



Historicising Mauritian self-determination at the International Court of Justice

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journals.sagepub.com/home/bpi**Zaki Nahaboo** 

Abstract

Between 2018 and 2019, the International Court of Justice considered whether the formation and current existence of British Indian Ocean Territory violated international law. This article reveals how three temporalities – decolonial nation-state, colonial and indigenous – shaped, and were shaped by, differing conceptions of Mauritian self-determination within the Case. In doing so, this study provides an account of previously unrecognised notions of self-determination that were formative of the recent Chagos Archipelago dispute. I argue that the British delegation recasts the meaning of Mauritian self-determination as an expression of intra-colonial rights, past and present. Furthermore, I contend that Chagossian responses to the Case advanced a notion of indigeneity as having multiple moments and sites of emergence – with corresponding rights claims that extricate self-determination from a singular period and space of injustice. These colonial and indigenous conceptions of self-determination are shown to challenge, yet ultimately become subordinated to, the familiar nation-state debates on complete/incomplete Mauritian decolonisation. A focus upon representations of time does more than uncover aspects of the recent Chagos Archipelago dispute, which were structured by novel attempts to conceptualise self-determination. This article holds wider significance for post-colonial IR. The competing registers of shaped time strove to reinforce or revise what counts as post-1960 norms of self-determination.

Keywords

British imperialism, Chagos Archipelago, citizenship, post-colonial, self-determination, temporality

Introduction

On 12 March 1968, the Champs de Mars racecourse in Port Louis hosted a ceremonious transfer of flags. The Union Jack was lowered. Les Quatres Bands was raised. The post-colonial nation-state of Mauritius was born. While the nascent administering power held jurisdiction over Mauritius, Rodrigues and several of the smaller outlying islands, the United Kingdom retained its title over the Chagos Archipelago. This was owed to a decision

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made in 1965 to detach the islands from the colony of Mauritius and designate them British Indian Ocean Territory (BIOT). From the 1980s onwards, Mauritius and other non-aligned nations demanded that the United Kingdom relinquish its 'sovereignty' over the Chagos Archipelago (Trinidad, 2018: 89). Only recently has the Mauritian titular claim garnered explicit recognition under international law. Following a United Nations General Assembly (UNGA) resolution on the 15 June 2017, the International Court of Justice (ICJ, 2017) (the Court) ordered proceedings on the 'Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965' (the Case). On 25 February 2019, the 14 presiding judges delivered their non-binding verdict. Thirteen judges opined that the 1965 excision left the decolonisation of Mauritius 'incomplete' (ICJ, 2019: 44). The United Kingdom was urged 'to bring an end to its administration of the Chagos Archipelago as rapidly as possible' (ICJ, 2019: 5). At the time of writing this article, BIOT endures.

Different ways of framing the history of Mauritian self-determination were central to the Case. Numerous studies have examined how Case proceedings constructed the issue of whether a right to colonial self-determination formed part of customary international law in 1965 (Allen, 2020; Bordin, 2019; Frost and Murray, 2024; Hilpold, 2022; Lythgoe, 2020; McCorquodale et al., 2020; Pigrau, 2021; Summer, 2021). A connected debate within the proceedings on whether Mauritian representatives freely consented to territorial detachment in 1965, and if that matter was exclusive to municipal law, has been analysed in terms of the wider legal problematic of tracking a dependency population's will (Fajdiga et al., 2021; Monaghan, 2021). Furthermore, the Case is scrutinised in terms of its contingent relation with justice for exiled Chagossians (Allen, 2020; Bhatt, 2019; Hilpold, 2022; Lythgoe, 2020; McKenna, 2022; Papanicolopulu and Burri, 2021; Snoxell, 2021). Existing accounts have implicitly treated time as a singular and natural conduit for enabling the recent Chagos Archipelago dispute. There is yet to be a study of the dispute that traces how its politics of self-determination was orchestrated through multiple and clashing temporalities.

This article explores how three temporalities – decolonial nation-state, colonial and indigenous – shaped, and were shaped by, occasionally oppositional conceptions of Mauritian self-determination within the Case. It also discusses a configuration of indigenous time that emerged after the Case, which challenged a Mauritian self-determination claim. The reasons for these focal points are twofold. First, the account of temporalities reveals previously unrecognised notions of self-determination that were formative of the recent Chagos Archipelago dispute. I argue that the UK delegation introduced a novel conception of Mauritian self-determination by situating its expression as part of a live colonial time. Mauritian self-determination was portrayed as an exercise of colonial rights that upholds, rather than exists in tension with, imperial administration. The United Kingdom's intervention worked to separate Mauritian self-determination from a singular global historiography of political decolonisation. Furthermore, I contend that certain Chagossian responses to the Case advanced an indigenous time. That temporality extricated Chagossian indigeneity from a singular territorialised space and historic moment of emergence. This did more than critique Mauritius as the primary unit of self-determination. It challenged primordial-nativist pathways for constructing a Chagossian indigeneity. Second, the focus on temporalities has wider significance for the study of self-determination within post-colonial IR. The right to self-determination is typically seen to have emerged as a consequence of successful, and ongoing, struggles to undo formal imperial territoriality (McKenna, 2022). Equally, competing anti-colonial articulations of self-determination are shown to rest upon an exclusionary politics; prior colonial borders, as well as hierarchies of natives/foreigners, are appropriated and recomposed under the banner of autochthonous popular sovereignty

(Menge, 2023). This article expands our understanding of how disputes over self-determination are structured. I illustrate the role of temporalities in facilitating the content of oppositional histories and conceptualisations of self-determination. In doing so, I also highlight when colonial and indigenous temporalities are generative of novel subjects and meanings of self-determination, which elide recognition within current post-1960 historiographies. These arguments are developed over the following sections.

The section 'Timing self-determination' outlines the theoretical framework that underpins the article. It describes conceptual features of the three temporalities and highlights their significance for the study of self-determination within (former) colonies. The proposed approach enables 'chronocenosis', intersecting and occasionally competing ways of ordering time that entrench or destabilise political authority (Edelstein et al., 2020: 4), to become a focal point of inquiry. To work towards adapting this theoretical framework to the Case, the section 'A conventional decolonial time of nation-state time of Mauritian self-determination' briefly revisits the explicit Mauritius–UK framing of the dispute. It does so by primarily consulting the states' written submissions to Court. Both states advanced a decolonial nation-state time. That temporality orchestrated the Mauritius–UK dispute through a global historiography of when dependencies' self-determination rights emerged under international law. This formulation of self-determination discourse adhered to what Elizabeth Cohen (2018: 32–33) notes as the statist production of a singular 'temporal boundary' (a calendrical moment of cessation/commencement) and territorial border (a spatialisation of authority and its limits).

