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QC 18/6

Mr. Jerron

Status of the inhabitants of BIOT

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My Department have drawn my attention to the Legal Advisers' minutes on QC 18/3 and 18/6. These suggest that rather more radical difficulties stand in the way of our originally agreed objective than those of which we advised the Foreign Secretary when he minutes to the Prime Minister on the Diego Garcia project on 25 July.

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2. You will recall that this objective was (in the words of the inter-departmentally agreed IOC(68)136) to establish "a situation where there were no individuals with claims on BIOT or without claims on either Mauritius or Seychelles." The importance of this objective was of course to avoid acknowledging Charter obligations towards these people "to regard their interests as paramount", when we or the Americans evacuated islands to establish military facilities there. We also wished to avoid other Charter obligations "to develop self-government", "to ensure their political, economic, social and educational advancement" in BIOT, and to make regular annual reports to the U.N. - obligations which we have so far neither fulfilled nor acknowledged. We have instead publicly argued that the inhabitants are "migratory labourers".

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3. We advised the Foreign Secretary that the latter argument might be difficult to sustain in view of the recent discovery that the numbers of second generation "Ilois" were much greater than originally anticipated. However it then seemed to us possible by the legislation proposed by the Commissioner in his Saving Despatch No. 26 of 19 June to require the inhabitants to have documents showing either that they were citizens of Mauritius or could be identified as coming from the Seychelles. This was reinforced by the fact that about 500 people from the Chagos Archipelago (including the "Ilois") have been given Mauritian citizenship by section 20 of the Mauritius Independence Constitution. Moreover the Governor of Seychelles had assured us that his government were prepared to issue a certificate of nationality or identity in respect of the remaining 300 in Chagos. The Foreign Secretary therefore wrote to the Prime Minister on 25 July that "when the arrangements are complete we would propose, as agreed at the time of the creation of BIOT to deny, if necessary, the competence of the U.N. to concern itself with a territory which has no indigenous population."

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4. We did not then know that by virtue of Section 3(1), (2) and (3) of the Mauritius Independence Act, those inhabitants of BIOT which had acquired Mauritian citizenship when Mauritius became independent, did not cease to be citizens of the U.K. and Colonies (Mr. Gordon Smith's minute of 3 March on (29)QC 18/3).

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Flag A The implications of this are explained in Mr. de Winton's minute of 1 March where the status of those inhabitants who are Mauritian citizens is compared with the Kenya Asians.

Flag A I share the concern then recorded by your predecessor, Mr. Fairclough, about this revelation.

5. It may be helpful to set out the situation as I understand it:

- (a) all the inhabitants of BIOT (totalling under 1,500) are citizens of the U.K. and Colonies and they are all entitled to a U.K. passport with the colonial endorsement;
- (b) if U.K. passports were issued in the case of Seychellois living in BIOT, no doubt the Governor of Seychelles could ensure that the colonial endorsement would record the fact that they belong to Seychelles. On figures provided by the Commissioner for Chagos and on the assumption that those living on the former islands of the Seychelles are all Seychellois, these form the majority of persons living in BIOT, but are unlikely to exceed 1,000;
- (c) some 500 others (including the 434 second generation "Ilois") have dual nationality. If they applied for a U.K. passport, presumably the Colonial endorsement could only reveal that they belonged to BIOT since there was no other British Colony to which they could belong. This would create difficulties for our public assertions that BIOT had no permanent population. On the other hand if they applied for and got a Mauritian passport they would not automatically lose their U.K. Citizenship unless they formally renounced it. If they went to live in Mauritius, however, they could presumably be refused re-entry into BIOT. This latter point is worth bearing in mind.

6. If my analysis is correct, it clearly contains the seeds of a serious problem: viz. that the original purpose of creating a territory without a permanent population is unlikely to be fulfilled unless something radical is done about it. The alternatives seem to me to be:

(1) Leaving the inhabitants within BIOT

As an island is required for a defence use, the inhabitants could be moved to another part of BIOT piecemeal. In those islands which are not put to any defence use, we could, as we have done for three years, leave the inhabitants alone to develop a not very remunerative copra industry. Neither course will remove their claim (if any) on BIOT. In the case of the Seychellois, the passage of time threatens to create a claim on BIOT. In the case of the dual nationality Mauritians, time could

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Government were unwilling to contemplate the return of these numbers, the dual nationality Mauritian could be treated together with the expatriate Seychellois and employment found for them all in Seychelles. The Governor would of course be responsible for proposing the details of a well-conceived resettlement scheme in Seychelles but the construction of the airfield at Mahé, might help.

8. In any case, I think Ministers should be given the opportunity of choosing between these alternatives, when they have been considered further. Had Ministers known that there was a serious prospect of retaining a permanent population in BIOT, I doubt very much whether they would have approved the expenditure of several million pounds to create the territory. You may find it helpful to arrange a meeting to consider before submission.

(J.H. Lambert)
4 September, 1968.

S:ff

Mr. Sykes, Defence Dept., F.O.
Mr. Scott, East African Dept.
Mr. Rushford, Legal Adviser

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