Decolonizing Cyprus 60 Years after Independence: An Assessment of the Legality of the Sovereign Base Areas

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Abstract The Sovereign Base Areas (SBA) are two parts on the island of Cyprus, with a combined territory of 99 square miles, over which the United Kingdom exercises sovereignty. They were created by the Treaty of Establishment 1960, which is also the international agreement that granted the Republic of Cyprus its independence. This article maps out the implications of the Chagos Archipelago advisory opinion for the SBA. It argues that the process through which they were created disregarded the wishes of the Cypriot people and, therefore, was not in accordance with the right to self-determination.
EUROPEAN COMMUNITIES

1 Introduction

In 2019, the International Court of Justice (ICJ) delivered one of its boldest advisory opinions to date, finding that when the United Kingdom (UK) separated the Chagos Archipelago from Mauritius while the latter was still a British colony, and then only granted Mauritius its independence, it violated the right to self-determination.[1] Since the decolonization process was not properly concluded, the UK's current administration of the Chagos Archipelago constitutes a wrongful act of continuous character

that the UK must bring to an end.[2] The objective of this article is to map out the implications of the *Chagos Archipelago* advisory opinion for Cyprus. Cyprus, the third largest island in the Mediterranean, is also an ex-colony of the British Crown. In 1960, it was separated to create the newly independent Republic of Cyprus (RoC), on the one hand, and retain under British sovereignty the Sovereign Base Areas (SBA), on the other.

Although the RoC has largely refrained from challenging the legality of the SBA to date, it has made no secret of the fact that it was watching the *Chagos* proceedings closely. When the United Nations (UN) General Assembly requested an advisory opinion on the legal consequences of the separation of the Chagos Archipelago, the RoC broke ranks with the other EU member states that had abstained and was the only European country that voted in favour of the resolution.[3] In its written submissions to the ICJ, it noted that '[t]he guidance of the Court on, and the clarification of, the international legal framework governing the decolonization process and its consequences are … of direct interest to the Republic of Cyprus'.[4] The RoC did not hide its intentions during oral arguments either when,

in referring to the SBA, it stated that 'even in the eyes of the United Kingdom itself, colonialism seems to be alive and well today'.[5] After the ICJ delivered its advisory opinion, the RoC's attorney general was even more explicit, stating that the Court's advice was a 'legal tool' that the Cypriot government could use to renegotiate the status of the SBA.[6]

The article is broadly divided into three parts. The first part sets the scene by providing a brief history and description of the SBA (section 2), an analysis of the legal status of the SBA (section 3) and a summary of the law outlined by the ICJ in *Chagos* (section 4). The second part of the article applies the Court's findings to the SBA (section 5). It identifies four important differences between the two cases that make it more difficult for Cyprus, compared to Mauritius, to argue that its decolonization process did not fully comply with the right to self-determination. Finally, the third part questions whether developments since 1960, and, in particular, the RoC's close cooperation with the UK in relation to the SBA, give rise to arguments that would estop the Republic from challenging the SBA's legality (section 6). The article concludes that, although not without significant obstacles, the RoC, should it wish to do so, could make a case for the illegality of the SBA.[7]

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2 A Brief History and Description of the SBA

Although it technically remained a part of the Ottoman Empire, Cyprus came under the control of the British in 1878.[8] The island was officially annexed by the UK in 1914, and Turkey relinquished its rights in Cyprus in 1923.[9] From 1955 onwards, calls for self-determination intensified, and the UK began considering how best to safeguard its military interests. The idea of retaining sovereign military bases in Cyprus, while allowing the rest of the island a measure of self-determination, was floated for the first time in 1957[10] and remained a permanent feature of all proposals for the decolonization of Cyprus that followed.[11] In addition to maintaining that any future arrangement should safeguard its military interests, the UK insisted that the 'Cyprus problem' was not only a colonial issue but could also develop into an international conflict between Greece and Turkey, two of its NATO allies.[12] It was thus fundamental that any solution to the 'Cyprus problem' was acceptable not (only) to Cypriots but also, first and foremost, to the two parent states.

Following a series of unsuccessful proposals by the British,[13] in December 1958, the Greek and Turkish foreign ministers approached their UK counterpart and suggested that they were ready to negotiate between themselves a mutually acceptable settlement for the future of Cyprus.[14] Having received assurances that such a settlement would take into account British military interests, the UK gave its informal blessing for the Greco-Turkish negotiations to begin.[15] Between 5 and 11 February 1959, Greek and Turkish representatives met in Zurich, where they agreed on the basic structure of what would become the RoC's Constitution.[16] On 12 February, this basic structure was shared with the UK, which agreed with it in principle so long as its military interests in Cyprus, in the form of the SBA, were safeguarded.[17] Five days after the conclusion of the Zurich Agreement, on 16 February 1959, Greek Cypriot and Turkish Cypriot community leaders were invited

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to London and officially presented for the first time with what had been agreed to date.[18] The two Cypriot delegations were headed by Archbishop Makarios, the Greek Cypriot who would become the first president of the Republic, and Dr Fazil Kutchuk, the Turkish Cypriot who would become its first vice-president. The UK, Greece, Turkey and the two Cypriot leaders acting as representatives of the newly formed Republic signed the Treaty of Establishment on 19 February 1959.[19] Negotiations to determine, among others, the fine detail of the Constitution, the size of the SBA, what would happen if the UK wanted to dissolve its military bases in Cyprus and any financial compensation to be paid by the UK to the newly established RoC, continued after the signing of the treaty and were

successfully completed in July 1960.[20] On 16 August 1960, the RoC was declared an independent state, and the SBA were formed.[21]

The SBA are two pieces of land—Akrotiri and Dhekelia—that jointly make up 99 square miles (or 3 per cent) of the island of Cyprus, an area that is in itself larger than the island of Malta.[22] Before 1960, they were both agricultural areas inhabited by Cypriot farmers, indistinguishable from other parts of the island. Today, they are British military bases: areas that the UK retained under its sovereignty to use for military and defence purposes.[23] They have an annual operating budget of £11.5 million[24] and a population of 18,000 persons.[25] Of these, approximately 7,000 are British soldiers, civilian personnel and their families, and the remaining 11,000 are local residents.[26]

