

The concept of duress in the world of decolonization

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1. Introduction

23rd September 1965, 10 AM, 10 Downing street, London: Discussions on the future of Mauritius. The United Kingdom (UK), the colonial power, represented by Prime Minister Harold Wilson is on one side and Premier Ramgoolam, acting on behalf of Mauritius, the colonial entity, on the other side of the negotiating table. The colonial power makes it more or less clear that independence will not be granted unless the colonial entity agrees to surrender the Chagos Islands and that if Mauritius fails to cooperate, the Chagos Islands will be detached unilaterally.¹ Later the same day in Lancaster House, the Mauritian representatives reluctantly agree to the detachment.²

Mauritius was clearly under 'pressure' when the Lancaster House Agreement was concluded. Such pressure could potentially have invali-

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¹ UK Foreign Office, Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No 10, Downing Street, at 10 AM on Thursday, September 23, 1965 FO 371/184528 (23 Sept 1965) 3 <www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-01-EN.pdf>. The Prime Minister went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.

² For a more detailed description of the events that led Mauritius to consent to the detachment, see *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Written Statement of Mauritius 91-100 <www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-00-EN.pdf>.

dated Mauritian consent. This would mean that the excision of the Chagos Islands constituted a violation of international law. However, under which criteria should the pressure that marked the 1965 negotiations between the UK and Mauritius be assessed? If Mauritius had been a sovereign state in 1965 and the Lancaster House Agreement a treaty, the answer would be simple: when two states negotiate to conclude a treaty, the standard for unlawful pressure is that of duress prescribed by Article 52 of the Vienna Convention on the Law of Treaties (Vienna Convention).³ But Mauritius was still a colony in 1965. Therefore, the preliminary question is whether the Vienna Convention is applicable in a case which is grounded in the context of decolonization. Or should the International Court of Justice (ICJ) apply another set of rules that prescribes a different standard of duress?

In the *Chagos MPA Arbitration*, Arbitrator Wolfrum, who faced the same dilemma, requested the parties to specify according to which standard the Arbitral Tribunal should review the allegations concerning duress.⁴ None of the parties provided a clear-cut answer. In its memorial, Mauritius linked duress to the concept of self-determination,⁵ whereas the UK directed the Arbitral Tribunal to apply the standard from the Vienna Convention,⁶ which prohibits only threat or use of military force, and therefore tolerates political and economic coercion.⁷ Yet at the same time, the UK seems to have recognized that international law might not define the concept of duress for the context of decoloni-

³ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331.

⁴ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Hearing Transcript (Day 5) 537 lines 14-19 <pcacases.com/web/sendAttach/1575>.

⁵ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Memorial of Mauritius 111 para 6.29 <pcacases.com/web/sendAttach/1796>.

⁶ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Hearing Transcript (Day 6) 714-715 <pcacases.com/web/sendAttach/1576>. See also *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Counter Memorial of the UK <pcacases.com/web/sendAttach/1798> 192 (n 570); *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Rejoinder of the UK 98-99 (n 460) <pcacases.com/web/sendAttach/1800>.

⁷ S Allen, *The Chagos Islanders and International Law* (OUP 2014) 107-113. Allen refers to MN Shaw, *International Law* (6th edn CUP 2008) 943, ME Villiger, *Commentary on the 1969 Vienna Convention on the Law of Treaties* (Brill 2009) 653-54 and HG De Jong, 'Coercion in the Conclusion of Treaties' (1982) 15 *Netherlands YB Intl L* 209, 224 and 247.



zation.⁸ In the final award, the Arbitral Tribunal skilfully avoided the question of validity of Mauritian consent to the detachment.⁹ As a result, its decision is rather unhelpful in the search for the legal criteria applicable to duress in the *Chagos Islands* case. Arbitrators Wolfrum and Kateka, who concluded in their dissenting and concurring opinion that consent was obtained under duress,¹⁰ gave no further explanation as to the standard of duress applied, either. This article therefore tries to clarify the legal requirements international law prescribes for duress in the case of the Chagos Islands.

