
The Separation of the Chagos Archipelago and the Pervasiveness of State Consent in International Law: A Feminist Analysis

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Abstract

The violent expulsion of the indigenous population of the Chagos Archipelago is a continuing colonial injustice which international law has failed to remedy. Instead, international legal discourse has reconfigured this wrong, casting it as a territorial dispute between two sovereign states: the UK as the former and continuing colonial power, and Mauritius as the postcolonial state. By framing the issue in terms of the possibility of Mauritius consenting to the separation, the concept of consent, and in particular state-based consent, plays a central role in this reconfiguration. In this paper, I argue that while consent is often seen as trivial, it offers a powerful tool of legal argumentation which sustains the centrality of the state as the ideal international legal subject. Turning to the language of consent serves to buttress a liberal imagining of atomised, unitary states engaging in consensual, contractual bargains with one another on equal terms. Within this framework, the extraction of impersonal goods, most notably that of military security, is seen as a rational venture, prioritised over the more personal, deeper indigenous relations with land. The paper reveals the power and perils of consent as a concept – its ‘double-edged’ nature – by drawing on those feminisms which have theorised autonomy within interpersonal contexts. This analysis is further developed through engagement with postcolonial and TWAIL approaches, which bring to the fore the different forms of power at play and the continuation of neocolonial relations.

Introduction

[W]e're a small people. We have no arms to make war with the British government, nor with the Mauritian government....Me, I say that the Mauritian government and the British government looked after their own interests.¹

The violent, forcible displacement of the Chagossian people occurred nearly 60 years ago when the UK separated the Chagos Archipelago from Mauritius. In 2019 the International Court of

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¹ Charlesia Alexis, co-founder of Chagos Refugee Group and co-organiser of women-led protests and hunger strikes in the ongoing struggle of the Chagossian people against the UK and Mauritian governments, cited in Sandra J T M Evers and Marry Kooy, 'Charlesia Alexis: The struggle of the Chagossian women' in Sandra J T M Evers and Marry Kooy (eds), *Eviction from the Chagos Islands: Displacement and Struggle for Identity Against Two World Powers* (Brill 2011) 81-82, 82.

Justice (ICJ) delivered its Advisory Opinion (AO) stating that the separation rendered incomplete the decolonisation process due to the coercive nature of the colonial relationship between the UK and Mauritius.² The granting of consent by Mauritius to the separation was, in the view of the ICJ, not possible. Through this zero-sum approach, a complex situation is reduced to two, possibly consenting subjects (a state and soon to be state) at the point of separation. In contrast, the above quote from Charlesia Alexis, co-founder of the Chagos Refugee Group, takes a broader view. She captures the long history of Chagossian resistance directed towards *both* the colonising state and the now independent postcolonial state. Her testimony complicates dichotomous views of the separation which view it as a bilateral dispute between the two states.

It is such testimonies which capture a key challenge for international law: keeping in view the very real, embodied peoples most vulnerable to and affected by geopolitical action, when the international legal system works to bury them beneath the folds of the state. The frames of statehood entrench competing, self-interested sovereigns within relations of power. Such relations are seemingly mediated by consensual agreements and consensual undertakings of legal obligations. Consent, therefore, is foundational.³ Operating at the inter-state level, consent has the curious effect of anthropomorphising the state by granting it a unified will, while paradoxically obscuring embodied persons.⁴ The AO of the ICJ does just this: in focusing on state-based consent, the Chagossian people have been sidelined. This failure to centre Chagossians has thus made possible, and indeed foreseeable, the continuing, present-day injustices felt by the indigenous community. What has ensued since is state-level tussling over sovereignty and territorial control. In May 2025 Mauritius and the UK published a new agreement which focuses predominantly on the UK's continued control over Diego Garcia, thereby ensuring the continued stability of the US/UK military base.⁵ At the time of writing, however, this agreement has been jettisoned owing to the powerful influence of a third state. US President Donald Trump has withdrawn US support of the 2025 agreement, calling the transfer of sovereignty an 'act of great stupidity'⁶ and of 'weakness'.⁷ So forceful is the need to retain territorial control and block the transference of sovereignty, particularly in the context of the 2026 US-Israel-Iran conflict, the US have reportedly considered bypassing the UK and 'buying' the archipelago.⁸ The Maldives, too, challenged the

² Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (AO) [2019] ICJ Rep 169.

³ Samantha Besson, 'Consenting to international law: An introduction' in Samantha Besson (ed), *Consenting to International Law* (Cambridge University Press 2023) 1-27, 6.

⁴ Jean d'Aspremont, 'Consenting to international law in five moves' in Samantha Besson (ed), *Consenting to International Law* (Cambridge University Press 2023) 117-135, 125.

⁵ Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia (Mauritius-UK) (22 May 2025)

https://assets.publishing.service.gov.uk/media/682f25afc054883884bff42a/CS_Mauritius_1.2025_Agreement_Chagos_Diego_Garcia.pdf accessed 28 September 2026.

⁶ Amy Walker, 'UK defends Chagos deal after Trump calls it "act of great stupidity"' *BBC News* (20 January 2026) <https://www.bbc.co.uk/news/articles/c0mkp021rvro> accessed 20 January 2026.

⁷ Joe Pike, 'UK shelves Chagos deal after Trump opposition' *BBC News* (10 April 2026) <https://www.bbc.co.uk/news/articles/c04x1lg1lygo> accessed 25 June 2026.

⁸ Katy Dartford, 'Trump weighs up plans to "buy Chagos Islands" which could see US bypass UK to access Diego Garcia base' *LBC News* (7 June 2026) https://www.lbc.co.uk/article/trump-plans-buy-chagos-islands-5HjdbFL_2/ accessed 25 June 2026.

2025 deal and stated its ‘prior claim’ to sovereignty over the islands.⁹ Amongst such geopolitical wrangling, the future of the military base appears relatively secure, in stark contrast to the futures of the Chagossians.

In this paper I interrogate the role consent plays across the various legal arguments in international case law pertaining to the Chagos Archipelago. State consent is often considered unable to account for the complexity of international law,¹⁰ yet consent is routinely appealed to in attempts to exercise control over the territory. For example, consent is appealed to by the US to bar the legal oversight of the UK into the detention of refugees on the military base;¹¹ the UK has withheld consent for international courts to arbitrate the ‘territory dispute’;¹² and Mauritius has consistently argued that its initial consent to the separation was vitiated.¹³ Consent has also been harnessed by the Chagossians in expressing the forcible nature of their dispossession and continued exile.¹⁴ I argue that the concept of consent offers a ready fall back in legal augmentation which reawakens the atomised, unitary consenting state which engages in bilateral, contractual engagements with other personified states. Such imaginings reinforce the same argument structures which facilitated the alienation of territory and its dispossession from an indigenous population in the first place. In short, consent was used to displace an indigenous population and create a new colonial territory, yet routinely it is deployed as offering a solution. It is not then surprising when Chagos continues to be alienated under the guise of proprietary inter-state bargaining, while the Chagossians remain dispossessed. As I will show, consent *per se* cannot remedy colonial injury when it is annexed to the nation state, even if that state is a postcolonial state.

In building this argument, I uniquely turn to those feminisms which have a history of theorising the power and limits of consent within inter-personal, often sexual, contexts. Consent often features as a double-edged sword in feminist activism and scholarship: on the one hand it promises personhood and bodily autonomy, yet on the other hand it decontextualises and atomises consent from the relations and systems of power within which it plays out.¹⁵ Bringing this perspective to the international (legal) plane stresses the relational situation of legal subjects (states) exercising autonomy. This is particularly animated by the status of the postcolonial state as it works toward a Westphalian ideal of independent, autonomous statehood. Moreover, postcolonial and Third World Approaches to International Law (TWAAIL) perspectives will facilitate the re-

⁹ Joshua Nevett, ‘Maldives tells UK it does not recognise Chagos Islands deal’ *BBC News* (28 March 2026) <https://www.bbc.co.uk/news/articles/c74vedxjq8zo> accessed 29 June 2026.

¹⁰ Gina Heathcote, *Feminist Dialogues on International Law: Successes, Tensions, Futures* (Oxford University Press 2019) 123.

¹¹ Alice Cuddy, ‘US blocks British court from British territory’ *BBC News* (9 July 2024) <https://www.bbc.co.uk/news/articles/cxe2v2mdg7vo> accessed 20 January 2026.

¹² Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (AO, Written Statement of the United Kingdom of Great Britain and Northern Ireland (15 February 2018) [1.2]-[1.3] <https://www.icj-cij.org/sites/default/files/case-related/169/169-20180215-WRI-01-00-EN.pdf> accessed 6 November 2025.

¹³ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (AO, Written Statement of the Republic of Mauritius (1 March 2018), Vol I [6.96] <https://www.icj-cij.org/sites/default/files/case-related/169/169-20180301-WRI-05-00-EN.pdf> accessed 6 November 2025.

¹⁴ Chagossian Voices, ‘Briefing: The rights of Chagossians to self-determination’ (January 2023) <https://chagossianvoices.org/wp-content/uploads/2023/12/07Jan-2023-Briefing-on-Chagossian-Self-determination.pdf> accessed 2 October 2025.