While on paper the SBA operate as entities that are entirely independent from their surrounding territory, in practice, their day-to-day functioning relies on significant administrative support from the RoC. The SBA have their own laws, which consist of a

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mixture of ordinances issued by the SBA administrator[27] (a position held by the commander of the British Forces in Cyprus[28]), decisions of secretaries of state,[29] laws of the former colony of Cyprus that have not been repealed to date,[30] common law and any Acts of the UK Parliament that have been explicitly extended to the SBA.[31] Nevertheless, the discretion of the administrator to issue ordinances – the most common source of law in the SBA – is limited by a declaration made by Her Majesty's Government in 1960, commonly known as 'Appendix O', which provides that '[t]he laws applicable to the Cypriot population of the Sovereign Base Areas will be as far as possible the same as the laws of the Republic'.[32] Although the UK does not consider Appendix O to be legally binding, the administrator generally complies with this obligation, thus ensuring that the laws regulating the lives of civilians in the RoC and the SBA are substantively the same.[33] Responsibility for the enforcement of SBA laws, both for British personnel and local residents, lies with the SBA administration.[34] As a matter of practice, however, the administrator delegates the exercise of most of his functions and the implementation of the ordinances that he issues to RoC officials.[35] Cooperative arrangements also exist between the RoC and the SBA in relation to the judiciary.[36] The SBA have their own court system, and SBA courts have jurisdiction in all civil and criminal disputes whose facts took place in the Areas.[37] Nevertheless, cases that involve Cypriots residing or operating within the SBA are generally dealt with by RoC courts.[38]

In order to ensure the functionality of the SBA, when the UK withdrew from Cyprus, it also kept control of about 40 'British Retained Sites and Installations'.[39] The retained sites, which make up about 40 square miles in total, are formally under the sovereignty of the RoC, but this sovereignty, however, is totally suspended. In practice, this means that RoC officials or citizens cannot enter these enclosed areas without the explicit consent of the SBA administration.[40] Additionally, and for the same reason,

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the UK retained a number of rights over the whole of the island of Cyprus. These are dizzying in their reach and potential implications. They include, *inter alia*, the right to obtain additional small sites that the UK considers necessary for the effective use of the SBA,[41] the right to fly military aircraft in RoC airspace,[42] the right to take control of RoC ports if they are to become inadequate to meet the needs of the SBA[43] and the right to make surveys 'of any kind in any part of the Republic'.[44] The UK can exercise these rights 'after consultation' with the RoC, but it does not need the Republic's consent; the final arbiter of whether it is appropriate to exercise these rights is the British Crown. Further, without consultation or even notification, the UK authorities can use roads, ports and other facilities within the RoC freely for the movement of troops.[45] Finally, the UK has retained the right to obtain, 'after consultation' with the RoC, 'the use of such additional rights as the United Kingdom may, from time to time, consider technically necessary for the efficient uses' of the SBA.[46] Combined, these rights provide 'possibly the most far reaching and comprehensive regime on access and freedom of movement' of any of the foreign military

bases that exist throughout the world.[47] Since these rights were extended to the UK to ensure the functionality of the Areas, any discussion about the SBA's legality also impacts whether and how these can be exercised.

3 The Legal Status of the SBA

The UK has maintained since 1960 that Akrotiri and Dhekelia jointly form a UK-dependent territory. Conversely, the RoC has adopted a less consistent characterization of the SBA. While, in 1991, the Cypriot Supreme Court ruled that the SBA are a *sui generis* entity with an exclusively military character,[48] different branches of government more recently have treated the SBA as a 'colonial remnant'.[49] Like with Mauritius in the 1970s and 1980s, this changing understanding of the SBA's legal status has come about because it is now easier for the RoC to publicly acknowledge the colonial character of part of the island. Thus, despite earlier differences and although the two sides use different terms to describe them, the RoC and the UK agree that the Areas are a direct continuation of Cyprus' colonial history.

The starting point for the British position that the SBA are a UK-dependent territory is found in Article 1 of the Treaty of Establishment, which states that

> [t]he 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.[50]

The choice of the word 'remain' suggests that there is a continuity between the pre- 1960 era when the SBA were undoubtedly part of a colony and the post-1960 period.[51] The position that the SBA are a UK-dependent territory has long been adopted by the SBA courts,[52] but, more recently and authoritatively, it has also been accepted by the UK Supreme Court. As the Court unanimously held in *R. (on the Application of Tag Eldin Ramadan Bashir and Others) v. Secretary of State for the Home Department*,

> [t]he 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.[53]

This finding is in line with a number of other British primary and secondary sources. Schedule 6 of the British Nationality Act 1981 and section 1(1) of the British Overseas Territories Act 2002 list Akrotiri and Dhekelia among the UK's 14 overseas territories.[54] *Halsbury's Laws of England* notes that the SBA 'are to be regarded … as constituting a colony acquired by consent or cession as of 5th November 1914',[55] while Ian Hendry and Susan Dickson conclude that all British Overseas Territories – among them, the SBA – fall within the definition of colony under the Interpretation Act 1978, Schedule 1.[56]

Conversely, the RoC Supreme Court has relied on Article 1(2) of Appendix O, which declares the UK's intention '[n]ot to set up and administer colonies' in Cyprus. This is also confirmed in section 2(i) of the Treaty of Establishment, which reiterates the UK's promise '[n]ot to develop the Sovereign Base Areas for other than military purposes'. The Court then held 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]

This position has been confirmed in subsequent cases of the RoC courts[58] and has been advanced by Cypriot authors[59] and in Cypriot publications.[60]

