining to Kashmir’s future. These solutions can be found here: http://news.bbc.co.uk/2/shared/spl/hi/south_asia/03/kashmir_future/html/

Questions to Consider

1. Who are all the actors involved in the conflict?
2. According to past UN action, what is the appropriate way of handling this issue?
3. What form of characterization should be used to decide who Kashmir should go to?

³⁸ Balaji Viswanathan (2013) *What is the best political solution to the Kashmiri Conflict?* <
<https://www.quora.com/What-is-the-best-political-solution-to-the-Kashmir-conflict>>