¹⁵ Maria Drakopoulou, ‘Feminism and consent: a genealogical inquiry’ in Rosemary Hunter and Sharon Cowan (eds), *Choice and Consent: Feminist Engagements with Law and Subjectivity* (Routledge 2007) 9-38, 29-31.

contextualisation of consent, as will the testimonies of members of the Chagossian people. In harnessing these intersecting methodological frameworks¹⁶ I problematise assumptions on inter-state, ‘consensual’ relations which, I show, are grounded in and sustain colonialism. This allows me to construct a multidimensional analytic approach of the sort required of a decolonial feminist praxis which aims to hold ‘several threads at once’, resisting segmentation, and revealing the interconnectivity of patriarchy, racism and colonialism.¹⁷ The contributions I make here then intervene in two fields: bringing multidimensional feminist insights to bear on foundational principles of international law, and bringing international legal disputes to bear on matters of alienation, self-governance, and the limits of contractualism. This is both timely and necessary given the live nature of the ongoing ‘sovereignty dispute’, situating it within its colonial, patriarchal context.

The paper will proceed by first examining how the notion of consent works to construct a unitary agent with consent feeding into the anthropomorphic imaginings of the state as a *person*. In the second section I interrogate the *de facto* inequality between the two states which is thrown into relief by the invocation of contractual framings of consent. This allows us to see clearly the consenting, rational, contracting state as the liberal norm. This sets the scene for the final section which shows how the treatment of the Chagos Archipelago is constituted as analogous to the trading of property which is *owned* by the consenting state subject (as person). This contributes to a narrative of land bargaining and trade between two states, thus narratively eclipsing the dispossession of a displaced indigenous community.

The primacy of the (possibly) consenting, unitary state

One day the administrator told us that we had to leave our island...we had no choice.¹⁸

Having the choice to consent is part of the powers of personhood. For Heidi Hurd, the ‘magic of consent’ lies in its power to transform the legal nature of interpersonal relations between subjects through their agreements.¹⁹ The translation of consent from the interpersonal to the international context similarly invokes notions of individual power and agency. While state-based consent is often claimed as too trivial to adequately explain the binding nature of the contemporary, complex framework of international law,²⁰ the concept has never been far from view. The values of autonomy, rationality and unity of interest resurface in the context of inter-state disputes, with states represented as singular and capable of bringing their unified will into existence. In this section I demonstrate how the ICJ’s AO on the separation of Chagos reinforces the primacy of the (possibly) consenting, unitary state, despite determining that Mauritius was no such subject at

¹⁶ For more doctrinal legal analyses see Stephen Allen, ‘Self-determination, the Chagos Advisory Opinion and the Chagossians’ (2020) 69(1) *International and Comparative Law Quarterly* 203; Robert McCorquodale, Jennifer Robinson and Nicola Peart, ‘Territorial integrity and consent in the Chagos Advisory Opinion’ (2020) 69(1) *International and Comparative Law Quarterly* 221.

¹⁷ Françoise Vergès, *A Decolonial Feminism* (tr Ashley J Bohrer, Pluto Press 2021)) 23.

¹⁸ Statement of Liseby Elysé to the International Court of Justice quoted in Philippe Sands, *The Last Colony: A Tale of Exile, Justice and Britain’s Colonial Legacy* (Weidenfeld and Nicolson 2022) 6-7.

¹⁹ Heidi M Hurd, ‘The moral magic of consent’ (1996) 2(2) *Legal Theory* 121.

²⁰ Heathcote (n 10).

the time of separation. Not only does this smooth over and homogenise the pluralist, complex collectives which make up the Chagossian diaspora, it also renders their consent and self-determination contingent upon the vehicle of the (unified and consenting) state.

Within liberal imaginaries of law, the central figure is the autonomous self.²¹ Consent facilitates self-governance as an expression of the subject's will, be that of the individual self and the nation state alike. This follows from the discursive treatment of consent within international law which invites thinking of states 'in organic terms, as individually autonomous agents capable of promoting, individually or collectively, their views or interests'.²² The notion that the state is a *person* is a foundational fiction of international law,²³ with such persons relationally constituted within gendered, racial and colonial hierarchies.²⁴ Rose Parfitt argues that prior to the decolonisation period, the *persons* of the international legal system were made up of graded entities, including 'not-fully legal subjects', 'Native states', and 'semi-sovereign states'.²⁵ Building on this line of thinking, I want to suggest that tracing a subject's proximity to the power of consent, and the degree to which said consent is recognised, can be used as an indicator of a subject's relational positioning. The ICJ AO reflects this by routinely emphasising the relational situation of Mauritius, as a non-self-governing state at the time of the separation, to the UK, as a state and as the relevant colonial authority. The status of Mauritius, as non-self-governing, bars it from exercising the powers of consent:

...it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter...heightened scrutiny should be given to the issue of consent in a situation where a part of a non-self-Governing territory is separated to create a new colony...the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.²⁶

The ICJ's recognition of coercive colonial power is welcome. The court rejects the arguments put forward by the UK which attempted to constitute the 'two parties' as seeing 'eye-to-eye' in their negotiations.²⁷ Recognising that consent in this context is illusory reveals how it may be used to dominate 'weaker' entities against oppressors, and also counter said domination.²⁸ However, in focusing on the formal status of 'two parties' the opinion ultimately rests on notions of unity and of formal equality.

²¹ Autonomy, from the construction of 'the self' (auto) and 'the law' (nomos); Yannick Radi, 'Autonomy in international law: About the legal and societal limits to the exercise of consent' in Samantha Besson (ed) *Consenting to International law* (Cambridge University Press 2023) 347-368, 350.

²² D'Aspremont (n 4) 125.

²³ See Teemu Ruskola, 'Raping like a state' (2010) 57 *UCLA Law Review* 1477, 1478.

²⁴ *ibid* 1495-1501.

²⁵ Rose Parfitt, *The Process of International Legal Reproduction: Inequality, Historiography, Resistance* (Cambridge University Press 2019), 77.

²⁶ ICJ AO (n 2), 172.

²⁷ Written Statement to the ICJ of the UK (n 12) [3.42].

²⁸ Wouter G Werner, 'State consent as foundational myth' in Catherine Brölmann and Yannick Radi (eds) *Research Handbook on Theory and Practice of International Lawmaking* (Edward Elgar 2016), 13-31, 22.

In terms of unity, the ICJ centres ‘two parties’ in a colonial, pre-independence world. Such entities appear unified and able to assert univocal will, even if one is formally non-self-governing at the time. The main thrust of the opinion is that the agreement, predominantly that which came out of the Lancaster House Agreement in 1965, simply failed to generate legal obligations and rights due to the formal authority one party wielded over the other. However, alongside these two unified parties are other possibly consenting subjects. The ICJ give cursory mention to the ministers as well as ‘the people concerned’. The discursive effect of the ICJ, however, is that these subjects collapse in on each other, thereby aligning with idealised imaginings of the state underpinned by a represented collective (though which collective is unclear in the above statement). This is somewhat unsurprising given the liberal view of the social contract which sees the authority of the state and its government as built on the consent of the people.²⁹ Such people become subsumed within the personified state. Parfitt demonstrates how the logics of early liberal thought, particularly on the social contract, shaped assumptions of statehood.³⁰ The ‘equality of man’, Hobbes argued, was preserved through ceding part of his natural freedom to the state to act on his behalf.³¹ This, Parfitt laments, is the birth of the modern state as a legal *person*: ‘the multitude...so united in one Person, is called a common-wealth’.³² Such thinking, Karen Knop argues, constructs a monolith at the expense of differences and plurality amongst peoples.³³ The constitution of Mauritius as a unified party – a (possible, would be) consenting state – may then serve to flatten those ‘included’ within its fold.

This is certainly a concern raised within the separate opinion of Judge Cançado Trindade. He attempts to tease apart the idea of ‘state consent’ from the ‘will of the *people* concerned’. He includes the above quoted paragraph³⁴ from the main opinion as an example of the ICJ’s repeated prioritisation of individual state consent, ‘even refer[ing] to “consent” as being a “principle”’.³⁵ This, he argues, is the ICJ ‘paying lip service’ to an inter-state outlook, placing the ‘will’ of states above the demands of justice. Quoting his dissenting opinion in *Georgia v Russian Federation*:

the ICJ cannot remain indifferent to such injustice of ‘human fates’, and to human suffering...the realization of justice can hardly be attained from a strict state-centred voluntarist perspective, and a recurring search for state consent.³⁶

²⁹ Shona Loong, Alex Manby and Fiona McConnell, ‘Rethinking self-determination: Colonial and relational geographies in Asia’ (2025) 13(7) *Territory, Politics, Governance* 901, 903.

³⁰ Parfitt (n 25) 96-104.

³¹ Thomas Hobbes [1651], *Leviathan* (JM Dent & Sons 1914) 71.

³² *ibid* 78; Parfitt (n 25) 96-97.

³³ Karen Knop, ‘Re/statements: Feminism and state sovereignty in international law’ (1993) 3 *Transnational Law and Contemporary Problems* 293, 319.

³⁴ ICJ AO (n 2), 172.

³⁵ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Separate Opinion of Judge Cançado Trindade) (February 2019) [297] <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-04-EN.pdf> accessed 16 October 2025.

³⁶ Application of the Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) (Dissenting Opinion of Judge Cançado Trindade) (April 2011) [209] <https://www.icj-cij.org/sites/default/files/case-related/140/140-20110401-JUD-01-08-EN.pdf> accessed 16 October 2025.