The article then discusses challenges to a decolonial nation-state timing of self-determination. The section 'Resituating Mauritian self-determination within colonial time' analyses parts of the United Kingdom's submission that reframe colonial political rights as a live enactment of self-determination in the present, which opposes the Republic of Mauritius' territorial claims. Unlike a conventional account of imperial legacies or their overcoming, the United Kingdom's argument was underpinned by a colonial time. In brief, this refers to the activity of creating territorialised imperialism and colonial subjecthood in the present – whose live expression seeks legitimation by ambiguously invoking and displacing contemporary norms of decolonial independence (Stoler, 2018). Elements of the United Kingdom's written statement depicted Mauritian representatives between 1965 and 1967 as empowered by an imperial administrative structure to freely define a state-territory people, past and present. These colonial rights-bearers were resituated as contemporary interlocutors with the Mauritian delegation, with both sets of actors deemed to hold authority in stipulating territoriality. In doing so, I argue that the United Kingdom attempts to untether contemporary Mauritian self-determination from the dominant global historiography (which renders self-determination rights discontinuous with imperial sovereign rule). The section 'Indigenous time in tension with Mauritian self-determination' uncovers two configurations of indigenous time. These worked to either reaffirm or oppose a Mauritian unit of self-determination. Through the Mauritian submission to Court, Chagossians were locked in a 'frozen' indigenous time (Wheatley, 2020: 62). Chagossian subjectivity and interests were tied to a 1967–1973 period of exile and integrated with the Mauritian territorial claim. Yet, certain Chagossian responses to the Case mobilised a diasporic notion of becoming. A 'deep' indigenous time (McGrath, 2015: 4) reshaped Chagossian identity and injustice apart from a singular moment of forced migration. This insufficiently acknowledged formation of indigeneity problematised both the Mauritian self-determination claim and the legal criteria for recognising indigenous units of self-determination.

Timing self-determination

Time is shaped in multiple and concurrent ways. Clocks, calendars, feelings of passage, duration of laws, a modern period, an ancestral custom and so on do not merely produce varied understandings of a past-present-future. Whether ‘mechanical, cognitive, or conceptual’, representations of time have a verb-like quality; they conduct individual and public life (Lazar, 2019: 24–25). A prominent way this transpires is by co-constituting and relating a perceived ‘chronos’ – ‘time of nature, a linear, irreversible continuum that moves at a constant pace’ – to ‘kairos’ (a qualitative intervention that loads time with meaningful change, which in turn projects what can be achieved in a present or future) (Hutchings, 2008: 49). Elements of kairos can be generated by modern historiography: the writing or critical reflection on narratives that demarcate, sequence, as well as assign significance to, recorded pasts (Munslow, 2007; Popkin, 2016). Kairos does more than facilitate a storied past and (dis)continuous present. It entwines history and contemporary politics by projecting ‘beginnings (moments of foundation and promise), ends (teleological culminations) or interruptions (Messianic breaks)’ (Hutchings, 2008: 156). Political imaginaries gain their content through the creation or contestation of narratives about progress/decline, a desirable/deplorable present, demands/denouncements of change, and attained/incomplete objectives (such as a liberal ‘end of history’ narrative) (Hom, 2020: 105–106).

Shaped time is more than a conduit for, or effect of, competing historiographies. Equally, it is not quite synonymous with the mobilisation of history to (de)legitimise or transform public memory and contemporary political agendas (Berger, 2007; Black, 2005). As implied thus far, shaped time can assume an ‘active’ modality: past–present–future relations and/or measurements are reconfigured in explicitly novel ways, transforming an existing social relation and possible courses of action (Hom, 2020: 36). How a flow of time (linearity, breaks, cycles etc.) is devised by official state agents, or those claiming to be non-state activists, enables political imaginaries to specify when and what change can transpire (Lazar, 2019). It can thus form one component part of narratives, which have direct effects in shaping domestic and foreign policy (Turner and Nymalm, 2019). Different ways of regimenting time can intersect in ways that create a political scene. An account of ‘chronocenosis’ unveils moments where two or more ways of ordering time emerge in relations of mutual support, hierarchy and/or conflict – which in turn entrench, destabilise or revise what counts as legitimate political authority (Edelstein et al., 2020: 4). This section unpacks and contextualises these initial insights. It makes explicit three conceptual representations of time – decolonial nation-state, colonial and indigenous – that condition overlapping and discrepant visions of self-determination.

Decolonial nation-state time marks a transformation of what Elizabeth Cohen (2018: 32) terms a ‘temporal boundary’: the specification of ‘when’ acts of sovereign rule legitimately begin and end, which is integral to establishing ‘where’ its territorial jurisdiction can be drawn. Through this temporality, the nation-state form is deemed to shift from being a container for territorial imperialism to that of independence from empire (Hutchings, 2008). This discontinuity occurs via a calendrical dating of self-determination, which inscribes a before/after period of its legal expression. The co-constitution of a decolonising nation-state time and self-determination is implicit within variations on the following historiography. In 1918, Woodrow Wilson’s Fourteen Points linked the term self-determination to anti-imperialism (Manela, 2007). Empires within the European continent were obliged to recognise a nationalised peoples’ claim of state

autonomy and territorial integrity (Hannum, 1998). This principle did not extend to European or East Asian saltwater colonial possessions, nor did self-determination emerge as a right (Manela, 2007). The dominant, though not hegemonic, international societal ideal of how to justly represent the interests of colonial dependency populations remained shuttled through policies of mandate and trusteeship (Moses et al., 2020). These liberal imperialist coloniser-colonised hierarchies were underwritten by the latter part of dyad's asynchronous positioning within nation-state time. Situating the colonised as backward objects worked to legitimise the standard of civilisation, unequal diplomatic statuses, and a lack of parity in law-making (Anghie, 2004; O'Hagan, 2017; Walsh, 2017). Thus, contrary to an early English School narrative of an expanded European international society, mid-20th-century anti-colonial self-determination was not a derivative occurrence (Jabri, 2014; Reus-Smit and Dunne, 2017).

Instead of ushering a liberal imperialist 'waiting room' of history, a 'not yet' readiness for self-government, nation-state time was actively recast by anti-colonial movements as an immanent 'now': a demand for immediate imperial withdrawal (Chakrabarty, 2000: 8) and a synchronous present via sovereign equality. The linking of dependencies' self-determination to an anticipated independent nation-state was sought beyond bilateral agreements (between representatives of an empire-state and anti-colonial elites). Struggles for self-determination sought recognition within customary international law (McKenna, 2022). The UNGA (1960) Resolution 1514(XV) 'Declaration on the Granting of Independence to Colonial Peoples' legitimised past and future campaigns. It decreed that 'all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development' (UNGA, 1960). Resolution 1514(XV) explicitly licenced the prompt dismantlement of 'non-self-governing territories' (UNGA, 1960). The right to self-determination did not specify who constituted the 'people', an authorised avenue of struggle, a particular regime type or a polity form. For instance, to mitigate inequalities between and within former colonies, certain self-determination ideals strove for a federation of states—wherein economic equality would be the cornerstone of sovereignty (Getachew, 2019). This manifestation of decolonial nation-state time, which projected a radically distinct future for legal sovereignty, became foreclosed. National self-determination eventually became a catalyst for (and explanandum of) a globalised world of 'nominally independent sovereign nation-states' (Young, 2016: 27).