Although unambiguously stated at the time, this position has been impliedly revised since then. The RoC's House of Representatives has unanimously passed four resolutions on the SBA over the years: in 1979, 2005, 2007 and 2012. The 1979 resolution made no reference to the legal status of the SBA and merely vaguely alluded to an entirely demilitarized Cyprus in the future.[61] The 2005 resolution referred to the 'relevant decisions of the UN for the abolition of colonialism' and the principle of self-determination,[62] but its characterization of the SBA is broadly in line with that of the RoC Supreme Court in *Estia*.[63] The 2007 and 2012 resolutions, on the other hand, make a lot more explicit references to colonialism and do not mention the declared *sui generis* character of the SBA at all. Thus, the 2007 resolution states that '[t]he rights of the UK that stem from the Treaty of Establishment constitute remnants of colonialism'.[64] Similarly, the 2012 resolution declares that 'the operation of 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'.[65] It adds that '[t]he alleged rights of the UK that stem from the Treaty of Establishment constitute remnants of colonialism and, as such, are a blatant anachronism'.[66] All resolutions from 2005 onwards make general references and conclude that the existence of a UK-dependent territory in Cyprus is contrary to international law. Finally, the position that the SBA are a colony was articulated by the then speaker of the House of Representatives (and, subsequently, president of the RoC) during a 2006 interview that he provided to the rapporteur of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly of the Council of Europe.[67] Demetris Christofias was categorical that 'the SBAs are a remnant of colonialism and that the British should leave'.[68]

At least for the last decade and a half, therefore, the UK and the RoC have been in agreement about the legal characterization of the SBA. They are not unique entities in international law over which the UK exercises limited sovereignty but, rather, a UK-dependent territory. This change is arguably the result of a growing realization among Cypriots that only if the SBA are labelled accurately can their legality, or lack thereof, be addressed. As the RoC attorney-general stated in his oral submissions in *Chagos*, 'the application of [the principles of decolonization] cannot be avoided by

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”'.[69]

4 The Chagos Archipelago Advisory Opinion

In *Chagos*, the UN General Assembly asked the ICJ to answer two questions.[70] The first was whether the decolonization process was lawfully completed when Mauritius gained independence in 1968, after Chagos Archipelago had been separated from its territory to be retained as a colony in 1965. The second was to assess the consequences under international law of the UK's continued administration of the Chagos Archipelago. To answer these questions, the ICJ had to clarify the content of the right to self-determination, to which the decolonization process was intended to give effect. The Court did this by making four related statements:[71] first, that by December 1960, the right to self-determination had crystallized into customary international law;[72] second, that the right to territorial integrity of a non-self-governing territory is a corollary to the right to self-determination;[73] third, that a detachment of part of a colony before independence is in violation of the right to self-determination, unless this decision is based on the free and genuine will of the people of the concerned territory[74] and, fourth, that whether such free and genuine will had been exercised should be subject to heighted scrutiny in situations where a part of the non-self-governing territory was separated to create a new colony.[75]

The Court based its first finding – that, by 1960, the right to self-determination had crystallized into customary international law – on UN General Assembly Resolution 1514 (XV) of 14 December 1960. It found that Resolution 1514, which had been passed with 89 votes in favour, nine abstentions and no votes against, was of a declaratory character, essentially announcing to the world that the right was already

in existence.[76] The Court drew support for this conclusion from the fact that, in the 1960s, 28 non-self-governing territories achieved independence, a development that was clearly related to the passing of Resolution 1514.[77] Reference was also made in the advisory opinion to the UN Charter and resolutions that had been passed before 1960, with the Court noting that these were relevant in assessing the evolution of the law on self-determination as both state practice and *opinio juris* had been consolidated and confirmed gradually over time.[78]

The Court's second finding was that the right to self-determination applies to the entirety of the non-self-governing territory and that, therefore, entailed within it was the right to territorial integrity. This finding was based on paragraph 6 of Resolution 1514, which provides 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 principles of the Charter of the United Nations'. In reaching this conclusion, the ICJ impliedly rejected the UK's argument that the colonial power had the right to alter a colony's territory at any stage before independence[79] and confirmed that the welfare of the colonized population is more important than any financial or military interests the colonial power is keen to protect.[80]

Also derived from Resolution 1514 was the ICJ's third finding – namely, that the exercise of the right to self-determination 'must be the expression of the free and genuine will of the people concerned'.[81] In reaching this conclusion, the Court relied on its previous findings in the *Western Sahara* advisory opinion that '[t]he validity of the principle of self-determination [is] defined as the need to pay regard to the freely expressed will of peoples',[82] an obligation that Judge Maharaj Nagendra Singh had considered to be 'the very *sine qua non* of all decolonization'.[83]

Having emphasized the importance of consent in the process of decolonization, the ICJ reached its fourth conclusion – namely, that the test for whether the free will of the people had in fact been exercised when a part of a non-self-governing territory was separated to create a new colony is one of 'heighted scrutiny'.[84] The Court did not elaborate on what exactly triggers the 'heightened scrutiny' test.[85] Immediately before referring to this test, the ICJ noted 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'.[86] This could be read as suggesting that the mere existence of a dependency relationship is enough to call for heightened scrutiny.[87] Judge Julia Sebutinde, in a separate opinion, expressly disagreed with this finding and noted that the free and genuine will of the people was not necessarily vitiated by Mauritius' status as a colony.[88] Rather, it was the fact that the UK had already taken legal and administrative decisions about Chagos' detachment without informing Mauritius that made it necessary to adopt a heightened scrutiny test.

Also different is Judge Patrick Robinson's position that what undermined free consent was the general atmosphere of intimidation and coercion that existed when the Mauritian premier met with the British prime minister to discuss the future of the archipelago.[89] What could have also triggered the need for heightened scrutiny was, as the Court's description of the facts implies,[90] the fact that the UK used the prospect of full independence to push the Mauritian premier into accepting Chagos' separation.[91] Ultimately, the Court's reasoning for adopting a heightened scrutiny test is arguably encapsulated in Judge Giorgio Gaja's observation that an administering power is under a duty 'to promote the well-being of the inhabitants' of the non-self-governing territory.[92] Establishing a new colony, constructing a military base and expelling the indigenous population from it are not acts that are in line with this duty.[93] If the only justification for such a decision is that the inhabitants consented to this, one must be certain – and, therefore, must critically examine and not just assume – that such consent was indeed given.[94]

Under the 1969 Vienna Convention on the Law of Treaties (VCLT), an international agreement is voided if it had been signed following coercion of a state's representative (Article 51) or if the state itself had been threatened or

subjected to the use of force (Article 52).[95] It is clear that when the ICJ referred to the heighted scrutiny test, it had in mind a range of broader circumstances that would vitiate consent. The two tests (the first relating to agreements between states under the VCLT; the second to agreements between a state and a colony established by the ICJ in *Chagos*) differ because

they are shaped by distinct considerations.[96] When two states enter into a treaty, the assumption is that they are both equal and sovereign – thus, the principle of *pacta sunt servanda* applies. Conversely, when a state and a non-self-governing territory enter into a treaty (usually one that signals the latter's independence), the governing principle is not value neutral; it aims for the elimination of colonialism. It is because of this consideration that whether the 'heighted scrutiny' test is satisfied cannot be answered by relying on a series of procedural requirements. Rather, 'heightened scrutiny' comprises of 'an evaluation of the full array of circumstances … which, either individually or cumulatively, are apt to impair the free and genuine consent of a colony'.[97] The following section explores these circumstances in the case of Cyprus.