Judge Cançado Trindade challenges the ICJ's ready alignment of the consent of the people and the consent of the state.³⁷ Crucially, the notion of 'individual state consent' speaks to the tendency to stand states apart as individual, unitary agents able to exercise will as detached from the 'human fates' of embodied people. Indeed, elsewhere he is more assertive in situating these 'subjects' in tension by reiterating that 'the peoples of the world cannot remain hostage of individual state consent'.³⁸

The discursive consolidation of the Chagossian people into the framework of the legal personality of Mauritius is a reconstitution of the subalternity of this population: unable to speak and be heard through the architecture of international law.³⁹ Gail Lythgoe, in stressing the exclusion of the Chagossians from international law, draws an analogy between them and the peoples of East Timor, quoting Judge Vereschetin: 'besides Indonesia...there is another "third party" in this case, whose consent was [not] sought...the "third party" at issue is the people of East Timor'.⁴⁰ Chagossians, as a 'third party', are clearly not central. This is a product of the entrenchment of consent within the package of legal personality and the personification of the state. This unitary, stable subject, Jean d'Aspremont observes, ironically 'exclude[s] individuals from its spatial representation of the world... providing states and [international organisations] with the privilege of consenting to international law'.⁴¹ The anthropomorphic designation of states eclipses embodied individuals by endowing *it* (not *them*) with 'human intellect enabling them to consent'.⁴² This fiction is alive in the ICJ's AO maintaining the dispossession of the Chagossians not only from the physical space of the archipelago but also through the spaces of international law.

The ICJ AO is undoubtedly significant for rendering the decolonisation of Mauritius incomplete due to the separation of Chagos contrary to the right of self-determination. This right, amongst others, is often considered a counter to the primacy of the (European) state in international law. For example, Malcolm Shaw observes a general tension in the field of international law with 'the principles of domestic jurisdiction, non-intervention and territorial integrity...pull[ing] in one direction, while the principles of self-determination and human rights may be seen as pulling in precisely the opposite way'.⁴³ Indeed, self-determination, Antony Anghie shows, was caught in the tussle between Western states and the 'new' post-colonial, Third World states which sought to reform the body of international law to make the framework responsive to their needs.⁴⁴ But the

³⁷ While there is a vast literature on democratic theory which addresses this, this is beyond the scope of the paper. Here I am interested in how the concept of consent constructs its subjects.

³⁸ Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v United Kingdom) (Dissenting Opinion of Judge Cançado Trindade) (October 2016) [159] <https://www.icj-cij.org/sites/default/files/case-related/160/160-20161005-JUD-01-06-EN.pdf> accessed 16 October 2025, cited in Separate Opinion of Judge Cançado Trindade (n 35) [159].

³⁹ Gail Lythgoe, 'Asymmetrical international law and its role in constituting empires: The ICJ Chagos Advisory Opinion' (2020) 72(2) *Northern Ireland Legal Quarterly* 305, 314.

⁴⁰ Case Concerning East Timor (Portugal v Australia) (Separate Opinion of Judge Vereschetin) (June 1995) [133] <https://www.icj-cij.org/sites/default/files/case-related/84/084-19950630-JUD-01-04-EN.pdf> accessed 16 October 2025, cited in *ibid.*

⁴¹ D'Aspremont (n 4) 125.

⁴² *ibid.*

⁴³ Malcolm Shaw, 'Self-determination, *uti possidetis* and boundary disputes in Africa' in Chia-Jui Cheng (ed), *A New International Order* (Brill 2016) 99-126, 105, cited in Yusra Suedi, 'Self-determination in territorial disputes before the International Court of Justice: From rhetoric to reality?' (2023) 36(1) *Leiden Journal of International Law* 161, 171.

⁴⁴ Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge University Press 2005) 198.

ambiguity of the ‘self’ in self-determination makes it vulnerable to disenfranchisement. A version of self-determination, tracible to social contract theories of the Enlightenment, saw legitimate rule as derived from consent of the people and so able to bolster the authority of the state.⁴⁵ States, cautious of ‘dethroning’ themselves as central subjects, accordingly limited the recognition of self-determination such that peoples cannot easily replace or succeed states and governments.⁴⁶ One such means is through limiting it to saltwater colonial contexts by annexing self-determination to territorial integrity and *uti possidetis*.⁴⁷ This ensured that colonial borders were persevered during decolonisation. The ICJ AO makes clear that as a matter of custom, the right to territorial integrity of a non-self-governing territory is a corollary of the right to self-determination.⁴⁸ Of course, the case of the Chagos separation is a stark demonstration of why the General Assembly sought to protect territorial integrity as non-self-governing states gained independence.⁴⁹ Disrupting territories was the means through which the Chagossian people were dispossessed of their land by the colonial power. Yet the Chagos separation also reveals the neutering of the revolutionary potential of self-determination through its inseparability to established, pre-ordained territorial boundaries.

A state-centred reading of self-determination will delineate the relevant ‘group’ able to exercise the right, along statist lines. This is partly due to what is at stake: the right of a group to shape their social and economic environment and to be ‘self-governing’.⁵⁰ Historically self-determination movements often ‘found themselves forced to accept colonial concepts of “people”, territories, and borders’, despite being driven by the desire to disrupt the colonial order.⁵¹ Consider that there is a represented portion of the Chagossian diaspora who reject the sovereignty of Mauritius over the Chagos territory:

Chagossians have never been meaningfully or democratically consulted about the sovereignty of their islands....Chagossians had no independent voice at the ICJ...[which] dealt only with Mauritian rights of self-determination, and sidelined Chagossians as ‘Mauritians of Chagossian origin’. We do not accept the advisory opinion of the court because Chagossians were not consulted and – as an indigenous people – Chagossians do not primarily identify as Mauritians.⁵²

This calls to mind injustices perpetrated against many indigenous communities forced to move between, across, or be incorporated into the colonial and postcolonial interstate system.⁵³ Jennifer

⁴⁵ Loong et al. (n 29) 903.

⁴⁶ Catherine Lu, ‘Decolonising borders, self-determination and global justice’ in Duncan Bell (ed), *Empire, Race and Global Justice* (Cambridge University Press 2019) 251-272, 270.

⁴⁷ Loong et al. (n 29), 903.

⁴⁸ ICJ AO (n 2), 160.

⁴⁹ Resolution 1514 reads: ‘Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations’; Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) (adopted by 89 votes to none; 9 abstentions).

⁵⁰ Avishai Margalit and Joseph Raz, ‘National self-determination’ (1990) 87(9) *The Journal of Philosophy* 439, 440-441.

⁵¹ Loong et al. (n 29) 905.

⁵² Foreign Affairs Sub-Committee on the Overseas Territories, ‘Written evidence submitted by Chagossian Voices (CHA0007)’ (January 2024) <https://committees.parliament.uk/writtenevidence/127976/html/> accessed 25 October 2025.

⁵³ Lu (n 46) 255.

Penelope-Lebrasse, for example, lives in the UK and reflects on the complex heritage she carries with her: with a Chagossian mother ‘born in exile’ and a Mauritian father, her sense of identity cannot be aligned with either the UK or Mauritian state.⁵⁴ Such testimonies echo Gloria Anzaldúa whose queer feminist work reveals the connections between bordering lands and bodies. She writes: ‘this is my home this thin edge of barbwire. But the skin of the earth is seamless. The sea cannot be fenced...a borderland is a vague and undetermined place created by the emotional residue of an unnatural boundary’.⁵⁵ The construction and policing of the state is the ultimate boundary. A lasting and sustained impact of colonialism in relation to Chagos therefore is the fragmentation of a people and the creation of a diaspora. Statist approaches – bilateral in this instance – to questions of territory and self-determination compound colonial injury by denying complex, multifaceted senses of self.

The absorption of the Chagos islands and its peoples into the pre-separation, colonial territory of Mauritius works towards the constitution of the state as such: the ideal, unified and autonomous state. The alignment of Mauritius with this liberal model of the state as person shores up its bordered integrity and inviolability. It is now impervious to the splitting of its subjecthood (or self). Feminist theorists have shown that the state subject, in its personified guise, is a *masculine* agent: it is constituted as bounded, with non-porous borders akin to the norm of the impenetrable male body.⁵⁶ The fear of ‘splitting’ this legal subject, Gina Heathcote argues, is demonstrable in the way that ‘secession haunts state sovereignty’.⁵⁷ Secession, ‘defined as the breaking away from the parent state without consent’, threatens the status quo of legal subjects and the legal framework underpinning them.⁵⁸ Due to such anxiety, international law has relegated secession to an internal matter. Paradoxically, the deference to state consent means that secession is contingent on the will of the very state peoples may seek to break away from.⁵⁹ Thus state consent, in lieu of specific legal principles, is used to stymie the threat of generating new states or spaces of self-governance outside of the territorial status quo. The ICJ’s AO does not even consider the notion of a self-governing space for the Chagossians. Its emphasis on (state) consent centres on its vitiation: that the UK violated the bounded territorial integrity of a non-self-governing state which did not, at that time, have the capacity to consent. Rendering Mauritius as the appropriate unit of self-determination seemingly facilitates the rectification of this inter-state violation: by ‘restoring’ the colonially drawn territorial status quo.⁶⁰ In effect this recognises and ‘rights’ the wrong of colonial oppression by focusing on the wound caused to the now postcolonial, then colonised, state.

⁵⁴ Jennifer Penelope-Lebrasse, ‘The forgotten voices of the Chagos Archipelago’, *Friends of the British Overseas Territories* (20 June 2025) <https://fotbot.org/the-forgotten-voices-of-the-chagos-archipelago> accessed 27 August 2025.

⁵⁵ Gloria Anzaldúa, *Borderlands/La Frontera: The New Mestiza* (Aunt Lute Books 1987) 2-3.