2. *Position of the UK and Mauritius before the ICJ with regard to duress*

The UK's position before the ICJ is very clear. It is based on the ruling of the Arbitral Tribunal which held that prior to the independence of Mauritius the applicable law was British constitutional law, whereas after independence the governing legal framework was public international law.¹¹ The UK maintains that the facts of the case came nowhere close to meeting the standard of duress either under domestic law or

⁸ Sir Michael Wood, legal counsel of the UK, stated before the Arbitral Tribunal: 'I am not sure that duress is a concept that is defined in international law for all purposes. We did our best in the written proceedings to respond to Mauritius by referring to comparable concepts in international law and by referring to some degree to national law on the subject. As everyone is aware, in the law of treaties we can find Articles 51 and 52 of the Vienna Convention on the Law of Treaties. [...] I would say that neither of those articles has any application to the facts of this case, it gets nowhere near to what they contemplated. [...] [T]he record in this case shows nothing like the kind of duress, call it duress, call it what you will, that might invalidate consent' (*Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*) (PCA) Hearing Transcript (Day 6) (n 6) 714 paras 15-19, 715, paras 5-7, 716, paras 3-4).

⁹ The Arbitral Tribunal ruled that 'the United Kingdom's repetition of the undertakings, and Mauritius' reliance thereon, suffices to resolve any concern that defects in Mauritian consent in 1965 would have prevented the Lancaster House Undertakings from binding the United Kingdom' (*Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*) (PCA) Award para 428).

¹⁰ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Kateka and Wolfrum dissenting and concurring 19 para 77 <pcacases.com/web/sendAttach/1570>.

¹¹ *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Verbatim Record 2018/21 paras 8-11 <www.icj-cij.org/files/case-related/169/169-20180903-ORA-02-00-BI.pdf>.

under the Vienna Convention and that the Mauritian consent to the detachment is consequently valid.¹²

On the other hand, Mauritius contends that the Vienna Convention is inapplicable, since the Lancaster House Agreement is not a treaty. The relevant legal framework is the law of decolonization, especially the right to self-determination, which demands a *free and fair expression of the people's will*.¹³ Mauritius argues that the events of 1965 amounted to 'coercion and duress within the everyday meaning of the words – the very opposite of free and fair consent that self-determination required'.¹⁴ The UK opposes the Mauritian line of reasoning and argues that 'if the standard for duress is set so low as the everyday meaning, if an agreement could be set aside because one party was powerful and one was not, then very few treaties would be left standing'.¹⁵

The argument of the UK does not call for a special explanation while the Mauritian claim is more complex. It builds on the concept of self-determination, which became the guiding principle of decolonization, a political and legal process that led to the creation of many new states¹⁶ and completely changed the political map of the world.

3. *Legal underpinnings of the decolonization process*

The law of decolonization started to develop with the adoption of the UN Charter. In Article 73, the administering states recognized that the interests of the colonial people were paramount and accepted as a sacred trust the obligation to promote to the utmost their well-being, to ensure cultural, social, political, economic and educational advancement of the colonial peoples and to develop their self-government and

¹² *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Written Statement of the UK 124-125 paras 8.16 and 8.18.

¹³ *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Verbatim record 2018/20 52 paras 29-30 <www.icj-cij.org/files/case-related/169/169-20180903-ORA-01-00-BI.pdf>.

¹⁴ *ibid* para 30.

¹⁵ *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Verbatim record 2018/21 (n 11) 45 para 10.