Colonial time remakes the meaning of self-determination in tension with the 20th-century historiography of the nation-state. To capture its distinctive features, it is worth departing from current accounts of colonial time that denote imperial continuity. One indicative definition of 'colonial time' references a 'teleological linearity that presupposes stages of (non-)modernity', which subjugates other concurrent imaginaries of past—present—future (Adib and Emiljanowicz, 2017: 1229). States' narrative of a homogeneous and progressive present can operate as techniques for both authorising a current regime and silencing collective experiences of state violence (such as that meted out to a political opposition) (Adib and Emiljanowicz, 2017). Through that depiction, colonial time traverses both imperial and post-independence nation-states. Its signification is thereby expanded beyond a situation of territorialised conquest over inhabitants, who are differentiated from imperial masters. This notion of colonial time is also implicit within the influential concept of 'coloniality': the practice of imperial expropriation and oppression that underlies the modern world of enduring Global North-South hierarchies (from 15th-century European colonisation onwards) (Quijano, 2007: 170–172).

Furthermore, colonial time is not equivalent to the existing recognition of contingent relations between rights to self-determination and decolonisation. The political indeterminacy of self-determination in non-self-governing territories (the scope to decide on whether to maintain or eject an administering power) (Margalit and Raz, 1990) is located within a discourse of norms/exceptions to a post-1960 Resolution 1514(XV) context. For instance, when inhabitants of the Falkland Islands (Islas Malvinas) convey a majority will for continued British association, it becomes justified as a legal expression of self-determination (Raimondo, 2014). Conversely, the Argentinian government finds British sovereignty an imperialist breach of self-determination rights to territorial integrity (Raimondo, 2014). These contemporary denials or denouncements of imperialism reiterate a discourse of globalised and uniform rights to self-determination. As previously discussed, a decolonial nation-state time facilitated and appealed to that synchronous present. The inviolable and immediate self-determination rights for dependencies worked against an imperial order, which had postponed these demands unilaterally.

I neither contest the above portrayals of colonial time nor conflate its meaning with imperial traces. Rather, I use the phrase ‘colonial time’ to denote the unfolding life of contemporary empire-states and attempts to shape their expression as legitimate. Through that temporality, contemporary empire-states are posited as neither an object of disavowal nor out of sync with international norms. For instance, attempts to legitimise current imperial rule (particularly post-2001 British and American military occupations) are grounded upon claims to effectively represent local interest and enable democratisation (Go, 2011; Gregory, 2004). In similar vein, notions of extra-territorial security, ‘partial sovereignties’ or practices of forced/prohibited mobility often function as dissimulating labels for enduring, as well as novel, forms of imperial ruler–ruled relations (Stoler, 2018: 193–199). One can locate such occurrences as evidence of an uneven fall, or re-composition, of ‘traditional’ European empires. However, colonial time helps signify the life of empire in terms of its innovative justifications and continual development (not a discrete old/new periodisation of empire). In the context of this article, colonial time is to be made apparent by exploring how it recrafts the meaning of dependencies’ self-determination rights as internal to, rather than a break from, an imperial ruler–ruled legal structure. I propose one route for identifying this temporal work by documenting how facets of a past colonial administration – elites drawn from the colonised who enact decisions on their behalf (within the strictures of a colonial rights regime) – are transposed by the British state as contemporary acts of self-determination. An account of this temporality gives specificity to what Ann Stoler (2018: 33) terms ‘colonial presence’: ‘the complex ways in which people can inhabit enduring colonial conditions that are intimately interlaced with a “postcolonial condition” that speaks in the language of rights, recognitions, and choices’.

Indigenous time issues another practice of crafting the meaning of self-determination within ‘former’ colonial contexts. After independence, rights-bearing subjects were differentiated through categorisations of autochthons and foreigners (along with sub-divisions of these groups) (Sharma, 2020). The emergent state–territory–people nexus depended upon restricting citizenship and delegitimising competing sovereignty claims (Sharma, 2020). Yet, autochthony discourse also interpellated certain marginalised and dispossessed groups to ground their rights-based struggles upon claims of ancestral belonging (Sharma, 2020). From the 1970s onwards, when the matter of indigenous self-rule became explicitly incorporated within legal self-determination, their entitlements were framed as an issue of the presiding nation-state’s observance of minority rights and native title (Daes, 2008). A configuration of indigenous time is essential to this process.

On the one hand, the indigenous ‘past is rendered invariant and what was denigrated under colonialism . . . [became] valorized’ (Chowdhury, 2017: 116). The legitimacy of indigenous rights claims rested upon notions of a pre-colonial territorially rooted existence and unchanging custom. A primordial collective identity is situated as in need of protection from the transformative effects of capitalist and state expropriation (Chowdhury, 2017). On the other, indigenous disagreement over what counts as custom, or attempts to change established custom, risks disqualifying authorised indigenous rights (Chowdhury, 2017). This bind is produced by a ‘frozen’ indigenous time (Wheatley, 2020: 62). An indigenous polity is attributed with life (i.e. growth and change) prior to the colonial encounter. But not after. Indigeneity becomes an object of recovery in the present, without having an autonomous existence from, or priority over, an imperial/post-colonial nation-state. Frozen indigenous time allows the nation-state to assume the role of an extant adjudicator of ‘authentic’ indigenous cultures and terms of recognition (Wheatley, 2020).

Contra depictions of a static and primordial being, indigeneity is a lived ‘momentum’ (Rifkin, 2017: 29–32). It is a ‘process of becoming’ whereby identity is a constant work of ‘re-creation’ that displaces a singular original moment of emergence and injustice; indigenous identification can elide (anticipated) state-recognisable self-determination rights (Rifkin, 2017: 29–32). The conceptualisation of indigenous time as ‘deep’ (McGrath, 2015: 4), rather than frozen, enables this process. This is not tantamount to claims of an unbroken generational inheritance or successive societal changes. The notion of a ‘deep past’ (as translated from an Aboriginal concept of time) is an ‘orientation . . . it is not a case of past/behind us, but past/in front of us. The deep past is akin to “in front, before”. The logic is explicit: you can actually see the past, not the future’ (McGrath, 2015: 4). Here, the past is immanent to the present. It is always ‘in front’ and unpredictable since it is the live sensory experience of delving into an ever-changing memory and a yet-to-be-attained knowledge of societal custom (McGrath, 2015: 22). In tandem, the allusion to depth is also suggestive of a ‘longue durée’ that releases the colonial encounter from being an anchor point for constructing memory and history (McGrath, 2015: 22). These insights are derived from an Aboriginal context within Australia. However, they urge a wider consideration of when linear (post-)colonial framings of a past–present–future falter as an organising experience of indigeneity. The implications of deep time for conceptualising self-determination, apart from a singular territorialised nation-state container, require further exposition. A study of indigenous time offers a prism for observing how its jarring formations (frozen and deep) condition, or remain incommensurable with, codified rights to self-determination.

This section outlined ways of identifying decolonial nation-state, colonial and indigenous times that bear upon the politics of self-determination. Over the course of this article, the Chagos Archipelago legal dispute is shown to be structured by the three temporalities. They entrench established notions of self-determination or facilitate novel revisions to its meaning. The following section outlines a conventional decolonial nation-state time, which restricts the dispute to historical reflections on incomplete/complete Mauritian territoriality. However, as we shall see in sections ‘Resituating Mauritian self-determination within colonial time’ and ‘Indigenous time in tension with Mauritian self-determination’, self-determination is given form through ‘chronocenos-*is*’ (Edelstein et al., 2020: 27). Colonial and indigenous temporalities generate meanings of self-determination that elide, challenge or become integrated within Mauritian nation-state historiography.