5 The Creation of the SBA

This section applies the law outlined in *Chagos* to the creation of the SBA. A comparison between the two is appropriate because, in both cases, a part of a colony was separated before independence in order to create a military base under British sovereignty that remains in operation today. Nevertheless, it must be acknowledged from the outset that there are differences between how this happened in each instance. These differences suggest that the RoC will find it more difficult than Mauritius, albeit not impossible, to challenge the legality of the separation of its territory. This section focuses on four such differences. First, while Mauritius achieved independence in 1968 – at a time when the existence of the right to self-determination was virtually undisputed – the RoC was created in August 1960, four months before the passing of Resolution 1514. Second, Chagos was separated from Mauritius without any consultation with the local population. Conversely, the separation of the SBA was preceded by intense negotiations and a general election. Third, while Mauritians agreed to Chagos' separation and their independence without any support from third states, Greece and Turkey were actively involved in the negotiations for the independence of the Republic and the creation of the SBA. Fourth, the separation of Chagos from Mauritius became possible through the forced displacement of some 2,000 Chagossians.[98] Nothing similar happened in Cyprus. In fact, Appendix O includes additional protections for the locals residing in the SBA and ensures that they will be subject to substantively the same laws as those of the RoC.

A The SBA Were Created before the Passing of Resolution 1514

The first finding of the Court – that by the time Resolution 1514 was adopted the right to self-determination had crystallized into customary international law – is one of the biggest hurdles that the RoC will have to overcome if it ever chooses to challenge the legality of the SBA. The ICJ's legal analysis in *Chagos* almost entirely relies

on the wording of the resolution. This was passed by the UN General Assembly on 14 December 1960, yet the Treaty of Establishment was signed, and the SBA were created, four months prior on 16 August. Thus, one interpretation of the law is that the advisory opinion is irrelevant to Cyprus since Resolution 1514 did not exist, and the right to self-determination did not apply, when it was granted its independence. Even if this argument is accepted in principle, it should be dismissed in the specific case of the SBA since the UK had acknowledged that the principle of self-determination was relevant and should be protected in Cyprus long before it granted the Republic its independence in 1960.[99] In 1956, for example, the UK Cabinet agreed to announce that '[a]s regards self-determination for Cyprus, the United Kingdom Government had already accepted the principle'.[100]

Cyprus-specific arguments notwithstanding, the position that the right to self-determination has no role to play in countries that received their independence before 14 December 1960 is unpersuasive. The ICJ might have characterized the adoption of Resolution 1514 as 'a defining moment in the consolidation of state practice on decolonisation',[101] but at no point did it state that the rule of self-determination was formed with the adoption of this resolution. To the contrary, the Court's statement that the resolution 'clarifies the content and scope of the right to self-determination' suggests that the right was necessarily in existence before the adoption of the resolution that clarified it.[102] Support for this argument is also found in the submissions of several states in *Chagos*: of the 12 submissions made to the ICJ about the history and development of the right, seven argued that the right existed before the passing of Resolution 1514.[103] Of the other five, two (the UK and the USA) argued that the right to self-determination had not crystallized at the time of Mauritius' independence, and three submitted that the right had crystallized with the adoption of Resolution 1514.[104]

However, if the right to self-determination crystallized before December 1960, it is not entirely clear when this happened. One argument is that the right was formed in 1945 with the drafting of the UN Charter. Several provisions of the Charter – among them, Articles 1, 55, 56, 73 and 74 – mention or describe self-determination and create specific obligations for states that stem from this. Support for this argument is derived from the fact that, while the English version of the Charter refers to the principle of self-determination, the equally authoritative French version uses the term 'droit à disposer d'eux-mêmes'.[105] Alternatively, it could be argued that the UN Charter

did not 'impose direct and immediate obligations on Member States' but marked 'an important turning point' that would lead, at a later date, to the crystallization of the right.[106] One such later date could be 1952, the year when the UN General Assembly passed Resolution 545 and agreed to add the right to the two International Covenants on Human Rights that were being drafted at the time.[107] Nevertheless, Resolution 545 might indicate the existence of 'strong moral and political support' for the right, but it does not provide strong evidence of *opinio juris*.[108] Coupled with the fact that state practice was, in the 1940s and early 1950s, essentially non-existent makes this argument unlikely to be successful.

A more plausible alternative date for the crystallization of the right is 1957. Between 1950 and 1957, the UN General Assembly passed eight resolutions that referred to the right to self-determination.[109] When reporting on the 12th (1957) and 13th (1958) sessions of the General Assembly, the secretary-general noted that the majority of member states 'wished only to reaffirm the right of self-determination. They emphasized that the General Assembly had already recognized self-determination as a fundamental right in resolutions adopted at previous sessions'.[110] Further, Resolution 1188, adopted by the General Assembly on 11 December 1957 by 65 votes to none and 13 abstentions, reaffirmed in paragraph 1 that member states bearing responsibility 'for the administration of Non-Self-Governing Territories shall promote the realization and facilitate the exercise of the right [to self-determination] by the peoples of such Territories'. Many of the states that abstained took issue not with the fact that self-determination was treated as a right but, rather, with the fact that this paragraph only recognized the people of non-self-governing territories as right holders.[111] By 1957, therefore, the existence of a legal right to self-determination was widely accepted by member states; any disagreements that remained concerned the scope of the right and whether this should be extended to contexts not relating to decolonization. This argument was accepted by Judge Robinson who noted in his separate opinion that when, between 1957 and 1960, 18 countries – the RoC among them – 'became independent, they did so in exercise of an existing right under international law'.[112]

Successfully contending that the right to self-determination had crystallized into customary international law before the passing of Resolution 1514 is essential if the

RoC is to argue that the creation of the SBA was illegal. However, while the argument is theoretically persuasive, it is, in practice, difficult to point to a moment of crystallization earlier than 1960. One plausible alternative that the RoC could advance is 11 December 1957. Resolution 1188 arguably received limited attention in *Chagos* not because it provided an inadequate legal authority for the crystallization of the right but, rather, because the facts of the advisory opinion made it unnecessary for the ICJ to rely on anything other than Resolution 1514.