⁵⁶ Knop (n 33) 342; Aoife O’Donoghue, “‘The admixture of feminine weakness and susceptibility’: Gendered personification of the state in international law” (2018) 19(1) *Melbourne Journal of International Law* 227; Faye Bird, ‘ISIL in Iraq: A critical analysis of the UN Security Council’s gendered personification of (non)states’ (2022) 11(1) *Laws* 5.

⁵⁷ Heathcote (n 10) 122.

⁵⁸ *ibid* 123.

⁵⁹ *ibid*.

⁶⁰ The ICJ in its AO briefly outlines the ceding of Mauritius ‘and its dependencies’ – which includes the Chagos Archipelago – by the colonial power France to the UK as the ‘new’ colonial power: ICJ AO (n 2) 27; David Vine, ‘From the birth of the *ilois* to the “footprint of freedom”: A history of Chagos and the Chagossians’ in Sandra J T M Evers and Marry Kooy (n1) 11-36, 17.

Internal differences between potentially self-determining groups are smoothed over as postcolonial Mauritius is recognised as a sovereign state incorporated within the pre-existing structures of the Eurocentric ‘international legal community’.

In determining that Mauritius, as a non-self-governing state at the time of separation, could not possibly consent to the colonial authority splitting up the (its) territory, the ICJ effectively shored up the analogy of the unified, consenting (state) subject at the heart of international law. In affixing self-determination to territorial integrity, the bounded, pre-independence, colonial borders are maintained, and the state survives the threat of splitting. This focus on consent renders the Mauritian state as the central actor and victim in both its pre- and post-independence configuration. The situation is positioned at a level of abstraction far removed from the embodied, pluralist collective of the Chagossian peoples. They are removed from the power of consent, effectively undercutting the revolutionary, decolonising potential of the right to self-determination. Having identified the centrality of the state in the ICJ’s reasoning, I will now turn to the substantive relationship between the two states (Mauritius and the UK), arguing that it is framed as one motivated by contractual, rational frames of consent and self-interest.

Consent as contractual agreement

We need to take part in the negotiations...they cannot decide behind our backs as they have done throughout history.⁶¹

Consent is a polysemous concept which shifts depending upon its given context.⁶² Having discussed consent in relation to the *unified* state as the consenting subject, I will now focus on the relational context in which consent plays out, that is, the conditions of inequality between Mauritius and the UK. Feminist, postcolonial and TWAIL scholars have scrutinised the assumptions of *formal* equality which underpin ideas of consent. Here I will bring those lines of thinking together to show that across the recent international case law on Chagos the logics of rationalism, contractualism and self-interest are pervasive. These logics subtly mask the tilted power relations which persist after formal equality has been ‘gained’ by the colonised state. Thus, the reasoning of the ICJ, premised on the inequality of status between Mauritius and the UK, cannot help us in problematising the *de facto* inequality that continues to exist even after both subjects are rendered fully sovereign.

The contemporary legal scrutiny of the separation of Chagos reveals the fundamental assumption of formal equality between states at the crucial moment of decolonisation. The window of time subject to analysis is when Mauritius transitioned from a non-self-governing state into a fully sovereign, autonomous state between 1965-1968. As a result, the legal argumentation is laden with state-craft; constructs such as consent, exchange and contractualism are drawn upon, effectively

⁶¹ Claudette Pauline Lafede, leader of Chagos Asylum People, cited in ‘Chagos Islanders confront their postcolonial future’, *The Continent* (7 October 2023) <https://continent.substack.com/p/chagos-islanders-confront-their-postcolonial> accessed 13 October 2025.

⁶² Nan Seuffert, ‘The law and politics of consent: Legal and political Subjectivity’ (2020) 46(2) *Australian Feminist Law Journal* 153, 154; Manon Garcia, *The Joy of Consent: A Philosophy of Good Sex* (Belknap Press 2023) 24.

cementing the paradigmatic view of international law which sees it as grounded in the agreement of states. Antony Anghie has argued that:

The classic paradigm of equal and sovereign states would suggest that international law, in the absence of an overarching sovereign, is made through the consent – the agreement – of equal and sovereign states. The paradigm of civilization, however, suggests that international law is made... – again driven by the West – to transform the inferior non-European peoples while simultaneously dispossessing them.⁶³

Despite the promises of equality, ‘consensual agreements’ obscure state hierarchies, the extraction of resources, and the displacement and dispossession of land from peoples marked as lesser. This draws to the surface the underlying power dynamics within state relations. As Glen Coulthard suggests, recognition of personhood (and so the formal equality of legal subjects) fails to dismantle social hierarchies as the *need* for recognition is not reciprocal; the power *to recognise* is held by the ‘master’ who does not need it in turn.⁶⁴ The recognition of Mauritius does not, therefore, result in its positioning within the international legal community as a *de facto* equal subject. In an interpersonal context, feminists too have argued that the liberal concept of consent obscures the sustained relations of dominance and submission hidden by the veil of formal equality.⁶⁵ Recognising women as consenting subjects cannot simply undo the relations of power often underpinning one’s *giving* consent – or permission – to another to act on their person.⁶⁶ These ideas will be unpacked as I reveal how consensual, contractual discursive frames (re)entrench an idealised account of state interactions premised on formal equality.

The classic paradigm of international law is routinely reinforced within the international case law on Chagos. This is most clear in the close attention paid to the negotiating conditions which culminated in the Lancaster House Agreement in 1965. The International Tribunal for the Law of the Sea (ITLOS) arbitration on the Marine Protected Area (MPA) assessed the ‘undertakings of Lancaster House’. These were clearly seen as contractually binding in nature: the UK described ‘its commitment in the language of obligation... an offer made on the basis of an intent to be bound’.⁶⁷ Legal arguments put forward by Mauritius maintained such undertakings as ‘part of the *quid pro quo* or “package of inducements” given in exchange for what the United Kingdom regarded as Mauritius’ consent to the detachment of the Chagos Archipelago’.⁶⁸ Similarly the ICJ proceedings are awash with the language of trade. The court states:

⁶³ Antony Anghie, ‘Rethinking international law: a TWAIL retrospective’ (2023) 34(1) *The European Journal of International Law* 7, 29.

⁶⁴ Glen Sean Coulthard uses Fanon’s critique of Hegel’s Master/Slave dialectic, reconfiguring it for the development of a politics of recognition in the context of indigenous peoples. This is in criticism of the centrality of the politics of recognition in discussions and legal efforts to remedy and prevent ongoing injustices carried out against indigenous populations, particularly in what is now known as Canada: Glen Sean Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (University of Minnesota Press 2014) 40.

⁶⁵ See, for example, Onora O’Neill, ‘Between consenting adults’ (1985) 14(3) *Philosophy and Public Affairs* 252; Garcia (n 62) 47; Drakopoulou (n 15) 29.

⁶⁶ Carol Pateman, *The Disorder of Women* [1989] (Polity Press 2003) 84.

⁶⁷ Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom) (Award) (‘Chagos Arbitration’) (18 March 2015) UN Dossier No 409 [396], [421].

⁶⁸ *ibid* [396].

On 3 September 1965, Sir Seewoosagur Ramgoolam [the Premier of Mauritius] and [the UK's Secretary of State for the Colonies] met in London...and agreed that the discussion on the detachment and the constitutional conference should be kept separate. However, [this was modified] to link both matters in a possible *package deal* (emphasis added).

This bartered-for package of goods and interests provided for, *inter alia*, future negotiations over defence, including over 'internal security situations' in Mauritius; £3 million compensation paid to the Mauritius government for the cost of resettling the Chagossian people; trade benefits with the US; and mineral and oil benefits.⁶⁹ Importantly, the ICJ determined that sovereignty became a part of this package, and that as a result Mauritius was subject to duress. These conditions made genuine consent impossible.

The ready adoption of contractual discursive frames cements a paradigmatic view of international law. There appears to be no doubt that this is a situation which could, in principle, be negotiated and bartered over. The UK conjures up the liberal ideal of two equally matched, legal subjects acting rationally and in service of their own interests. The deal, it claims, was highly advantageous to Mauritius at the time: 'it was a freely negotiated package that expressed the consent of Mauritius to the detachment....in exchange for [a] considerable sum of money' and other advantages.⁷⁰ It goes on to suggest that the talks were part of a broader series of communications and debates underscoring the iterative, back and forth nature of the negotiations.⁷¹ On this account, Premier Ramgoolam had time to 'mull [the conditions] over in his hotel room'⁷² after a lengthy process in which Mauritius had secured 'tangible benefits'.⁷³ Moreover, the UK paints a scene of strategic competitiveness, with Premier Ramgoolam portrayed as self-interested and calculating, by using the negotiations to strengthen his political position against internal, political opponents within Mauritius.⁷⁴ The UK suggests he used the negotiations to 'extract as much value as possible from the agreement on detachment'.⁷⁵ These examples capture the UK's appeal to liberal legalism's idealised view of itself as mediating the rational, voluntary undertakings of equal state subjects. The frames it deploys rest on the idea that contracts are acts 'abstracted from relations of power'.⁷⁶

The legal argumentation put forward by Mauritius to both the ICJ and ITLOS did not challenge the contractual nature of the issue *per se*, but rather the suggestion that there was formal equality between the two negotiating parties. The effect of this is to leave as central the state as the consenting and contracting subject of international law. In its written statement to the ICJ, Mauritius advances the proposition that consent was extracted under duress,⁷⁷ as the reluctant agreement of Premier Ramgoolam was given amidst escalating pressure.⁷⁸ Such duress, Mauritius

⁶⁹ ICJ AO (n 2) 108-110.