A conventional decolonial nation-state time of Mauritian self-determination

The ICJ (the Court) was tasked with ascertaining whether ‘the nature, content and scope of the right to self-determination’ was ‘applicable to the process of [the] decolonisation of Mauritius . . . both in United Nations practice and by the administering Power itself’ (ICJ, 2019: 35). This remit was established to determine (1) whether territorial dismemberment in 1965 prevented the ‘lawful’ completion of Mauritian decolonisation and (2) the ‘consequences under international law’ for continued British administration, including the prevention of a Mauritian resettlement programme for Chagossians (ICJ, 2019: 7). To navigate these issues, principles of inter-temporal law were made integral to the Case:

its first element holds that actions must be judged by reference to the law in force at the time they were carried out while the second component requires states to conduct themselves in ways that keep pace with legal developments as far as their (unfulfilled) international obligations are concerned. (Allen, 2020: 208)

Thus, the problematic became one of identifying customary international law: whether a state action conformed to ‘settled practice’ and *opinio juris* (a belief that the state practice is enacted as expressive of, rather than incidental to, an accepted legal obligation) (Orford, 2021: 241–242). Yet, it is impossible to reach into the past and extrapolate what the Court’s position would have been on the matter of BIOT’s creation. Proceedings were absent during the mid-1960s. Historical interpretation of past events remained unavoidably tethered to contemporary understandings of international law, ‘which have occurred over the last 50 years’ (Allen, 2020: 210). Instead of reducing international law to the quest for a ‘correct’ argument or ‘real origin’, Anne Orford (2021: 247–248) recognises the centrality of historical interpretation and ‘narrative’ (with temporal plot devices such as ‘teleology’ or anachronism) for argument and adjudication – revealing the constitutively ‘partisan’ emergence of legal norms. These ‘legal fictions’ are not falsehoods that invalidate customary international law; they generate its conditions of possibility (Orford, 2021: 156). This section emphasises aspects of the Case where Mauritius and the United Kingdom configured a decolonial nation-state time. This temporality enabled conflicting stories about the meaning and presence/absence of Mauritian self-determination. Specifically, the states’ dispute revolved around differing ways of positioning self-determination within a calendrical moment (a before/after dating of universally applicable rights to ‘complete’ independent statehood) and duration (the right as evincing a settled practice over time).

Mauritian and UK written statements to the Court share common features. After reflecting on the legitimacy of the Court’s jurisdiction, both parties gave a sweeping political history of British Mauritius. A narrative of mid-20th-century constitutional reforms towards internal self-rule and Mauritian independence was documented. In addition, the British administrative structure of the Chagos Archipelago (from 1814 till 1965 and the subsequent BIOT) is traced. BIOT was created by an Order in Council; its formation was authorised by the Colonial Boundaries Act of 1890 and Royal Prerogative (UKWS: 28).¹ The post-1965 administration held powers to ‘make laws for the peace, order and good government of the territory’ (UKWS: 28). Although a new ‘BIOT (Constitution) Order’ was passed in 2004, it retained the administrative structure of imperial responsible government (UKWS: 28). Mauritian and UK written statements conclude with positions on the implications of BIOT’s existence, past and present, for decolonial self-determination.

Mauritius configures nation-state time as a shift from an imperial project of postponing 'complete' statehood to an immediate right. In contrast to the contemporary UK government's depiction of the pre-BIOT Chagos Archipelago as a 'lesser dependency' (UKWS: 139), Mauritius follows the defunct Colonial Office's recognition of the islands as an integral 'part of the colony' (MWS: 44).² The £3 million compensation granted by the United Kingdom to Mauritius, and the promise that the Archipelago will 'revert' to Mauritius after the US defence function ends, is taken as a 'loss of sovereignty' and site of future restitution (MWS: 47). According to Mauritius, the 1965 excision of the archipelago violated an 'inalienable right' to self-determination and 'territorial integrity' (MWS: 141). To support the claim, Mauritius invokes the 1960 Resolution 1514(XV) and cites subsequent UNGA concerns about a breach in international law – the 'creation of a new colony' from an existing one (MWS: 136–138). Advancing the Mauritian position, the African Union (2018: 7–18) documented self-determination as *erga omnes* (owed to all, in the interest of all) and *opinio juris* after the Resolution 1514(XV). These territorial claims also rested upon a wider historiography of Latin American independence struggles from the 19th century onwards, whereby constraining self-determination to a colonial border was both a *fait accompli* and reflective of *uti possidetis juris* (the right to inherit the colonial territory at the time of independence agreements) (Brown, 2002). Through the Mauritian position, the geographical remit of self-determination is modulated by creating a historical break. The co-extensive transformation of nation-state time and self-determination – from a strategy of enabling hierarchical inclusion to uniform co-presence (dependencies' immediate right to 'complete' nation-statehood) – facilitates a contemporary international society discourse of norms/exceptions. Territorial dismemberment is cast as an exception.

The United Kingdom crafts dependencies' self-determination as a 'not yet' guarantee to territorial integrity in 1965. Long before the Case, Stephen Allen (2014: 7, 184–185) argued that rights to self-determination only became part of customary international law with the 1970 Resolution 2625 (XXV), since it was then that imperial powers accepted a right to self-determination. This position is shared by the UK delegation when claiming that a 'right' to self-determination was not a 'rule' in 1965, but rather an 'aspirational instrument' that lacked an *opinio juris* (UKWS: 143–144). In turn, the redrawing of dependencies' borders prior to independence in 1968 was described as an imperial norm and legitimate under international law (UKWS: 138). The United Kingdom positions itself as then, and still, entitled to maintain sovereignty over the Chagos Archipelago. Aside from arguing that a right to decolonial self-determination lacked status as *jus cogens*, the United Kingdom also appealed to a state system *modus vivendi* and expediency. If *uti possidetis juris* were acknowledged prior to independence agreements being constitutionally ratified, then this would hazardously 'throw many existing boundaries into doubt' (UKWS: 138). Here, the United Kingdom constrains dependencies' self-determination to a fixed and finalised *passé* moment. Subsequent claims-making are located as a threat to international order. The Court's 2019 Advisory Opinion contested UK sovereignty. It declared, '[b]oth State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination' (ICJ, 2019: 38).