¹⁶ The List of Trust and Non-Self-Governing Territories (1945-1999) <www.un.org/en/decolonization/nonselgov.shtml>.



political institutions according to their political aspirations. Yet, Article 73 was not considered to impose legal obligations, but was predominantly regarded as a political commitment.¹⁷ Only the subsequent resolutions of the United Nations General Assembly (UNGA) and practice of the Special Committee on Decolonization (Committee of 24) led to the creation of legal norms that form the framework of the process of decolonization. In December 1960, the UNGA adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples (Colonial Declaration),¹⁸ with eighty-nine states voting in favour and nine states abstaining, one of them being the UK. The Colonial Declaration laid down the cardinal rule of the decolonization process: self-determination.¹⁹ Paragraphs 2 and 5 defined *colonial*²⁰ self-determination as a right of the colonial peoples to freely determine their political status and freely pursue their economic, social and cultural development without any conditions or reservations imposed by the administering state, in accordance with their *freely expressed will* and desire. In paragraph 6, the Colonial Declaration defined the principle of territorial integrity, which protects the territory of a colony from being divided by the administrative power in order for the colonial peoples to be truly able to exercise their right to self-determination.²¹ As stated by Professor Crawford before the Arbitral Tribunal, self-determination

¹⁷ Allen (n 7) 140-144.

¹⁸ Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) <documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/152/88/IMG/NR015288.pdf?OpenElement>.

¹⁹ Whether self-determination was a rule of customary international law in 1965 when Mauritius gave its consent to the excision of the Chagos Islands, is a matter of great controversy among legal scholars and naturally between Mauritius and the UK. For the purposes of this article, we follow the opinion of Arbitrators Kateka and Wolfrum in the *Chagos MPA Arbitration* where they argued that self-determination was a rule of customary international law in 1965. *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Kateka and Wolfrum dissenting and concurring (n 10) para 71.

²⁰ As explained by Vidmar, 'self-determination is not an entitlement to independence. It effectively resulted in a right to independence only in colonialism'. J Vidmar, 'Statehood as a Politically Realised Legal Status' (2014) 2 <ssrn.com/abstract=2482781>.

²¹ S Kwaw Nyameke Blay, 'Self-determination Versus Territorial Integrity' (1986) 18 NYU J Intl L Pol 441, 447; MN Shaw, 'Peoples, Territorialism and Boundaries' (1997) EJIL 478, 493; J Crawford, *The Creation of States in International Law* (2nd edn OUP 2006) 336, 645.



would be an “empty shell”,²² if the colonial power could freely dismember the territory of a colony. However, if a colonial people consents, the dismemberment of a colonial territory is permitted under international law.²³ Mauritius does not dispute this, but claims that the required consent was not given in accordance with the standards of self-determination.²⁴

4. *A different standard of duress in the context of decolonization?*

The above principles and rules of decolonization do not explicitly define the standard of duress. There is no mention of the kind of coercion that is prohibited. While self-determination ensures the development of the colonial countries in accordance with the *freely expressed will of the colonial people*, the law of decolonization does not specify what the phrase freely expressed will means. Mauritius implicitly argues before the ICJ (as it did in the *Chagos MPA Arbitration*)²⁵ that the term freely expressed will implies a stricter standard of duress than the one enshrined in the Vienna Convention and thus lowers the threshold for negative influence amounting to duress. Hence, the political pressure the Mauritian representatives were under is said to constitute unlawful coercion that invalidates the consent to the detachment. But is the standard of duress to

²² *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Hearing Transcript (Day 3) 246 <www.pcacases.com/web/sendAttach/1573#page=36>.

²³ Shaw (n 21) 493-94; Crawford (n 21) 336; J Trinidad, *Self-Determination in Disputed Colonial Territories* (CUP 2018) 91.

²⁴ *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (ICJ, Request for Advisory Opinion) Written Comments of Mauritius 102, 106. The Mauritian line of reasoning seems to be confirmed by the decolonization practice. After the 1960 Colonial Declaration prohibited any conditions or reservations with respect to granting independence to the colonial peoples (para 5), the international community condemned every single disruption of territorial integrity which was contrary to the wishes of the people (eg Mayotte, Scattered Islands). On the other hand, where the partition of the colony, which took place after the adoption of the Colonial Declaration, had been in accordance with the wishes of the people of a colony, the international community did not oppose the disruption of territorial integrity (British Cameroons, Trust Territory of Pacific Islands, The Gilbert and Ellice Islands Colony). See Trinidad (n 23) 74-83, 92-96.