⁷⁰ Written statement of the UK to the ICJ (n 12) [3.51].

⁷¹ *ibid.*

⁷² *ibid* [3.29].

⁷³ *ibid* [3.27].

⁷⁴ *ibid* [3.21]-[3.23].

⁷⁵ *ibid* [3.23]

⁷⁶ Wendy Brown, *States of Injury: Power and Freedom in Later Modernity* (Princeton University Press 1995) 162.

⁷⁷ Written statement of Mauritius to the ICJ (n 13) [6.96].

⁷⁸ *ibid* [1.11].

notes, was recognised by the dissenting judges in the ITLOS arbitration award. There, Judges Kateka and Wolfrum stated that:

Mauritius had no choice. The detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not...The Private Secretary of Wilson used the language of ‘frighten[ing]’ the Premier ‘with hope’....The Council of Ministers of Mauritius was presided over by the British Governor who could nominate some of the members of the Council. Thus, there was a clear situation of inequality between the two sides.⁷⁹

We are invited to see the issuing of consent as materially irrelevant and not the product of rational bargaining between equals. Importantly, consent constructed in this way is reduced to its interpersonal context, thereby bringing to the fore the bodies of those embroiled in the Lancaster House talks as though attempting to undertake a business transaction.

The subjects constituted by the arguments of the UK then appear equal; they are the idealised rational, self-interested agents coming to an accord. In contrast, Mauritius constitutes unequal subjects, with relations marked by duress and coercion. Both states, however, maintain the centrality and *personality* of the (emerging) state and the illusory ideals of fair contracting conditions. In traditional, anthropomorphic fashion, the UK argues that ITLOS recognised that ‘the two parties were able to see *eye to eye* on this issue, thus reaffirming the 1965 agreement’.⁸⁰ Mauritius, on the other hand, suggests that the was UK advancing ‘the spurious claim...that Mauritius had consented to *its own dismemberment*’.⁸¹ a suggestion which clearly invokes the limits of contractualism as excluding the right to trade in one’s own limbs. The contract is situated as the domain under which ideal subjects come together. Margaret Radin notes the prevalence of such a scene in the liberal imaginings of contracts. She paints the normative ideal of contracts through the device of ‘World A’: an idealised world of ‘free exchange’ premised on a voluntary, consensual transaction.⁸² World A is the backdrop within which the UK seeks to situate the ‘agreement’, while Mauritius reveals the real-world inequality in bargaining power without actually disrupting the ideal of World A. This should not be overly surprising, as while the questions asked by the General Assembly press upon matters of public international law, the notion of consent speaks to the private law analogy of interstate relations. It has been claimed that the consent theory of international law was motivated by the ‘business-orientated philosophy’ of the nineteenth century.⁸³ This philosophy stressed ‘the importance of the contract as the legal basis of an agreement freely entered into by both (or all) sides’.⁸⁴ While the understanding of international law as contractual may now seem archaic,⁸⁵ it is clearly kept in view within the legal discourse here. This throws into relief the

⁷⁹ Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom) (‘Chagos Arbitration’) (Dissenting and Concurring Opinion of Judge James Kateka and Judge Rüdiger Wolfrum) (18 March 2015) 76-77.

⁸⁰ Written statement of the UK to the ICJ (n 12) [3.42]; Chagos Arbitration (n 63) [431].

⁸¹ Written statement of Mauritius to the ICJ (n 13) [6.96] (emphasis added).

⁸² Margaret Jane Radin, *Boilerplate: The Fine Print, Vanishing Rights and the Rule of Law* (Princeton University Press 2012) 3-18.

⁸³ Malcolm Shaw, *International Law* (Cambridge University Press 2021) 8.

⁸⁴ *ibid.*

⁸⁵ Besson (n 3) 6.

centrality of consent in ideals of contract formation and the parallel persistence of consent within international legal argumentation.

What then is the specific problem with contractual framings of consent in this context? In many respects it seems desirable that the ICJ scrutinise the processes through which ‘negotiations’ were carried out and the specific conditions placed upon Premier Ramgoolam in obtaining ‘consent’. Bringing to light the ‘bullying’ and intimidation of the Mauritian Premier – who stated that he had a ‘nook around [his] neck’⁸⁶ – certainly deepens our understanding of the interpersonal wielding of colonial power and subjugation within diplomacy. This ostensibly resists the ‘moral magic’ of consent which serves to conceal more passive acceptances (assented or coerced) under the guise of active agreement and choice.⁸⁷ Feminists have critiqued consent for this very reason; in capturing such a wide spectrum of behaviours, consent can flatten the gradation from positive agreement to passive acquiescence through rendering them all lawful.⁸⁸ However, the focus on interpersonal negotiations and agreements entrenches the classic paradigm of international law which Anghie describes. First, it replicates the notion that states can have a unified will and that they are ‘endowed with a human intellect enabling them to consent’.⁸⁹ This is achieved through the distillation of the dispossession of a people into a simplistic bargain-for-exchange paradigm between representatives around a negotiation table. Second, consent is not challenged but embedded as Mauritius is seen as lacking capacity to consent *at that time* due to the formal authority of one over the other. Having the ability to consent marks the fully independent state and signals its ability to enter into contracts with other states. Mauritius in 1965 was yet to be *granted* this capacity at the time of the Lancaster House Agreement. The answer to the formal inequality which Mauritius and the ICJ identify is not through upending the structures of power which persist long after independence, but by recognising Mauritius as fully sovereign and having the potential to freely consent. The classic paradigm remains the ideal means of interstate engagement. The colonised, or Third World (soon to be) state is simply yet to achieve the power of consent due to its positioning toward the ‘uncivilised’ or ‘barbaric’ end of the civilisational continuum.⁹⁰ To wield the power of consent to generate agreement within the idealised liberal encounter between equal sovereigns is rendered normative. Indeed, it is solidified as the universal, ideal governance model to which the colonised state must strive if it is to counter powerful states.

We have reasons to doubt the universality of the power of state consent, particularly when annexed to the idealised, liberal account of agreements and contract formation between ‘free and equal’ states. This is because these ideals of international legal thought have long been embedded with contradiction. European liberal thought during the Enlightenment advanced ‘universal ideals’ such as equality and individualism.⁹¹ Such ideas prompted the question of how free and equal individuals can be subject to the authority of another. Contract and consent theories aimed, therefore, to

⁸⁶ Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Separate Opinion of Judge Robinson) (February 2019) [93] <https://www.icj-cij.org/sites/default/files/case-related/169/169-20190225-ADV-01-09-EN.pdf> accessed 29 November 2025.

⁸⁷ Hurd (n 19).

⁸⁸ Garcia (n 62) 25.

⁸⁹ D’Aspremont (n 4) 125.

⁹⁰ Ratna Kapur, *Erotic Justice: Law and the New Politics of Postcolonialism* (Routledge-Cavendish 2005) 23.

⁹¹ Ruskola (n 23) 1493.

reconfigure the relationship between the state and the individual.⁹² Crudely put, the authority of the state over 'free and equal' individuals is supposedly derived from, in part, the *voluntarism* of those individuals.⁹³ In discussing the positions of Locke and Hobbes on the hypothetical consent underpinning the social contract, Carol Pateman summarises:

Voluntarism presupposed that individuals are rational, that they have, or are able to develop, the moral and intellectual capacities necessary to enable free commitment to be given. 'Free and equal individuals', to use Lockean terminology, own the property in their persons and their attributes, including their capacity to give consent. The individual is the 'guardian of his own consent'.⁹⁴

Pateman goes on to show the obscured counterpart – the sexual contract – underpinning the social contract,⁹⁵ while postcolonial theorists reveal the obscured racialised Other as counterpart. Drawing on Uday Singh Mehta, Ratna Kapur argues that the 'universal' values of liberalism faltered at colonial encounters, giving way to traditional and antiquated decisions as to treatment based on perceived difference. She observes that: 'if consent was fundamental to the legitimacy of political authority, and consent entailed the capacity to reason, then a subject who lacked the capacity to reason also lacked the capacity for consent'.⁹⁶ Interrogating the writing of James Mill she shows how he constituted Indians as 'infantile and childlike', in Lockean terms 'incapable of consent – the core requirement for a liberal subject, for liberal democracy, and for representative government'.⁹⁷ The autonomous consenting subject is thus constituted by its *reason and rationality* and sits at the end of a civilisation scale in opposition to the primitive Other.⁹⁸

Running parallel to, and overlapping with, these arguments are feminist concerns on consent in more interpersonal contexts. These insights are helpful in that they critique the normative rendering of a subject idealised for (his) rationality and atomised autonomy.⁹⁹ In particular, the autonomous, atomised, self-sufficient liberal self comes to be the ideal subject which women, gender and sexual minorities must strive to embody. This is the benchmark of equality, despite its illusory nature.¹⁰⁰ For Onora O'Neill, evaluations on whether consent or dissent is given often invoke this abstraction, which she calls the 'possibly consenting adult'.¹⁰¹ In determinations of consent subjects are assumed to act as abstracted, idealised adults, as opposed to *particular* persons embodied with weaknesses, sets of abilities, dependencies and personal, emotional histories. It is the particularities of a person, she argues, which tend to bear more on whether consent is given in any particular context. To emphasise a similar point, Manon Garcia is critical of a blindness to the deeply personal and contingent nature of sexual consent, which is lost when it is imagined in the

⁹² Parfitt (n 25) 99.