The mobilisation of calendar dates as 'fair, impartial, or egalitarian means for administering rights' necessarily reflects a socially 'situated' and contingent technique for defining an emergence, duration or moment of rights; the shaping of time for political life is not itself pre-political (Cohen, 2018: 118). Through the Case, a particular event (the

1960 Resolution 1514(XV)) was imbued with variable significance for demarcating a period before/after rights to colonial territorial integrity. Equally, a period between 1960 and 1965 was advanced to mitigate the arbitrariness of a single date. Mauritius, the United Kingdom and Court founded their positions by asserting a progressive evolution (and not simply changing) state norms, which in turn became a basis for specifying customary international law. These arguments reflected a modern historicism, whereby the channeling of time into notions of before and after is linked to human-directed (uneven) ‘development’, a ‘*neuzeitliche* experience of history’ (Koselleck, 2004: 245–248). In brief, a decolonial nation-state time established terms of the Chagos Archipelago dispute. It specified when limits on sovereign state action arose in international law, vis-à-vis dependencies’ territorial dismemberment and rights to self-determination. However, the Case exceeded the familiar terms of this discontinuous and developmental nation-state time. As we shall see, the United Kingdom attempted to redefine the meaning and practice of contemporary self-determination as part of (rather than in contradiction with) an imperial administrative structure.

Resituating Mauritian self-determination within colonial time

British subjecthood was fragmented via one’s position within colonial rights regimes, which were unique to each territory. The administration of dependencies was partially shaped by empowering sections of the colonised with rights to legislative representation, limited law-making powers and civil protection (without the authority to excise imperial rule) (Benton, 2010; Cooper, 2018). Variations in colonial rights regimes, diachronically or synchronically, might seem wholly incommensurable with independent statehood. When former dependencies appropriated a parliamentary constitution, which enabled a post-independence executive with minimal accountability (Kumarasingham, 2013), nominally uniform citizen rights prevailed. Furthermore, imperial legacies of indirect rule and legal pluralism are said to inform the differentiated citizenship of populations within certain former dependencies (Mamdani, 2012). Whether colonial rights are overcome or exist as a reconstituted trace, a decolonial nation-state time enables these reflections. The globalisation of independent nation-states, with self-determination located as both instrument and effect of this development, consigns colonial rights to historic phenomena. This section turns to arguments in the Case that attempt to displace this temporal lens. Aspects the United Kingdom’s written statement advance a colonial time that refashions Mauritian self-determination as a live and novel enactment of colonial rights. The United Kingdom positions Mauritian representatives in 1965 as authorised by colonial rights to decide terms of political association. Their supposed decision on territorial excision is made into a political claim that is co-present with, and takes priority over, contemporary Mauritian demands. Before elaborating the United Kingdom’s argument, we first need to identify the context of intervention: the established historiography of the mid-20th-century legislative situation in British Mauritius.

Chapter 3 of the Mauritian written statement dovetailed with existing constitutional histories. These histories find the 1947–1965 Legislative Council reforms pivotal for expanding the franchise and elected posts (de Smith, 1968; Dukhira, 2002; Lange, 2003; Varma, 1976). Within that period, the Mauritius Labour Party (MLP) campaigned for universal suffrage and the empowerment of the Legislative Council in ‘internal affairs’ by seeking to curtail the governor’s authority over ‘the civil service, finance, and the

judiciary' (MWS: 59). While the 1958 constitution increased the number of elected seats in the Legislative Council, it still could not create or repeal laws without approval from the 'non-elected Executive Council' (MWS: 59). The supreme local law-making institution could bypass the elected body 'in the interest of public order, public faith or good government' (MWS: 59). Eventually, political rights to office and franchise were transformed under the 1964 Mauritius (Constitution) Order. A new Legislative Assembly and Council of Ministers (headed by the leader of the dominant party) was inaugurated, with continued oversight from the governor's office (MWS: 62). The MLP's campaign for self-rule reached a turning point during the 7–24 September 1965 constitutional conference at Lancaster House. The United Kingdom committed itself to guarantee independence after the next general election, if a pro-independence party was victorious and the Chagos Archipelago were detached (pending an 'agreement' with the Council of Ministers) (MWS: 98–104).

This history formed a contextual backdrop for the Mauritian claim that colonial representatives lacked executive decision-making power on questions of sovereignty. First, the negotiations on the excision of the Chagos Archipelago reflected absent intra-imperial diplomatic parity. A now infamous civil service brief given to Prime Minister Wilson on 22 September 1965 advised him to make clear to Chief Minister Ramgoolam that recognition of independence was conditional on following a 'sensible' decision on territorial detachment (MWS: 91). When the Mauritian Council of Ministers consented to detachment on 5 November 1965, they apparently construed it as a pre-requisite for 'independence' (MWS: 100–103). The 1965 agreement was made under 'duress' and 'there was a clear situation of inequality between the two sides' (MWS: 6). Anthony Anghie (2006: 741) notes how a 'sovereignty doctrine' produced non-European regions as a constitutive outside, exempt from norms of so-called Westphalian diplomatic and bellicose state interaction. The Mauritian acquiescence further exemplifies Anghie's insights on how an imperial international order 'tolerates' and 'legitimizes' the 'negotiation of treaties between politically unequal parties' (Lythgoe, 2020: 312). The colony in 1965 did not have a 'distinct legal personality' and capacity to enter international arrangements – it was wholly incorporated within municipal law (Allen, 2014: 119). Royal prerogative illustrates the point further. The Colonial Office emphasised that territorial detachment could be carried out 'by Order in Council, without Mauritius consent' (MWS: 92). Decisions were not confined to British Mauritius. The concluded arrangements of the conference 'would be legally binding on Mauritius once it accessed to independence' (Allen, 2014: 123). Second, the United Kingdom's proposal for detachment remained a matter of closed-door elite negotiations; the 'administering power' had neglected its duties to enable the 'people of Mauritius as a whole' to make an 'informed and meaningful choice about the future of the territory' (MWS: 236). Therefore, alongside the claim that a right to self-determination existed under international law by 1965 (see section 'Timing self-determination'), the Mauritian written statement situated colonial political rights as a compromised route towards, and not a full expression of, national self-determination. Ultimately, Mauritius is suggesting that self-determination is *ultra vires* of colonial authority.

Rather than assess the validity of the United Kingdom's opposing argument, I want to make explicit when colonial time operated as an organising feature. For it is through this temporality that self-determination garners a novel meaning. Following the section 'Timing self-determination', the phrase 'colonial time' is used to signify a governmental activity of shaping past–present–future, whereby colonialism is projected as a still

developing, legitimate, and desirable contemporary governmental norm. To briefly recall, colonial time is distinct from understandings of coloniality, the neocolonial or the post-colonial that stabilise a singular history, whereby an 'old' model of rule is partially overcome. Colonial time is instead arising in chronocenos. Two historical times, a life of an imperial and post-colonial nation-state, continue to unfold in the present. They are made to coexist and mutually constitute one another, as opposed to being organised into linear transitions or transformations. In our context, a shaping of colonial time reworks self-determination as endogenous to, rather than arising in external tension with, British imperial rule.