B Cypriots Formally Consented to the Creation of the SBA

In principle, there is nothing legally problematic with a state ceding part of its territory. Although the principle of *uti possidetis* and Resolution 1514 create a presumption that the borders of the newly independent state will reflect those of the ex-colony, it is within the rights of any state to redraw its borders and leave some part of its territory to a former colonial power or a third state. Indeed, as the argument goes, it is precisely one of the attributes of an entity that has exercised the right to self-determination that it has the legal capacity to make such territorial dispossession. This argument, of course, is premised on the idea that the newly established state was acting voluntarily when it decided to redraw its borders. If the negotiations that led to this decision took place at a time when it was a colony, it is still necessary to assess, using the heighted scrutiny test, whether it was indeed the product of the free and genuine will of the people.

This argument leads to the second major difference between the two cases. While the decision to separate Chagos from Mauritius was not preceded by any sort of referendum or general election, the creation of the SBA was at least impliedly endorsed by the Cypriot public in two ways. First, the de facto leaders of the Greek Cypriot and Turkish Cypriot communities, who would later become the first president and vice-president of the RoC, signed the Treaty of Establishment.[113] Second, the creation of the SBA was indirectly approved by the Cypriot population when it voted in the country's first democratic elections, some 10 months after the singing of the treaty and eight months before independence. It appears, therefore, that, while it was relatively easy for Mauritius to make a *prima facie* case that Chagos' separation was not the product of the free and genuine will of its people, this will be significantly harder to prove for the RoC. Nevertheless, a closer examination of the facts in Cyprus suggests that neither the leaders' involvement nor the holding of general elections provide compelling evidence of the exercise of free and genuine will that the heightened scrutiny test demands.

Whether the SBA would be created or not was never the subject of any meaningful negotiation since the UK, from the outset, had inextricably linked the RoC's independence with the retention of the SBA. The confidence and frequency with which the UK ministers spoke about the establishment of military bases in Cyprus – before the

Cypriots agreed to it – is striking. According to a 'top secret' Cabinet paper, dated 26 July 1957, the UK made clear to the USA that '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'.[114] The same document identified Akrotiri and Dhekelia as the first two locations that the UK were considering for these military facilities.

When the 'Cyprus problem' was discussed between the Greek, Turkish and British governments in February 1958, it was reported to the Cabinet by the secretary of state for foreign affairs that 'it was made clear by me that whatever happened, British bases under British sovereignty would remain in the island. This was accepted by Turkish and Greek Ministers'.[115] The same document noted that the UK government had already declared its 'acceptance for the principle of self-determination' and its 'intention to achieve a settlement of the Cyprus problem'. However, it stipulated 'as fundamental conditions of such a settlement … (b) that such bases and installations as may be required to meet the security and strategic requirements of Her Majesty's Government … are retained'.[116] A

year later, in February 1959 when the Greek and Turkish foreign ministers brought the Zurich Agreement they had negotiated to London for approval, they made sure to note that 'their Governments would be prepared to concede in full our own [that is, the British] strategic requirements in Cyprus including the establishment of military bases in enclaves retained under British sovereignty'.[117] Even a year after the Treaty of Establishment had been signed, in a 'Memorandum by [the UK] Minister of Defence', it was explicitly stated that '[i]t will be remembered that a basic condition of the London Agreements [that resulted in the signing of the Treaty of Establishment] was that we should retain two areas as military bases under full British sovereignty'.[118] The fact that independence was conditional on the retention of the

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SBA provides compelling evidence that the decision of the Cypriot representatives to sign the Treaty of Establishment was not the product of their 'free and genuine will'.

The second reason why, unlike the Mauritians, Cypriots appear to have consented to the creation of the SBA is that general elections were held 10 months after the Treaty of Establishment had been signed and eight months before the RoC and the SBA were formed. The contents of the treaty were well known at the time of the elections, which nevertheless resulted in overwhelming wins for the two leaders who participated in the negotiations: Archbishop Makarios was elected president by 67 per cent of the Greek Cypriots, and Kutchuk ran unopposed. This could be interpreted as indirect public endorsement of the contents of the Treaty of Establishment and the creation of the SBA. However, the argument becomes less compelling when one understands the political context in which the elections took place. Whether the SBA would be separated from the RoC was not the only, or even the main, question that was debated in the months leading to the general elections. How political power would be divided between the Greek Cypriot and Turkish Cypriot communities and the fact that Greece, Turkey and the UK were given the right to militarily and unilaterally intervene in Cyprus were questions that monopolized political debates, often to the detriment of discussions relating to the SBA.[119]

Moreover, none of the candidates challenged at the time the contents of the Treaty of Establishment.[120] The Communist Party had the support of a sizable portion of the Greek Cypriot population,[121] and at least some of its members wanted to overthrow the Treaty of Establishment or were only willing to accept it for an interim period.[122] Yet the British governor only lifted the ban on the Communist Party that was in place at the time on 4 December 1959, one week before the general election took place.[123] Thus, those who opposed the creation of the SBA had no candidate to rally behind in the elections.[124] Evidence that there was public opposition towards the creation of the SBA is found in newspapers of the time. For example, on the day of the elections,

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Charavgi, the main left-wing newspaper in Cyprus, published a list of 15 reasons why the public should not vote for Archbishop Makarios (see Figure 1). The first reason on the list is 'BECAUSE he signed without the will and approval of the people the ignominious Zurich-London Agreements'.