⁹³ Pateman (n 66) 72.

⁹⁴ *ibid* 73.

⁹⁵ Carol Pateman, *The Sexual Contract* (Polity Press 1988).

⁹⁶ Kapur (n 90) 24.

⁹⁷ *ibid*.

⁹⁸ *ibid* 23.

⁹⁹ Ji-Young Lee, 'Relational approaches to personal autonomy' (2021) 18(5) *Philosophy Compass* 1, 2-3.

¹⁰⁰ Drakopoulou (n 15) 29-31; see also Martha Fineman, 'Cracking foundational myths: Independence, autonomy, and self-sufficiency' (2000) 8 *The American University Journal of Gender, Social Policy and the Law* 13.

¹⁰¹ O'Neill (n 65) 253.

abstract.¹⁰² Moreover, there is a very real worry that the ostensible freedom of giving consent renders active those choices which are, in reality, prescriptive. Maria Drakopoulou suggests that consent as empowering vests ownership and governance of the self *within* subjects (women) who are in fact nestled within histories of restrictive social orders.¹⁰³ In this way, behaviours and roles supposedly taken up voluntarily and consented to, chart an eerily familiar normative pattern but are now rubber-stamped as actively *wanted* by the self. Thus, while the ownership of the power of consent signals autonomy and personhood in liberal thought it is double edged in that it produces atomised, rational, free and equal subjects which obscures more persistent undercurrents of inequality.

These concerns, whilst raised in the context of interpersonal interactions, are also clearly relevant for thinking through interstate relations and the role consent plays as the supposed mechanism for preserving freedom and equality within those interactions. That consent can be understood as a counter-hegemonic strategy for postcolonial states sits at odds with how, particularly in the context of contractual engagement, consent works to obscure power imbalances and the broader social order. Sharon Cowan's argument, made in the aftermath of sexual law reform in England and Wales (which were said to echo J S Mill's account of the value of autonomy),¹⁰⁴ could just as easily speak to a model of contractual interstate relations:

...consent does not operate in a vacuum and is relational, and dependent on social interaction rather than individualistic decision making. A formal model of consent does not capture the underlying power imbalances that may exist before 'negotiation' takes place, and may portray each choice as an isolated snapshot, rather than reflect the interconnected nature of choice.¹⁰⁵

In the context of the separation of Chagos, power imbalances were easily identifiable as preventing any sincere question of consent due to the formalised subjugation of Mauritius; consent could not arise because both 'parties' to the contract were not legal persons. This says nothing about the continuing relations of Mauritius and the UK. The power of the state to wield consent – while now extended to Mauritius after independence – is, on paper, a universal, liberal right which all states are bearers of. Within the liberal imaginary, the question of sovereignty has been remedied and what now exists are two free and equal subjects able to enter into consensual agreements. This sets the scene for the more contemporary 'negotiations' over the future of Chagos to which I will now turn.

Bargain for exchange: sovereignty/property as disposable

For us, the land and sea are not just a place to live but a part of our identity...no one can

¹⁰² Garcia (n 62) 81.

¹⁰³ Drakopoulou (n 15) 29-30.

¹⁰⁴ Sharon Cowan, 'Freedom and capacity to make a choice: A feminist analysis of consent in the criminal law of rape' in Vanessa Munro and Carl Stychin (eds), *Sexuality and the Law: Feminist Engagements* (Routledge 2007) 51-71, 52.

¹⁰⁵ *ibid.*

look after the soil and sea better than those who call it home.¹⁰⁶

As I have shown, the legal discourse on the separation of Chagos has shored up the centrality of the state, while pushing the indigenous community who suffered dispossession and displacement to the margins. The heavy reliance on contractual forms of engagement in interrogating the (im)possibility of consent between the ‘two parties’ has offered a pyrrhic victory from a decolonial perspective. By focusing on formal inequality international case law shields as unproblematic, and indeed entrenches, the contractual mode of engagement between (prospective) ‘free and equal’ legal persons. I will now turn to the more contemporary engagements between Mauritius and the UK (with the US in the background) to show how the colonial separation is a continuing injustice due to the idea that the postcolonial state has the freedom to ‘dispose of itself’.¹⁰⁷ The legacy of the classic paradigm of international law is the constitution of Chagos as a commodity: alienated from the Chagossians and subject to continued extraction and liberal bargaining. It is for this reason, I argue, that the Chagossians do indeed remain an ‘un-self-determined’¹⁰⁸ diaspora, barred from the power of consent.

Having been alerted to the illusion of the universal promise of liberal values, we can better interrogate the interstate relations between Mauritius and the UK. Returning to Anghie’s critique of the classic paradigm of international law, he contends that ‘contractual approaches to international law...obscure the colonial past’.¹⁰⁹ He goes on:

The whole discourse of contracts as it applied to the Third World has, since the nineteenth century, focused on two main themes: the construction of ‘consent’ on the part of the non-European entity; and the power that contracts bestow on a non-European entity, whether a tribe or a sovereign state, to transfer whatever resources it possesses.¹¹⁰

Anghie shows how the idea of ‘native consent’ has moved from a context of indigenous ‘agreements’ transferring land titles, to contracts between postcolonial sovereign states and multinational corporations. Crucially, he argues that the notion of freedom of contract fosters the logic that Third World sovereignty is marked by the right to ‘dispose of their natural resources’, an idea he links to the ‘principle’ of the ‘right of natives to dispose of themselves’.¹¹¹ This characterisation, he maintains, has been curiously embraced by Third World states.¹¹² Such patterns of engagement between colonial states and postcolonial states therefore operate beneath the guise of formal equality. The contractual paradigm within which the state of Mauritius is recognised as the sovereign of Chagos requires interrogating through the contributions of feminist and gender theorists. Their work allows us to see why the concept of consent itself fosters the notion of

¹⁰⁶ Foreign Affairs Sub-Committee on the Overseas Territories, ‘Written evidence submitted by Chagos Islanders Movement (CHA0030)’ (January 2024) <https://committees.parliament.uk/writtenevidence/128102/html/> accessed 25 October 2025.

¹⁰⁷ Anghie (n 44) 240.

¹⁰⁸ Lythgoe (n 39) 315.

¹⁰⁹ Anghie (n 44) 241.

¹¹⁰ *ibid* 240.

¹¹¹ *ibid* citing Siba N’Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law* (University of Minnesota Press, 1996) 80.

¹¹² *ibid* 240.

seemingly rational, commodified self-disposal, and how this is at odds with deeper interdependencies between peoples, bodies, community and land.

For many Chagossians the archipelago is not of quantifiable, fungible value. The Chagos Islanders Movement affirmed that ‘Chagos holds immense significance for us; it is not merely a place on the map but our sanctuary, our home, our dignity, our treasure, and a repository of cherished memories’.¹¹³ Contrary to the UK’s racist narrative of the Chagossians as a transitory collective of contract workers prior to their dispossession,¹¹⁴ the history and culture of the Chagossians reveal their deep connection to the islands.¹¹⁵ Kinnari Bhatt, building on the anthropological work of Laura Jeffery, argues clearly that the case is rooted in the traditional land relations of indigenous persons. She argues that despite the Chagossians not fitting neatly into the Eurocentric understanding of indigeneity as either ‘saltwater’ or ‘first inhabitants’, their status as indigenous (should) derive from the ‘golden thread of their way of life that coalesces around a special social, cultural and often spiritual connection to land that defines and unites [them]’, alongside their expulsion and discriminatory marginalisation.¹¹⁶ The interconnection between Chagossian culture, dignity, and conditions of living and the Chagos islands is in stark contrast to the extractive value sought by nation States.

Chagos as a site of forced labour, resource extraction and military security has a long history. While I cannot provide a full historical account here,¹¹⁷ I aim to stress the interlocking patterns of capitalist extraction, violence and displacement. The ‘value’ of Chagos from the perspectives of states has been captured by Laleh Khalili as ‘from guano to copra to guns’.¹¹⁸ Tracing the colonial history of the islands, the early extraction of fertiliser gave way to the harvesting of coconut oil by the enslaved peoples forcibly taken in ships to the islands – initially from Madagascar and South-Eastern Africa, and later Indian indentured labourers and other workers from across the British colonies. The Cold War saw the capitalisation of Chagos for military defence purposes. The violent dispossession and displacement of the Chagossians was part of the process of establishing the US/UK military base on the largest of the Chagos islands, Diego Garcia. The military security for the US and the UK was therefore built on the forced insecurity of the people of Chagos. The expansion of the military base since the 1960s has seen it play a role in detention and torture through the ‘war on terror’ era;¹¹⁹ the confinement of Sri Lankan refugees without judicial process

¹¹³ Chagos Islanders Movement (CHA0030) (n 106).

¹¹⁴ The racist nature of this is clear in the use of derogatory terms such as ‘Tarzans’ and ‘Man Fridays’ in internal state official communications: *ibid.*

¹¹⁵ Laura Jeffery, *Chagos Islanders in Mauritius and the UK: Forced Displacement and Onward Migration* (Manchester University Press 2013) cited in Kinnari Bhatt, ‘A postcolonial legal approach to the Chagos case and the (dis)application of land rights norms’ (2019) 15(1) *International Journal of the Law in Context* 1, 3–4.

¹¹⁶ Bhatt, *ibid.* 6.

¹¹⁷ See Jeffery (n 115); Vine (n 60).