²⁵ *Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)* (PCA) Hearing Transcript (Day 3) (n 22) 247-248.



be applied for determining the ‘freely expressed will of the colonial people’ really different from the standard of duress set out in Article 52 of the Vienna Convention?

Public international law generally governs relations among sovereign states that are presumed to be equal. In the world of equals, the fundamental rules and principles are based on stability, foreseeability, *pacta sunt servanda* and resolution of disputes by peaceful means. However, the Chagos Islands case is embedded in a very different context – the world of decolonization: a process where colonial people, subjugated to the rule of the administering power, strive for independence.²⁶ The world of sovereign states could be compared to the adult world, whereas the world of decolonization could be understood as the world of child-parent relations. Among adults, the rules are obviously different than between a parent and a child. Parents must take care of the children’s well-being and promote their best interests until they reach the age of majority and enter the world of adults. It is respectfully submitted that a similar logic should govern the relationship between an administering power and a colony. In accordance with Article 73 of the UN Charter, the administering states recognized that ‘the interests of the colonial people are paramount and accepted as a sacred trust the obligation to promote to the utmost their well-being’. Not only is the colonial country a weaker party in any agreement with the administering power on a factual basis, it is also formally (legally) unequal.²⁷ Article 73 of the UN Charter recognizes its vulnerable position and offers special protection until the colonial country achieves ‘adulthood’ – ie a full measure of self-government either by becoming independent or freely associating or integrating with an independent state.

As stated by the ICJ in the *Namibia* advisory opinion, ‘the ultimate objective of the sacred trust was the self-determination and independence

²⁶ Colonial self-determination normally results in independence of the colonial people even though other outcomes are also possible. In accordance with Principle VI of UNGA Resolution 1541, external self-determination may also lead to a free association or integration (UNGA Res 1541(XV) (15 December 1960) UN Doc A/RES/1541 <[daccess-ods.un.org/TMP/427376.40440464.html](https://access-ods.un.org/TMP/427376.40440464.html)>). UNGA Res 1541 was adopted with 69 states in favour, 2 against (Union of South Africa and Portugal) and 21 abstentions (among which the UK).

²⁷ This distinction was put forward and discussed at the workshop on the *Chagos Islands* case in St Gallen in October 2018.



of the peoples concerned'.²⁸ The Court went further in the *Western Sahara* advisory opinion where it construed the essential content of self-determination as 'the need to pay regard to the freely expressed will of peoples'.²⁹ Accordingly, the ultimate objective of the process of decolonization is to uphold the free and true will of colonial peoples. Hence, international law governing the process of decolonization has a different purpose than international law governing the relations among sovereign states. If the fundamental values among sovereign and equal states are stability, *pacta sunt servanda*, international peace and security, as well as resolving disputes by diplomatic means, the underlying purpose of the decolonization is to establish the free and genuine will of the people concerned and ensure that it manifests itself in reality. Given this particular purpose, the determination whether consent to a partial detachment of colonial territory was given freely should be subject to stricter standards than those defined by the Vienna Convention. Furthermore, it is submitted that the law of decolonization does not distinguish different kinds of coercion, since the only relevant parameter is what the people want. This true 'want' (or will) of a people cannot lawfully be altered by either threat of military force or political and economic coercion. If it is therefore established that a colonial people (or their representatives) were under any kind of pressure impacting their true will, consent cannot be claimed to have been validly given.³⁰

However, if the broader concept of duress suggested here were accepted, would states not invoke various forms of economic and political pressure to escape legally binding treaties? Would that not lead to a disruption of *pacta sunt servanda* and international treaty law? This was the fundamental concern of many states in the negotiations leading to the Vienna Convention in the 1960s.³¹ As a consequence, economic and politi-

²⁸ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* [1971] ICJ Rep 19 para 53. The ICJ also held in para 52 that '[t]he concept of the sacred trust was confirmed and expanded to all 'territories whose peoples have not yet attained a full measure of self-government' (Art 73). Thus, it clearly embraced territories under a colonial régime'.