Two facets of colonial time are developed by the United Kingdom. First, the United Kingdom argues that Mauritian representatives held and exercised authority to determine the territorial make-up of the colony – on par with UK decision-making. This argument suffuses chapter 3 of the UK written statement, wherein the language of an ideal social contract abounds. It is riddled with claims about Mauritian deliberation, consent, affirmative decision-making, uncoerced agreement and UK transparency (UKWS: 33–54). Mauritian representatives are said to have 'agreed in principle to detachment' during the September 1965 conference, without punitive conditions being attached to a rejection (UKWS: 36). The elected Mauritius Council of Ministers 'debated' and 'approved' detachment in November 1965 (UKWS: 37). Territorial negotiations between Mauritian representatives and the imperial government supposedly did not entail 'duress' (according to pre-1968 domestic standards), and there was no 'threat or use of force' – as enshrined within the post-1969 Vienna Convention on the Law of Treaties (UKWS: 125). Furthermore, drawing from pronouncements that Ramgoolam made at the Legislative Assembly, the United Kingdom surmised that he 'was always clear that Mauritius consented to detachment and that he himself expressed his consent to that detachment' (Buckland, 2018: 13). By situating questions of territorial dismemberment within the remit of Mauritian colonial representatives' internal affairs, the United Kingdom repositions self-determination as already licenced by colonial institutions. A decolonial nation-state time that produced, and was produced by self-determination, is interrupted by the United Kingdom. The *de facto* exercise of self-determination is relocated as already fully realised through the local legislature and executive council, as opposed to being constrained by these colonial institutions.

When the United Kingdom makes a hypothetical concession to the argument that BIOT was a pre-requisite for independence, they cite the 1967 election campaigns as devoid of misgivings. An example of Parti Mauricien, which opposed territorial excision and independence without a referendum, is given; 'they only questioned the amount of compensation for detachment, and in no way portrayed this as part of a package on independence' (Buckland, 2018: 14–15). Furthermore, to address the charge that excision was never put to the electorate, the United Kingdom noted that an expressed 'free and genuine consent of the population concerned' via referendum did not (and does not) form part of a 'right to self-determination' (UKWS: 125). The United Kingdom does more than echo the contemporary notion of self-determination as existing in a contingent relation with struggles for independence or direct democracy (Margalit and Raz, 1990). The colonial representative system is, again, situated as one of non-domination for incumbent party elites.

Second, the United Kingdom is not merely describing past developments to legitimise the continuation of BIOT. Instead, Mauritian colonial political rights are fashioned as a live and creative activity in the present. Pre- and post-independence cohorts are

repositioned as interlocutors, equal in their capability to decide on the territorial fate of Mauritius. As described above, the United Kingdom finds that Mauritian colonial representatives held an uncodified right to approve or deny BIOT's formation in 1965 (despite it being ratified by Order in Council). This collapsing of self-determination into colonial rights is made further apparent when the United Kingdom situates pre- and post-independence Mauritian representatives equivalent in sentiment on the matter of consent. Mauritian representatives did not express 'any reservations as to the process of decolonization' until the 1980s (UKWS: 122). Yet, to give priority to those ostensibly supportive of BIOT, territorial claims are deemed too late. The Mauritian territorial claim was '*belatedly*' advanced in international law via the 2012 'Memorial of Mauritius in the Chagos Arbitration' at the Permanent Court of Arbitration (emphasis added UKWS: 122). In brief, the exercise of colonial political rights is framed as immanent to the present and given a novel meaning. Past colonial subjects' enactment of rights is attributed a novel form and purpose: a contemporary contestation of Mauritian self-determination claims. Thus, a mere legacy is not being argued by the United Kingdom. The purported capabilities and decisions of Mauritian colonial representatives are transposed by the United Kingdom as contemporary act of self-determination, which supersede the territorial demands of the Republic of Mauritius.

As noted in the previous section, a decolonial nation-state time was formative of the Case proceedings. It enabled Mauritian self-determination to be plotted within a singular, linear and global historiography that sought to identify when internationally recognised self-determination rights emerged. Decolonial nation-state time organised this break between past and present; the arrival of self-determination rights is said to trump and exclude norms of imperial territoriality. In contrast, this section discussed how the United Kingdom introduced colonial time as a strategy to interrupt this narrative. The United Kingdom portrayed Mauritian self-determination as the right of colonised representatives to decide territoriality via imperial diplomacy and the colonial legislature. Such decisions were situated in a contingent relation with post-1960 developments in customary international law. The United Kingdom's argument was more than an attempt to anchor self-determination to the strictures of colonial authority, and thereby contest a historical shift to norms of decolonial nation-statehood. When colonised representatives of British Mauritius were cast with decision-making powers over territoriality, their supposed authority was mobilised as co-present with contemporary Mauritian claims-makers. Colonial time came to signify this work of generating a temporal co-presence and jurisdictional parity between pre- and post-independence Mauritian political subjects. Neither an imperial legacy nor continuation, colonial time animated seemingly bygone subjects and their purportedly uncoerced decisions as present-day challenges to the Mauritian territorial demand. Despite being unsuccessful in swaying the Court, the United Kingdom's intervention is significant for its conceptual innovation. It reimagined contemporary self-determination as internal to, commensurate with, and expressive of, colonial political rights.

Indigenous time in tension with Mauritian self-determination

Within 4 days of BIOT's creation, the Colonial Office instructed the new administration to begin 'contingency planning for evacuation of existing population' (Reynolds, 2019: 2). The Mauritian written statement recounted what followed, in similar vein to David Vine's (2009) *Island of Shame*. Mauritius describes the secret 1966 UK-US agreement to

depopulate the Chagos Archipelago, the stifling of economic life (the closure of copra plantations), the prevention of return for overseas Chagossians and the forced removal of all remaining residents by 1973 (MWS: 110–116). All Chagossians were exiled from the archipelago (Diego Garcia, Peros Banhos and Salomon Atoll held the most residents), with most being settled in Mauritius and the Seychelles (Vine, 2009). For over two decades, Chagossian civil society groups have struggled for a right to return through the domestic UK legal system without any enduring success (Snoxell, 2018). When the Court ruled in favour of Mauritius, it did not spell an end to that struggle. The ruling had little to say about whether and how Chagossian demands are to be fulfilled. Such issues were not within the remit of the Case. This section revisits Chagossians' positioning within the Case and civil society responses to the Case. I argue that a frozen indigenous time enabled the Chagossians' plight to become subsumed under Mauritian demands for territorial integrity. Yet, certain representations of Chagossian injustice were indicative of a deep indigenous time, which produce justice-seeking subjects who elide a nation-state routing of self-determination.

Through the Case, Chagossians were assimilated as objects of justice by the United Kingdom and Mauritius. The United Kingdom 'regretted' the 1967–1973 strategies of expulsion (UKWS: 55) and evoked the 1982 Agreement with the Government of Mauritius as restitution. A sum of £4 million was transferred to the Mauritian government for housing provision, which the United Kingdom deems a 'final settlement of all [Chagossian] claims' (UKWS: 59). Individual access to the distribution mechanism, the Illos Trust Fund, required Chagossians to explicitly renounce claims against the UK government 'past, present or future' – regarding the consequences of transfer to Mauritius (UKWS: 60–61). The United Kingdom notes that only '12 persons' out of roughly 1300 refused to sign the 'renunciation forms' (UKWS: 61). Chagossians' experience of deprivation and discrimination within Mauritius (Jeffery and Vine, 2011) was not considered a contributing factor for their decisions. In addition, recent decades of Chagossian litigation – 'claims for damages and declaratory relief' and 'claims of judicial review' in the UK courts – are not framed as self-determination struggles by the United Kingdom delegation (UKWS: 58–67).