¹¹⁸ Laleh Khalili, *Extractive Capitalism: How Commodities and Cronyism Drive the Global Economy* (Verso 2025) 100.

¹¹⁹ *ibid.* 105.

or adequate living standards;¹²⁰ and the site of US B-52 and B-2 bombers positioning them in range of Iran.¹²¹

Crucially this military ‘value’ sits alongside the resource potential of the archipelago. As Khalili stresses, the islands were long seen as offering a dual utility: ‘as possessions ripe for commercial exploitation, and as naval positions facilitating transoceanic strategic power’.¹²² This is apparent in the UK’s record of meeting between itself and Mauritius regarding the creation of the MPA in 2010:

The Territory and its environs had become one of the most valuable sites in the world for coral biodiversity and also had the cleanest oceans and was a valuable scientific resource... The UK delegation explained the advantage to Mauritius that through a marine protected area, *the value of the Territory would be raised and this resource would eventually be ceded to Mauritius*. No decisions had yet been taken. The UK was discussing issues with the US: [British Indian Ocean Territory [BIOT]] was created for defence purposes and the environmental agenda must not overcome that purpose.¹²³

Here we can see the continuation of logics which posit *terra nullius* as a desirable attribute of land. This seemingly facilitates the notion that environmental protections, such as the MPA, can in turn produce transferrable resources which can later be capitalised upon.¹²⁴ In short, the UK invites Mauritius to imagine the extractive potential born from the dispossession it carried out. Moreover, the UK clearly oscillates between the value of the islands as based upon natural resources when facing Mauritius, but military value when facing the US. The guarantees of the primacy of security reflect the latent, often veiled hegemony of the US throughout the ongoing colonisation of the BIOT. Anglo-American military forces initially carried out the displacement of the Chagossians, and the US has continued to support the UK in its efforts to retain the BIOT.¹²⁵ This latent power has viscerally surfaced as the US has withheld consent for the UK legal authorities to inspect the detention conditions of refugees on the islands.¹²⁶ Moreover, the US has recently withdrawn support over the 2025 agreement, going as far as suggesting it will ‘buy’ the archipelago from

¹²⁰ Jacob Goldberg, ‘Diego Garcia: Where the Refugee Convention doesn’t apply’, *The New Humanitarian* (15 September 2022) <https://www.thenewhumanitarian.org/news-feature/2022/09/15/Diego-Garcia-UK-island-Refugee-Convention> accessed 24 September 2025.

¹²¹ Idrees Ali and Phill Stewart, ‘US military replaces B-2 bombers that were sent amid Middle East tensions’, *Reuters* (12 May 2025) <https://www.reuters.com/business/aerospace-defense/us-military-replaces-b-2-bombers-that-were-sent-amid-middle-east-tensions-2025-05-12/> accessed 24 September 2025.

¹²² Khalili (n 118) 97-98.

¹²³ Chagos Arbitration (n 67) 128 (emphasis added).

¹²⁴ A recent study has stressed the significant positive impact the large Chagos MPA has had for marine ecosystems. The authors have expressed concern over the future of the MPA due to ‘the anticipated change of sovereignty’. In detailing this finding, I hope to convey the sensitivity of critique. There is very real reason to find hope in successful environmental interventions, however the capitulation of this into economic value may trouble this sense of success; Alex Morrison, ‘Chagos study highlights value of vast Marine Protected Areas’, *University of Exeter News* (7 August 2025) <https://news.exeter.ac.uk/faculty-of-environment-science-and-economy/chagos-study-highlights-value-of-vast-marine-protected-areas/> accessed 30 November 2025; see also Alixe M Trevail et al. ‘Large marine protected areas can encompass movements of diverse megafauna’ (2025) 62(9) *Journal of Applied Ecology* 2454.

¹²⁵ Peter Harris, ‘The Chagos dispute: Where right makes might’ (2022) 44(2) *Third World Quarterly* 395, 397.

¹²⁶ Cuddy (n 11)

Mauritius.¹²⁷ 'The strategic value of the base is clearly 'heightened' by the US-Israel war with Iran as strikes have been fired from, and targeted at, Diego Garcia.¹²⁸

Chagos as a militarised commodity – owned by the state and to be disposed of at will – is a present-day continuation of colonial logics. The 2025 agreement between the UK and Mauritius reveals the sustained coupling of sovereignty and the rights of the state to extract resources, while the interests and perspectives of the dispossessed community fall by the wayside. (Postcolonial) sovereignty itself remains a part of the bargain. Article 1 unequivocally states that Mauritius is sovereign over the entirety of the Archipelago, including Diego Garcia;¹²⁹ however article 2 goes on: 'as sovereign, Mauritius authorises the United Kingdom to exercise the rights and authorities of Mauritius with respect to Diego Garcia in accordance to the terms of this Agreement'.¹³⁰ Practically, this allows for the survival of the UK/US military base (for 99 years), while formally recognising the title over land as belonging to the Mauritian state. Much of the agreement centres on the reach of the UK's control, effectively delineating the rights of sovereignty between the two states.¹³¹ The agreement maintains that certain sovereign rights can only be exercised by Mauritius *if* there is a 'mutual decision by both parties via the Joint Commission'.¹³² In effect the UK would have joint say over the activities of Mauritius in relation to Diego Garcia, such as sovereignty over natural resources; conservation and protection of the environment, including the marine environment; and regulation of commercial activities.¹³³ The effective veto that this would appear to give the UK frustrates the 'long-standing ambition [of Mauritius] to exploit the economic potential of the archipelago and its surrounding waters'.¹³⁴ Such ambitions appear hampered through the splitting of Mauritius' sovereignty specifically over the extraction of natural resources. This may amount to the temporal alienation of territorial sovereignty through precluding permanent sovereignty over those natural resources. Indeed, in the UK's explanatory notes to the agreement it stresses that 'there would be no circumstances in which Mauritius would be able to prevent the UK or US having full control over operations from Diego Garcia'.¹³⁵ Of course, the temporally and spatially delimited nature of the agreement may prompt an objection to the notion that this is a *total* transfer of territorial sovereignty. Yet the explicit delineation of sovereign rights

¹²⁷ Gloria Oladipo, 'Trump reportedly considers buying Chagos Islands from Mauritius', *The Guardian* (7 June 2026) <https://www.theguardian.com/us-news/2026/jun/07/trump-deal-chagos-islands-mauritius-uk> accessed 29 June 2026.

¹²⁸ *ibid.*

¹²⁹ Mauritius-UK (n 5) article 1.

¹³⁰ *ibid.*, article 2.

¹³¹ *ibid.*; see, for example, the allocation of civil and criminal jurisdiction under article 2(3)(a)-(d) relating to the personnel on Diego Garcia to the UK.

¹³² The Joint Commission is made up of representatives designated by the UK and Mauritius. The US holds a right to introduce issues to the Commission and designate a representative to attend meetings of the Joint Commission: Mauritius-UK (n 5) annex 3.

¹³³ *ibid.*, article 2(3)(e)-(h).

¹³⁴ 'The change in sovereignty for the Chagos Archipelago' (2024) 30(26) *IJSS: Strategic Comments* 1, 3.

¹³⁵ Foreign Office, *Explanatory Memorandum on the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Mauritius concerning the Chagos Archipelago including Diego Garcia* (Cmd 1334, 2025).

within the agreement indicates that packages of sovereignty can be commodified and transferred in such a way which alienates the land from Chagossians, including future generations.¹³⁶

This agreement, while now shelved, reveals the centrality of economic and military entitlements to the negotiations over state sovereignty and rights pertaining to Chagos. What is of less significance in the agreement is the resettlement of the Chagossians. While the preamble expresses regret for how they have been treated, it fails to recognise them as indigenous to the islands alongside their self-determination claim. It predominantly concerns their welfare through the establishment of a trust fund paid into by the UK, to be executed by Mauritius.¹³⁷ In relation to resettlement, article 6 states: ‘in the exercise of its sovereignty over the Chagos Archipelago, Mauritius is free to implement a programme of resettlement on the islands of the Chagos Archipelago other than Diego Garcia’.¹³⁸ For some Chagossians the Agreement has been well received,¹³⁹ however for many this limits resettlement to the smaller, outer islands, presenting a ‘profound personal and cultural loss’.¹⁴⁰ Human Rights Watch have criticised the failure of the agreement to consider the rights of the Chagossians as well as state accountability for the violence and ongoing displacement they have suffered.¹⁴¹ Crucially, this provision places responsibility for resettlement on the state of Mauritius. Sovereignty works here to situate resettlement as a domestic issue, far outside the central focus of the bilateral, *internationalised* nature of allocating economic and military resources (via the interstate contract). Further, the language that ‘Mauritius is free’ to carry out resettlement within a demarcated geographical space de-emphasises the significant constraints of that geographical stipulation by invoking the language of freedom and sovereignty. The language is permission generating; the act is assumed to be wrong were it not for it being permitted.¹⁴² It fails to secure a *right* for the Chagossians.¹⁴³

Strengthening the sovereign claims of Mauritius over the Chagos Islands does not appear then to centre Chagossians nor appropriately remedy their dispossession. Feminist perspectives of consent help illuminate why this is so beyond mere explanations of state interest. Consent is often held up as the mechanism to strengthen autonomy; holding the power to wield consent signals one’s proprietorship over one’s own body.¹⁴⁴ It is this tendency to render the body as property – subject to self-governance and individuated control – that feeds into the liberal Cartesian mind-body dualism.¹⁴⁵ The mind is privileged within this binary and the disembodied, rational subject maintains rights and interests over *its* propertised body, such as the right to use and enjoyment,

¹³⁶ For an excellent discussion on the ‘murky waters’ of sovereignty, territory and property in the context of corporate land grabs, see Anna Jurkevics, ‘Land grabbing and the perplexities of territorial sovereignty’ (2022) 50(1) *Political Theory* 32.