²⁹ *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 33 para 59.

³⁰ Allen (n 7) 129.

³¹ *ibid* 105.



cal coercion was considered too vague and was not included in the final text of the Vienna Convention.³²

The UK expressed the same concern in the pending proceedings before the ICJ.³³ This argument indeed has merit in the relations among sovereign states. Yet, it is hard to imagine that a broader conception of duress would lead to such consequences, if applied only to the narrowly conceived 'world of decolonization'. In relations between an administering state and a colonial country, the latter is formally unequal, which is a very different position from a situation where, for example Slovenia is negotiating with the Russian Federation. As Slovenia is formally equal as a sovereign state, it cannot rely on the stricter conception of duress. Therefore, declaring 'the end of international treaty law' seems exaggerated.

5. Elements of practice supporting a broader conception of duress

Even though a wider conception of duress failed to become part of the final text of the Vienna Convention, a large number of states, namely Arab, Afro-Asian and Latin American states as well as the Soviet Bloc supported the proposition that economic and political coercion should be included in the Vienna Convention.³⁴ The text of Article 52 was agreed upon only together with the adoption of the *Declaration on the Prohibition of Military, Political or Economic Coercion in the Conclusion of Treaties*, which was annexed to the Final Act of the UN Conference on the Law of Treaties.³⁵ Moreover, several members of the International

³² SS Malawer, 'A New Concept of Consent and World Public Order: "Coerced Treaties" and the Convention of the Law of Treaties' (1970) 4 *Vanderbilt J Intl L* 1 22-25; Allen (n 7) 106.

³³ See *supra* section entitled *Position of the UK and Mauritius before the ICJ*.

³⁴ Malawer (n 32) 17.

³⁵ *ibid* 17-18. See Final Act of the United Nations Conference on the Law of Treaties, UN Doc A/CONF.39/26 285 <legal.un.org/diplomaticconferences/1968_lot/docs/english/conf_docs/a_conf39_26.pdf>. In the Declaration, the UN Conference on the Law of the Treaties '[s]olemnly condemn[ed] the threat or use of pressure in any form, whether military, political, or economic, by any State, in order to coerce another State to perform any act relating to the conclusion of a treaty in violation of the principles of the sovereign equality of States and freedom of consent'.



Law Commission advocated the broader concept.³⁶ From the significant support for the general inclusion of economic and political coercion in the process of conclusion of treaties among states, it is only a small step to the idea to apply it in the relationship between a state and its colony.

If the ICJ adopted the presented view, it would not be the first international tribunal willing to broaden the scope of duress. In the *Aminoil v Kuwait* investment arbitration, the *ad hoc* arbitral tribunal had to determine whether the agreement between Kuwait and Aminoil (a private oil exploration and production company), which was governed by international law, was void on grounds of economic pressure. The government of Kuwait threatened to close Aminoil's operations in Kuwait, if the company refused to consent. The tribunal can be said to have recognized that 'pressure of any kind' could nullify the agreement if its magnitude made it impossible not to consent or if the pressure was illegal either by nature, object or means employed.³⁷ Even though the facts were found insufficient to substantiate duress,³⁸ the *Aminoil case* shows that in principle, economic coercion can invalidate consent. It is noteworthy that like in the Chagos Islands case, the Aminoil case concerned the relationship between a state and a non-state subject, which probably had a major influence on the tribunal's award.