Unlike the United Kingdom, Mauritius sought to give voice to Chagossians during the Case. This is illustrated through the trajectory of Liseby Elysé's (born 1953 on Peros Banhos) testimony at Court. During oral proceedings she declared, 'I form part of the Mauritius delegation . . . I am happy that the International Court is listening to us [Chagossians] today' (Elysé cited in ICJ, 2018: 73–74). Elysé recited a personal experience of forced uprooting, exile, longing for residency-based return and continued suffering (Elysé cited in ICJ, 2018: 75). The narrative of displacement is translated by the Mauritian legal representative: 'the desire to return, and the inability to do so, offer tangible evidence that the decolonisation of Mauritius is yet to be completed' (ICJ, 2018: 75). Mauritian and Chagossian self-determination are made synonymous. Mauritius (2018a) deemed 'its population of Chagossian origin' as having a right to 'self-determination', which shall be respected through voluntary resettlement (should the Court rule favourably on territorial transfer). That action would ostensibly help redress the United Kingdom's violation of 'human rights' that transpired with the 'dislocation, deportation and transfer of indigenous inhabitants' (MWS: 272). It is unclear whether the Mauritian state intends to create an unconditional right of return. After all, Mauritius repeated its foreign policy of having 'no problem whatsoever with the military and naval base on Diego Garcia' (MWS: 263).

The trajectory of Elysé's testimony at Court is illustrative of self-determination garnering meaning through a frozen indigenous time. The assertion of a native people who position themselves as prior to the imagined community of the nation-state, and claim territorial rights within that state, poses the issue of how to recognise indigenous authority in the present (Wheatley, 2020). Contemporary state authorities navigate this issue by shaping indigenous time as frozen. An autonomous indigenous polity has its life arrested by the colonial encounter and the establishment of the sovereign state, with the latter situating itself as irrevocable in the present and the final arbiter of codified indigenous rights (Wheatley, 2020). Without speculating on whether the suturing of indigenous narrative to Mauritian self-determination aligns with Elysé's own sense of justice, what is clear is that the Chagossian's memory is subjected to frozen indigenous time. The integration of Elysé's statements into the prism of Mauritian self-determination reflects the transformation of a recalled past into a 'good minority history' (Chakrabarty, 2000: 107). Chagossians' injustice shifts from an absence in international 'high' politics to a recognised margin within that sphere. Yet, in doing so, their injustice also becomes a matter of re-presentation and redress by Mauritian statist recognition. This Chagossians' positioning is made possible by precluding their collective life from historical change, beyond the moment of exile, and subordinating it to a decolonial nation-state time (as discussed in the section 'Timing self-determination'). To make this chronocenos explicit, it is worth noting that Elysé's statements arose against a backdrop whereby contemporary Mauritius had already located the pre-1965 Chagos Archipelago as part of British Mauritius. The anticipated post-colonial state casts itself as having priority to shape the unit and ends of self-determination by locating the inhabitants of the archipelago as its exclusive subjects. Contemporary Mauritius makes this representative claim when arguing that 'the freely expressed consent of the people of Mauritius as a whole – including the inhabitants of the Chagos Archipelago' was absent at the time of territorial excision (MWS: 236).

There exists significant recognition of the limits of Mauritian self-determination for encompassing Chagossian identity and rights under customary international law. This precedes this Case. Allen (2014: 7) contends that BIOT should be treated as a 'non-self-governing territory' from 1965 onwards, with the Chagossian population as the primary unit of self-determination. This is because their period of exile (1967–1973) coincided with the emergence of 'binding' self-determination rights on the United Kingdom (in the form of Resolution 2625(XXV)); Mauritian territorial claims of illegal territorial excision in 1965 is, arguably, referencing a time before self-determination rights entered customary international law (Allen, 2014: 246). Although the Court ruled that binding self-determination rights existed in 1960, thereby supporting the Mauritian territorial claim (see the section 'A conventional decolonial nation-state time of Mauritian self-determination'), Allen's argument is important for highlighting the conditions of autonomous claims-making for Chagossians.

For Chagossians to constitute a discrete indigenous unit of self-determination, international law compels an assertion of continuity from a 'pre-invasion' society of 'first inhabitants' who claim a prior territorial rule (Bhatt, 2019: 5–9). Following a criteria-based approach to indigenous self-determination, derived from the UN Commission on Human Rights Martinez-Cabo report, Allen notes that Chagossians lack 'historical precedence' over a settler population (Allen, 2014: 276). However, Chagossians do meet criteria of being the only 'societal group with inter-generational attachments' to the islands that can appeal to ancestry and cultural belonging – thereby qualifying indigenous rights to self-determination (Allen, 2014: 275–276).

Therefore, the carving of distinct Chagossian rights to self-determination is made dependent upon a frozen indigenous time. The discourse returns a 'salvage ethnography' – the discernment of a people with ancestral, cultural and territorial continuity (Nanibush cited in Rao, 2018: 307) – whereby an authentic pre-colonial tradition and rule is necessarily advanced as an object of loss and project of vitiation in the present. This was reflected in the Case when Judges Gaja and Abraham showed recognition of Chagossians as a 'separate people' with rights to self-determination, but lamented the limits of the Case in addressing this matter (Allen, 2020: 216–217). The Case reflected the 'statist character of international law' that neither specified how human rights were to be secured for Chagossians (regardless of whether territory is ceded to Mauritius) nor recognised the implications of their claim to authority for nation-state sovereignty (Allen, 2020: 215).

A competing deep indigenous time opens a different sense of Chagossian identity, which elides the requirements for becoming a subject of self-determination in international law. Chagossian Voices (a grassroots lobby group) crystallised this development. After the Case, they contested the Court's portrayal of 'Chagossians as "Chagossians of Mauritian origin"' (ICJ cited in Chagossian Voices, 2022). The group asserted that 'Chagossians have their own language, culture and had a living relationship to the islands and the oceans around them for more than 200 years' (Chagossian Voices, 2022). The indeterminate time-space was juxtaposed to the Mauritian claim, which rested upon a period when it 'was administered from Port Louis under British colonial rule' (Chagossian Voices, 2022). In turn, Chagossian Voices (2022) deemed the Case limited in only dealing with 'the Mauritian right to self-determination' and not 'the central issue of Chagossian self-determination'. Chagossian Voices are not, however, simply perpetuating a 'here first' narrative or unbroken chains of identitarian continuity. A deep time (elaborated in the section 'Timing self-determination') is being signalled as formative of Chagossian indigeneity. The notion of a 'living relationship to the islands' (Chagossian Voices, 2022) evoked a shifting identification, whereby the past attachment is continually produced anew in the present. The claim of a lost ancestral belonging, yet continuing identification, enables relationships to the islands to garner new life in geographically diffuse sites.