Finally, it is worth noting that the general elections took place on 13 December 1959, while the negotiations that followed the Zurich-London Agreements continued until July 1960. During this seven-month period, important decisions about the future and administration of the SBA were taken. These focused on debates concerning the size of the Areas,[125] whether Appendix O would be legally binding[126] and what would happen to the SBA if they were no longer needed by the UK.[127] So heated were the negotiations that, in January 1960, the undersecretary of state for the colonies had to convene another conference in London between British, Greek, Turkish and Cypriot delegates in order to resolve their disagreements.[128] As late as April 1960, four months after the elections and 14 months after the signing of the Treaty of Establishment, the undersecretary of state for the colonies was instructed by Cabinet to 'have an informal meeting with Archbishop Makarios with a view to making it clear that, unless he accepted Dr Kutchuk's proposal [on the size of the SBA], we would break the discussions and seek some other

settlement of the Cyprus problem in consultation with the Greek and Turkish Governments'.[129] The involvement of the undersecretary of state for the colonies (rather than the secretary of state for foreign affairs) and the strong-arming that the UK felt it could exert on Archbishop Makarios, even after the elections, suggests that the separation of the SBA was not the result of an equal and free negotiation between the parties. Thus, despite initially appearing that the Cypriots freely and voluntarily consented to the separation of the SBA, the facts on the ground paint a more convoluted picture. While not as straightforward as the case made by Mauritius in *Chagos*, there is sufficient evidence for the RoC to argue, under a heightened scrutiny test, that the separation of the island was not voluntary.

C Greece and Turkey Were Actively Involved in the Negotiations

The active involvement of Greece and Turkey in the negotiations for Cyprus' independence could be seen as another major difference between the separation of Akrotiri and Dhekelia, on the one hand, and Chagos, on the other. Independence was often the

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Figure 1: Charavgi, 13 December 1959.

product of negotiations between the colonized and the colonisers, but it is possible, in principle, that the interests of the colonized were also represented by third states as well.[130] As the argument goes, this is what the Greek and Turkish representatives were doing in Zurich and London. Thus, unlike Mauritius, which was negotiating on its own against the UK, Cypriots were represented by two powerful states that were both important allies of the British. Nevertheless, a closer examination of the facts suggests that, rather than assisting the Cypriot representatives, the presence of Greek

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and Turkish diplomats meant that, at crucial points in the negotiations, Cypriots were excluded from them and were merely relegated to rubber-stamping the Treaty of Establishment.

The Treaty of Establishment was negotiated in Zurich between 5 and 11 February 1959; in London between 16 and 19 February 1959 and in three follow-up committees in the months leading up to July 1960.[131] The Zurich negotiations took place between the Greek and Turkish delegations in the absence of any Cypriots.[132] Only after the Zurich Agreement received the British seal of approval, which was provided on the condition that the UK 'should need to retain certain substantial areas under British sovereignty as permanent military bases', were the Cypriot delegates flown to London.[133] This delay was not an oversight. Rather, it was a strategic decision taken with the express objective of limiting the negotiating power of the Cypriot representatives. As it was candidly reported to the UK Cabinet on 12 February 1959, '[i]t 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'.[134] Indicative of the fact that Greek Cypriots were not privy to what was negotiated on their behalf is the fact that, when Archbishop Makarios and his advisers met on 16 February 1959 after reading the Zurich Agreement for the first time, they rejected the agreement by 25 votes to two.[135]

Indeed, when Archbishop Makarios tried to challenge some of the points agreed in Zurich – admittedly, nothing relating to the SBA[136] – he was told that what had been agreed was not subject to renegotiation.[137] The whole purpose of the London Conference, it was explained, was to build on what had already been negotiated in Zurich.[138] If he was not willing to accept the totality of the agreements reached in

his absence, the negotiations for independence would cease altogether.[139] Archbishop Makarios complained about the process that had been followed and the non-involvement of Cypriots in the negotiations, but his concerns were summarily dismissed.[140] Despite the archbishop's overall very close cooperation with the Greek government, this was not the first time he objected to the idea that Greece could speak on behalf of Greek Cypriots. He had noted, for example, as early as 1955, that '[t]he Cyprus question does not constitute a political issue between Britain on the one hand and Greece and Turkey on the other. The Cyprus issue is purely a question of self-determination and concerns the British government and the Cypriot people only'.[141] In fact, having learned from his experience in February 1959, when negotiating the size of the SBA in the summer of 1960, Archbishop Makarios publicly and successfully demanded that Greece (and, therefore, also Turkey) be excluded from the negotiating table.[142]

In the plenary session of the Cyprus Conference in London on 18 February 1959, the archbishop was reported as saying

> that there appeared to be a misunderstanding. He was being represented as rejecting the Zurich Agreements. But the Conference had surely 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?[143]

This statement was made a day after the Greek prime minister called a Cabinet meeting in Athens that unanimously authorized him to ignore the archbishop and sign the agreements, should Archbishop Makarios persist in his refusal to accept them.[144] Responding to the archbishop's comments in the plenary session referenced above, the Turkish foreign minister made it clear that '[t]he Archbishop should not suppose that the Zurich Agreements were a beginning from which he could start negotiations'.[145] The day after this debate took place, the Treaty of Establishment was signed. Thus, although at first instance the presence of the Greek and Turkish delegations could be seen as evidence of the fact that the right to self-determination in

Cyprus was protected to a greater extent than in Mauritius, a closer analysis of what happened suggests that, in fact, the opposite was the case.

D The Creation of the SBA Did Not Involve Forced Displacement of the Local Population

The fourth difference between Chagos and the SBA concerns the fact that Chagos' separation was accompanied by the forcible displacement of the islanders from, and their inability to return to, their homes. Conversely, although the inhabitants of the SBA enjoy a much more limited protection of their property rights compared to other Cypriots,[146] they have not been forcibly displaced. In fact, Appendix O includes additional protections of these individuals and provides that they are subject to the jurisdiction of the RoC courts and that the laws in the SBA will be substantively similar to those in the Republic. While this is indeed the state of affairs today, the history of what was expected to happen to the inhabitants of the Areas is more complex. Article 1(a)(b) of Appendix R of the Treaty of Establishment provides that the UK would pay the RoC 'a sum not exceeding £500,000 … for inhabitants of Akrotiri who desire to leave Akrotiri and settle within the territory of the Republic of Cyprus' (no similar provision exists for inhabitants of Dhekelia). In his report to the Parliamentary Assembly of the Council of Europe, the special rapporteur noted that the inhabitants of Akrotiri were paid £1 million to move out of the village upon the establishment of the SBA.[147] Nevertheless, after being unable to resettle elsewhere, the inhabitants returned to the village, a move that has been de facto accepted by the British since the 1980s.[148] While this difference has important human consequences, it is unlikely to make an impact on self-determination claims. Evidence for this is provided by the fact that, although the ICJ gave detailed descriptions of the gross violations suffered by the Chagossians in previous parts of the advisory opinion,[149] it did not refer to them when applying the heightened scrutiny test.