Perhaps even more importantly, dissenting and concurring Arbitrators Kateka and Wolfrum decided in the *Chagos MPA Arbitration* that the Mauritian representatives consented to the excision in a situation that amounted to duress. In other words, in their opinion, the political coercion exercised by the UK was not in accordance with international law.

Moreover, the distinction between military force on one side and economic and political force on the other turns to be untenable in certain cases.³⁹ Sir Hersch Lauterpacht gave the example of threatening 'to starve a State into submission by cutting off its import or its access to sea'; he stated that in that case 'the treaty must be deemed to have been conclud-

³⁶ O Corten, 'Article 52. Coercion of a State by the Threat or the Use of Force', in O Corten, P Klein (eds), *The Vienna Convention on the Law of the Treaties. A Commentary* (OUP 2011) 1205.

³⁷ Award in the Matter of an Arbitration between Kuwait and the American Independent Oil Company (AMINOIL) (1982) 21 Intl L Materials 976 1007-1008 para 43.

³⁸ *ibid* para 44.

³⁹ Malawer (n 32) 16.



ed as a result of the use of force or threats of force'.⁴⁰ Similarly, there is arguably no significant difference between a situation where a state threatens with military occupation of another state, and the case at hand, where the administering power threatened not to grant independence (and thus implicitly to maintain the colonial regime for an indeterminate period of time) if the Mauritian side failed to consent to the detachment of the Chagos Islands. In both cases, freedom of the people is at stake. Accordingly, there is no reason why such a political threat should be distinguished from a military threat and, as a result, tolerated. Interestingly, Myres S McDougal in this regard differentiates between major and minor coercion and understands coercion directed against territorial integrity as a form of major coercion.⁴¹ Along that line, it can be argued that the Mauritian side was under major coercion since the UK forced Mauritius to agree to the detachment in violation of Mauritian territorial integrity. Again, the nature of the threat in the Chagos Islands case seems similar to a case where one state threatens to occupy another if the latter does not agree to cede a part of its territory.

The stricter standard of duress can also be said to have been confirmed by the UNGA's critical response to the excision of the Chagos Islands and the creation of British Indian Ocean Territory. In resolution 2066 (XX) of 16 December 1965, the UNGA invited the UK to take no action which would dismember the territory of Mauritius and violate its territorial integrity.⁴² A year later, the UNGA referred to Mauritius and other colonial countries in its resolution 2232 (XXI) and unambiguously declared, that '[a]ny attempt aimed at the partial or total disruption of national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in the colonial Territories, is incompatible with the purposes and principles of the UN Charter and of the Colonial Declaration.'⁴³ The same wording was reiterated in the UNGA resolution 2357 (XXII) of 19 December 1967.⁴⁴ Why would the UNGA condemn the detachment if it considered it to be in accordance with international law?

⁴⁰ Sir H Lauterpacht, Report of 24 March 1953, A/CN.4/63 (1953) II YBILC 149, para 7.

⁴¹ ASIL Proceedings 57 (1963) 163.

⁴² UNGA Res 2066(XX) (16 December 1965) UN Doc A/RES/2066.

⁴³ UNGA Res 2232(XXI) (20 December 1966) UN Doc A/RES/2232.

⁴⁴ UNGA Res 2357 (XXII) (19 December 1967) UN Doc A/RES/2357.



6. *Conclusion*

Joe Miller, the lawyer from the 1993 drama ‘Philadelphia’, would want the following question to be explained in a very simplified way to a four-year old child: Was international law violated, when the UK forced a colonial people to give up something that belonged to them – the Chagos Islands – for something they were entitled to anyway – independence? We have established that international law governing the process of decolonization prohibits varied forms of political and economic coercion. Such coercion affects the expression of the free will of a colonial people. The threshold for duress in the relations between a colonial entity and an administering power is lower than in relations among sovereign states. Hence, the ICJ should find that the Mauritian consent was vitiated.