Implied thus far is a deep time, which untethers identity from a singular period of colonial encounters. To clarify how deep time organises the 'living relationship to the islands' (Chagossian Voices, 2022), it is worth noting a Chagossian diasporic identification that arises via successive experiences of migration and shifting territorial belonging. Socioeconomic disadvantage in Mauritius and the Seychelles (or a sought-after escape from deprivation via migration to the United Kingdom) have become anchored to earlier experiences of forced/compelled mobility from the archipelago (Jeffery, 2017). Alienation from a homeland is doubled as the archipelago and current residency. The Chagossian campaign that revolves around redressing an enduring sorrow caused by dispossession (Jeffery and Vine, 2011) is, therefore, severed from a fixed historical event, subsequent nostalgia and sought-after redress. The past injustice of exile is not a stable and unchanging object. It gains form in the present through becoming enmeshed with contemporary injustices. Chagossian indigeneity thereby reflects aspects of a deep time where the past is 'in front, before' (McGrath, 2015: 4) – a continual creation of indigenous identity as a live present-day experience. This has implications for crafting a unit of self-determination. The collective subject, sources of injustice and timeframe of injustice are de-territorialised from a singular state. Yet, this diffuse time and space of becoming Chagossian are shorn of that complexity in the Case. Chagossian identity is reduced to a singular

territorial origin and exilic migration. When hints are given that Chagossian injustice exceeded a singular event, their plight becomes integrated within state-mediated indigenous self-determination rights. Judge Sebutinde's (2019: 282) Separate Opinion reflected this practice. She noted that the historic and enduring injustices for Chagossians require redress through consideration of indigenous rights to resettlement, and those pertaining to restitution within a 'third state' (Sebutinde, 2019: 282). This returns the issue of Chagossian self-determination to the dominant post-1960 context of 'self-determination' that evokes 'a right of "peoples" . . . [whereby] the "peoples" in question are *territorially* defined' by 'colonial boundaries' (Trinidad, 2018: 12).

Indigenous temporalities arose through chronocenos, with the effect of reinforcing or unsettling established pathways of self-determination. A frozen indigenous time complemented a decolonial nation-state time (as discussed in the section 'A conventional decolonial nation-state time of Mauritian self-determination'). While an indigenous community was recognised as prior to Mauritian rule, its life was frozen in that past (as opposed to changing expression over time and existing as a challenge to the imperial/post-colonial nation-state form). When Chagossians found representation within the Case, their justice was made conditional upon Mauritian sovereignty over the archipelago. Certain elements of Chagossian activism appear to reaffirm this temporality when seeking to carve a separate unit of self-determination. This is particularly evident when asserting an unchanging and singular identity, which derives from an ancestral claim to the islands. However, certain indigenous Chagossian identifications evoked both a memorialised past and a contemporary, mutable, diasporic experience that exceeds the archipelago. This ambiguous indigenous deep time challenges its frozen counterpart, albeit without recognition from international law. Indigenous deep time demands that the Chagossian self-determination collective be expanded beyond a singular moment of injustice and territorialised identity.

Conclusion

Heterogeneous expressions of self-determination within dependencies shared a common idea: the colonised have their interests best represented by a section of that population than a section of the colonisers (Mehta, 2011). Representatives of 'non-state groups', who seek national independence, assert a singular state-people-territory nexus as having been unjustly denied full existence by an administering power (Batistich, 1992: 1014). In turn, self-determination arose as a problematic of how to discern the people and track their consent to ruler-ruled relations (without replicating colonial strategies of speaking for a population or colonial territoriality) (Ypi, 2013). Regardless of the machinery used to make representative claims about a people's interest – such as a referendum, general election, 'native' elite decision-making, military coup – it conjures an imagined people's desire as the 'final source of state legitimacy' (Mayall, 1999: 484). The efficacy of self-determination is not dependent upon a unilateral declaration. Its success hinges upon whether the administering power recognises it, begrudgingly or otherwise, as a legitimate demand that requires observance (Mayall, 1999). Even if an expression of self-determination is positively received by the administering power, recognition from other states is needed to sustain the terms of political association (Raic, 2002).

The disagreement over the relative completeness of Mauritian self-determination at the ICJ, and shortly after, did more than merely exemplify the established registers of self-determination politics. In this article, I broadened our understanding of how self-determination

politics was constructed during the recent Chagos Archipelago dispute. I argued that conflicting or complementary ways of shaping time were instrumental in crafting new and discrepant notions of self-determination. Novel conceptions of self-determination were initially masked by the dominance of a familiar decolonial nation state-time. That temporality projects a singular, unilinear and (in)complete world transition (from norms of empire-states to independent nation-states) (Hutchings, 2008). According to the United Kingdom, codified rights to self-determination were supposedly absent at the time of BIOT's creation. In contrast, Mauritius and the Court found that self-determination rights were breached in 1965; imperial rule persists through BIOT. Fixed events (UNGA declarations) and durational prisms (evolving international norms) facilitated the states' reflection on whether the excision of the Chagos Archipelago violated customary international law.

Instead of naturalising and normalising a stable world historiography of self-determination, wherein Mauritius is located as another exemplar of (or unjustified exception to) post-colonial international norms, I observed how colonial and indigenous times facilitated innovative meanings of self-determination that disrupted this narrative. The United Kingdom re-presented authorised expressions of colonial political rights as self-determination. Mauritian colonial representatives supposedly held powers to carve the boundaries of colonial territory in 1965. The United Kingdom was not simply advancing a historical interpretation. A live colonial time structured the argument. Pre-independence Mauritian politicians were reframed by the United Kingdom as contemporary decision-makers who held priority over current Mauritian territorial claims. The United Kingdom reworked colonial rights as a live political expression of self-determination, whereby the latter is extricated from a historiography of decolonisation. In turn, colonial citizenship was thereby narrated as separate from a bygone rights regime (Cooper, 2018) or a legacy.

An indigenous deep time was also important for reinventing the meaning of self-determination. This temporality lacked a fixed period and territory of injustice. Chagossians raised a notion of peoplehood and dispossession across continually accumulating diasporic moments of emergence. The formation of self-determination units through a legal territorialised criterion was thereby problematised. These colonial and indigenous ways of timing and conceptualising self-determination contested, yet became subordinated to, the Case focus on questions of complete/incomplete Mauritian territorial integrity. The nation-state framework continues to hold dominance. In October 2024, the United Kingdom confirmed that it will transfer sovereignty over the Chagos Archipelago to Mauritius (FCDO, 2024).

Therefore, this article did more than extend the current focal point of temporal studies within the social sciences, which highlights how representations of time steer the conduct of political life (Gokmenoglu, 2022; Rao, 2018), to the recent Chagos Archipelago dispute. As I have emphasised, the meaning of self-determination is not simply generated through struggles over which subjects can acquire an institutional recognition or what histories get represented to support a position (de Waal and Nouwen, 2021; Mégret, 2016). Rather, this politics of self-determination is also compounded by conflict over how to shape time. If one observes shaped time as an activity, which is explicitly and implicitly developed by political agents, then one can become attuned to the work it does in settling or displacing established notions of self-determination. Furthermore, this need not be an interpretive pursuit confined to the academy. Those embroiled in activist struggles over self-determination can attend to how the content of their campaigns acquire form through different ways of structuring time – along with the possibilities and limits this practice holds for pursuing their objectives.

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2. The abbreviation 'MWS' refers to the following source: Republic of Mauritius (2018b) 'Written Statement'. Available at: <https://www.icj-cij.org/sites/default/files/case-related/169/169-20180301-WRI-05-00-EN.pdf> (accessed 8 December 2023).

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