In sum, the four differences between Chagos and the SBA suggest that, while it will be possible for the RoC – should it wish – to make a case for the illegality of the SBA, this will be a more challenging task than the one with which Mauritius was faced. Perhaps the hardest hurdle to overcome is the fact that the RoC became independent four months before Resolution 1514 was passed by the UN General Assembly. Another difficulty for those challenging the lawfulness of the continued administration of the

SBA concerns the difference between how Cyprus has handled the issue of the SBA in contrast to how Mauritius handled the issue of Chagos since their independence. It is to this difference that the next section now turns.

6 Developments since the Creation of the SBA

Even if the SBA were created in violation of the right to self-determination, the RoC's actions from 1960 onwards could prevent it from challenging their legality today. Over the last 62 years, the RoC has not challenged the legality of the SBA in any international fora, has entered into agreements with the UK for the smooth functioning of the Areas and has been cooperating and providing assistance to the SBA administration. Thus, the UK could argue that the RoC might not have freely agreed to the creation of the SBA in 1959 or 1960, but its actions in the years since should estop it from questioning their legality in 2022. This section outlines the four requirements that must be satisfied for an estoppel defence to be successfully argued, as these were outlined by the Arbitral Tribunal in the *Chagos Marine Protection Area Arbitration Award*.[150] It contends that, while at first instance it appears that the UK could make a case that would prevent the RoC from challenging the SBA's legality, this is not as straightforward as it originally appears.

Estoppel has been used in international arbitration since the 1800s,[151] while the doctrine has been mentioned by the ICJ or discussed by the parties in their submissions to the Court in more than 30 cases.[152] Nevertheless, the ICJ 'has been extremely cautious in upholding arguments found on alleged estoppel',[153] with one author suggesting that claims based on the doctrine must satisfy a higher evidential threshold than other arguments before they are accepted by international courts and tribunals.[154] While the requirements that have to be satisfied for a successful estoppel defence have been subject to some debate,[155] the four conditions that the Arbitral Tribunal settled on accurately summarize the current state of the law.[156]

The first two elements of the defence jointly require that 'a state [in this case, the RoC] 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'.[157] It is clear that RoC officials have made a number of representations that could provide evidence of the perceived legality of the SBA. For instance, following the rare use of violence by Akrotiri residents against the SBA administration, due to a 2001 decision to erect high frequency antennae near their homes, the then president of the Republic, Glafkos Clerides, was adamant: '[T]he Government of Cyprus makes it perfectly clear in the most explicit way that for the Government there is no question of raising the issue of the British bases.'[158] In fact, the RoC has endorsed the legality of the SBA in the most authoritative manner by entering into several agreements with the UK over the years with the intention of addressing problems that had not been foreseen by the Treaty of Establishment.

The two governments, for instance, have signed a memorandum of understanding according to which individuals that have been rescued by SBA vessels in the Areas' territorial sea[159] are eligible to apply for asylum in the RoC.[160] The UK and the RoC also signed the Non-Military Development Agreement in 2014 (2014 Agreement), through

which they renegotiated the Treaty of Establishment's provision that prevented commercial developments in the SBA.[161] Even more high profile was Protocol no. 3 of Cyprus' Act of Accession to the European Union, which provided that the SBA would remain outside the European Union but would join the European Customs Territory in order to comply with the Treaty of Establishment and avoid the erection of customs posts or other frontier barriers between the SBA and the Republic.[162] Since Brexit, Protocol no. 3 has been replaced by the Protocol to the Withdrawal Agreement, which has essentially maintained the *status quo* in the SBAs.[163]

Unlike what arguably happened in 1959 and1960, the RoC entered into these subsequent international agreements voluntarily, not as a colony on the cusp of

independence but, rather, as a sovereign state. The 2014 Agreement recalled, in its preamble, the Exchange of Notes Concerning the Administration of the SBA (that is, Appendix O) and noted 'the strong wish of the Governments to work closely together'. Similarly, the preamble of Protocol no. 3 confirmed the legality of the SBA by reiterating 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'. In none of the negotiations that preceded these agreements did the RoC directly challenge the legality of the SBA or even hint that this might be a concern. This is in sharp contrast to the approach adopted by Mauritius in relation to the Chagos Archipelago, which began questioning the legality of its detachment in 1980.[164]

The third requirement outlined by the Arbitral Tribunal is that 'the State invoking estoppel [in this case, the UK] was induced by such representations to act to its detriment, to suffer prejudice or to convey a benefit upon the representing State'.[165] This requirement contains within it two elements – namely, that the representations induced change in the UK's actions and that this change created some sort of detriment to it.[166] With regard to the first element, the ICJ made it clear in *Pedra Banca/Pulau Batu Puteh* that 'a party relying on estoppel must show, among other things, that it has taken distinct acts in reliance on the other party's statement'.[167] Yet it is unclear what such acts the UK has taken. The UK established the SBA in 1960 and has been continuing their uninterrupted administration until today. There are no distinct acts that followed specific representations of the RoC to which the UK would be able to point.

The second element is that the UK must have suffered some sort of detriment from the RoC's representations.[168] Yet the UK, in fact, has not detrimentally relied on any Cypriot statements. To the contrary, any agreements or memoranda of understanding that have been signed between the RoC and the UK seek to promote the smooth functioning of the SBA (a responsibility that, legally speaking, falls to the UK) by delegating duties and responsibilities to the RoC. Further, the Treaty of Establishment does not provide for the repayment of costs incurred by the RoC when offering assistance to the SBA administration. The UK, however, did commit to a grant that would be paid on a yearly basis,[169] and the amount of this grant would be renegotiated every five years.[170] The lack of a sunset clause in the payment of this grant, like the lack of a sunset clause

in the retention of the SBA, suggests that the two are connected; thus, although not expressly articulating this, the Treaty of Establishment provides for the payment of compensation for the retention of the Areas. In fact, Britain has recognized that this grant was understood as compensation for the retention of the SBA, but 'at the time … naturally we did not admit it to the Cypriots'.[171] The UK has paid the £12 million that was due before 1965 but has not entered into negotiations and has not paid any money to the RoC under this grant since. The failure of the UK to meet its financial obligations has been raised in all four House of Representatives resolutions and by the speaker when being interviewed by the special rapporteur of the Parliamentary Assembly. It has also been raised directly with the UK, which has nevertheless continued to refuse to pay what is due.[172] It becomes clear, therefore, that not

only has the UK not detrimentally relied on statements and actions of the RoC, but, over the years in fact, it has also benefited from them.

The final requirement outlined by the Arbitral Tribunal is that a state's reliance on the representation must be 'legitimate, as the representation was one on which the State was entitled to rely'.[173] Commenting on this, Pan Kaijun suggests that, although not new,[174] the requirement arguably 'plays a confirmatory role' because if 'clear and consistent representations' have been made by one State it is hard to imagine why the other cannot legitimately rely on them.[175] Arguably, Cyprus offers an example of this hard-to-imagine scenario. Following the inter-communal violence that erupted on the island in 1963 and the withdrawal of Turkish Cypriots from government, the RoC has been in ongoing negotiations with Turkey, Turkish Cypriots or both, with the stated objective of resolving the Cyprus problem. A successful outcome to these negotiations will result in the amendment, or, more realistically, the termination, of the Treaty of Establishment and therefore requires the consent of Greece, Turkey and the UK. The RoC has never hidden the fact that it has relied on the UK to reach an equitable solution to the Cyprus problem and, therefore, has to maintain good political relations with it. For instance, immediately after President Glafcos Clerides publicly reassured the British that the RoC was fully supportive of the SBA's continuing presence on the island, he candidly explained that 'Cyprus does not have the luxury of opening new fronts'.[176] Instead, he continued, there is 'an imperative need to focus our attention both on the deliverance from the

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Turkish occupation and on our accession course [to the EU] of which Britain is a basic supporter'.[177]

This political situation and its impact on how the RoC views and responds to the SBA has been well understood and relied upon by the UK government. In May 1971, UK Prime Minister Edward Heath commented that, despite the cost and political disadvantages of the continued absence of a solution to the Cyprus problem, the 'situation in Cyprus does not suit us too badly'.[178] The sentiment had been articulated more explicitly a few months prior when in a letter written by the British minister for public works, Julian Amery, to the then defence secretary, Lord Carrington, Amery stated that '[a]s long as there is tension between Turks and Greeks I think we have little to worry about in terms of our tenure of the Sovereign Base Areas'.[179]

Unfortunate as it may be, the political situation on the island is not in itself a reason for stopping any estoppel arguments made by the UK. What does raise doubts as to whether the UK is 'entitled to rely' on the RoC's accommodating stance towards the SBA, however, is the following. In February 1964, two months after inter-communal violence erupted on the island, the RoC minister of foreign affairs (and future president of the RoC), Spyros Kyprianou, argued before the UN Security Council that the three treaties that Cyprus had signed in 1960 before its independence,[180] and, in particular, the Treaty of Guarantee, were not compatible with the principle of self-determination and undermined its sovereignty.[181] The RoC's position was shared, among others, by Rosalyn Higgins, who remarked a few months earlier that what had been agreed in 1960 'would seem to come very close to the borderline of true independence'.[182] This had also been a concern of the UK, which advised the RoC in 1960 to join the UN before applying for Commonwealth membership for fear that the RoC's application to join the latter would be questioned because of its truncated sovereignty.[183] Kyprianou's submission before the UN Security Council did not directly refer to the SBA, but, had it

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been successful, it would have potentially had an impact on the Areas. This is because, according to Article III of the Treaty of Guarantee, Greece, Turkey and the UK 'undertake to respect the integrity of the areas retained under United Kingdom sovereignty … and guarantee the use and enjoyment by the United Kingdom of the rights' listed in the Treaty of Establishment (namely, the rights that relate to the SBA and its retained sites). Had the legality of the Treaty of Guarantee been questioned, the legality of the SBA would have potentially followed soon. This must have been appreciated by British diplomats who suggested during the debate that it would be best to revisit the challenge

to the 1960 treaties after the inter-communal violence had been resolved.[184] Almost 60 years later, the resolution to the Cyprus problem and the resumption of the 1964 debate before the Security Council are still pending. If the RoC, therefore, has stalled in challenging the SBA's legality, it is partly because it was urged to do so by the UK itself. Proposing now that the UK is 'entitled to rely' on representations that followed this advice would arguably be inequitable.[185]

7 Conclusion

In 1954, when the island was still a colony, during a House of Commons debate on the constitutional arrangements of Cyprus, the UK minister of state for the colonies declared that 'there are certain territories in the Commonwealth which, owing to their particular circumstances, can never expect to be fully independent'.[186] This article has sought to assess whether the UK's decision, reflected in this statement, to sever part of the island of Cyprus and keep it as a dependent territory before granting the rest its independence is lawful under international law. It has argued that, while the basic facts between what happened in Mauritius and Cyprus are similar – a part of a colony was separated to create a military base over which the UK continues to exercise sovereignty today – a number of differences between the two cases are likely to make it harder for the RoC to argue what Mauritius successfully submitted before the ICJ. One of the two biggest hurdles in this regard is likely to be the fact that Cyprus was granted its independence four months before the passing of Resolution 1514 by the UN General Assembly. The second is the argument that the SBA's separation might indeed not have been the result of the free and genuine will of Cypriots in 1960, but their failure to challenge, and their active endorsement of, the SBA since then should estop the RoC from contesting the legality of the Areas. Both hurdles could potentially be overcome by the Republic. Whether the RoC will be willing to take advantage of the opportunity offered by the ICJ in *Chagos*, and how it will do this exactly, remains to be seen.