¹³⁷ Mauritius-UK (n 5) article 11(1)(b).

¹³⁸ *ibid*, article 6.

¹³⁹ International Relations and Defence Committee, *Chagossian Views on the UK-Mauritius Chagos Agreement* (HL Paper 234) [34].

¹⁴⁰ *ibid*, report summary.

¹⁴¹ Allan Ngari and Clive Baldwin, ‘Chagos Archipelago residents deserve reparations, not regrets’, *Human Rights Watch* (28 August 2025) <https://www.hrw.org/news/2025/08/28/chagos-archipelago-residents-deserve-reparations-not-regrets> accessed 1 November 2025.

¹⁴² Hurd (n 19) 124.

¹⁴³ See *Chagossian Views* (n 139) [46], [56]-[61].

¹⁴⁴ Nicola Lacey, *Unspeakable Subjects: Feminist Essays in Legal and Social Theory* (Hart 1995) 113.

¹⁴⁵ *ibid* 107-108.

disposition and possession.¹⁴⁶ The body becomes a part of property relations, thus ‘the mind-body dualism introduces an instrumental relationship to the body’.¹⁴⁷ The sovereign subject in liberal thought is one who has control over their ‘property in persons’¹⁴⁸ and has cemented themselves as the controlling agent; this now fully fledged subject knows their will and desires and is able to *use* their body freely.¹⁴⁹

This line of thinking is analogous to the postcolonial state gaining governance over *its* territory. Taking up the gendered, racialised analogy of states as persons discussed above,¹⁵⁰ reason and rationality mark the normative standard of the liberal self-knowing and self-governing state,¹⁵¹ while the territory becomes reified as the possessed body.¹⁵² In this way the mind-body dualism attached to the individual runs parallel to a governance-territory dualism within the anthropomorphic logic of statehood. For the postcolonial sovereign state (entering into the liberal, social order) exercising rights over territory, including its disposal, appears to be the means through which control, rationality and autonomy are asserted. However, as feminists have argued, the atomised, autonomous and possessing agent is an illusion.¹⁵³ The broader context within which transactions over ‘property’ take place can reveal the relational, interdependent nature of choice. Proprietary understandings of the body configure consent as a permission to access or direct said body: consent operates within this pattern as a signal of submission by some bodies (coded feminine) to dominating bodies (coded masculine). For example, the practice of the heteronormative ‘marriage contract’, Carol Pateman argues, is one of unequal ‘exchange’ of obedience for protection.¹⁵⁴ Similarly the employment contract is marked by unequal bargaining power whereby the *need to survive* motivates the seemingly consensual commodification of oneself, thus handing over control of one’s body and self to the employer.¹⁵⁵ The contract, as emblematic of freedom of exchange, obscures how certain bodies – racialised and gendered – are frequently those subject to ‘exchange’ and alienation. They are the ‘freely’ disposable bodies.

Continuing the state/person, territory/body analogy demands a reckoning with the previously made observation that postcolonial, territorial sovereignty is marked by its disposability. The practices of neocolonialism convey clearly that land and territory was once forcibly but now ‘freely’ disposed of by postcolonial, or Global South states. Indeed, such contracts of disposal appear a rational means to ‘develop’ across the developing/developed continuum cementing neoliberal, capitalism as the normative model of statehood. This has been made most apparent through the

¹⁴⁶ Cheryl I Harris, ‘Whiteness as property’ (1993) 106(8) *Harvard Law Review* 1707, 1736; see also Margaret Jane Radin, ‘The liberal conception of property: Cross currents in the jurisprudence of takings’ (1988) 88(8) *Columbia Law Review* 1667.

¹⁴⁷ Daniel Loick, ‘“...as if it were a thing.” A feminist critique of consent’ (2020) 27(3) *Constellations* 412, 415.

¹⁴⁸ Moira Gatens, ‘Paradoxes of liberal politics: Contracts, rights, and consent’ in Daniel I O’Neill, Mary Lyndon Shanley and Iris Marion Young (eds), *Illusion of Consent: Engaging with Carole Pateman* (Pennsylvania State University Press 2008) 31–48, 37.

¹⁴⁹ Megan Gallagher, ‘The ambivalence of consent’ (2024) 38(118) *Australian Feminist Studies* 472, 478.

¹⁵⁰ Kapur (n 90) 23–24; Ruskola (n 23); Bird (n 56) 6.

¹⁵¹ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989) 162.

¹⁵² Ruskola (n 23) 1492.

¹⁵³ Gallagher (n 149) 479; Sharon Krause, *Freedom Beyond Sovereignty: Reconstructing Liberal Individualism* (University of Chicago Press 2015) 21.

¹⁵⁴ Pateman (n 95) 129.

¹⁵⁵ *ibid* 151; see also Gatens (n 148) 32–37.

imposition of 'land grabbing' contracts between postcolonial states and multinational corporations,¹⁵⁶ alongside the establishment of transnational legal norms protecting those foreign investments from the jurisdiction of the state.¹⁵⁷ The consensual agreement of Mauritius and the UK must, therefore, be read in the context of resource extraction and militarism which, within the social order of the international community, regularly flows from the Global South to the Global North. Robert Knox demonstrates how the accumulation of capital transitioned from being an explicitly racist project to an insidious one. Drawing on the work of Ntina Tzouvala, he argues that the drive of capitalism 'encourage[ed] non-European states to "civilise" themselves', and entering into unequal treaties was one such way of doing so.¹⁵⁸ The treaties, or in this case the agreement, operate within the liberal legal frame which naturalises the embedding of unequal, racialised transactions over commodities, which extends to rights of *ownership* over land/territorial sovereignty. This context allows us to see beyond the veil of contracts and consent which construct formal equality with international law as its guarantor.

Yet, the Mauritian state is not simply a powerless victim. Crucially, feminists have had to grapple with the role of agency within broad structures of oppression and inequality. Work on autonomy and consent shows how subjugated persons are neither lacking in agency nor fully autonomous but enmeshed within social, political and economic relations, thereby holders of partial and relational agency.¹⁵⁹ The autonomy of Mauritius is tied up within that of the (greater) agency of the UK and the US and situated within a neoliberal, capitalist social order. While the negotiations over the 2025 agreement are not transparent, Paul Bérenger, Deputy Prime Minister of Marutius, indicated that the agreement was delayed due to disagreements over finances. Here he invokes the language of sovereignty, nationalism and ownership:

This base existed on our land, on our territory...but not only is it [about] our sovereignty. There are some things you can't accept if you're a true patriot. They are trying to make us sign and they are quibbling on a small amount.¹⁶⁰

This possessive language maintains land alienation in the name of state ownership. The land serves as a commodity for value extraction. Importantly, the impersonal register of proprietorship is in stark contrast to the more fulsome registers of indigenous relations with land which we see expressed by members of the Chagossian community. For example, the Chagos Islanders Movement stressed:

[t]he Chagos Islands are more than just a location; they are our heritage, and we take immense pride in being the stewards of this unique environment.... Our deep connection

¹⁵⁶ Jurkevics (n 136).

¹⁵⁷ Anghie (n 44) 223-235.

¹⁵⁸ Robert Knox, 'International law, race and Marxism: An outline of a commodity-form approach' (2024) 15(4) *Rev Direito e Práx* 1, 12; Ntina Tzouvala, "'And the laws are rude,...crude and uncertain": Extraterritoriality and the emergence of territorialised statehood in Siam' in Daniel S Margolies, Umut Özsü, Maia Pal and Ntina Tzouvala (eds) *The Extraterritoriality of Law: History, Theory, Politics* (Routledge 2019).

¹⁵⁹ Gallagher (n 149); Krause (n 153).

¹⁶⁰ Yasine Mohabuth, 'Mauritius hints Chagos talks stuck over money', *BBC News* (23 December 2024) <https://www.bbc.co.uk/news/articles/cj49qjypqv4o> accessed 28 September 2025.

to the land and sea means that we have a vested interest in their preservation and sustainable management.¹⁶¹

This language resists the distancing of the possessive self, collapsing the Cartesian mind-body dualism. To be stewards over land is to disavow capitalist impulses which see it as subject to ownership and control. The land is constituted for many as a part of self and identity, not as a distanced possession. Yet this relation is not intelligible within the frames of consent-based liberal legalism. In contrast, the state of Mauritius reproduces the mind-body dualism and so wields the (albeit partial) agency of state relations which is unavailable to Chagossians. In taking up contractual, liberal registers, therefore, Mauritius effectively compounds the alienation and dispossession of the land from the Chagossian people.

Conclusion

The AO of the ICJ has certainly made some modest contributions towards the decolonisation of the Chagos Archipelago. However, it offers a pyrrhic victory which leaves the status quo largely in place, perpetuating the ongoing subordination and dispossession of the Chagossian people. The logics of the court rest upon the liberal ideals of consent and contractualism bound to the personified state. Self-determination requires the machinery of *a state* through which the will of the people is expressed. However, as the recent 2025 agreement shows, the state of Mauritius, while the relevant postcolonial state, is subject to neocolonial, capitalist hierarchies which restrain and shape its autonomy. Instead of seeking to remedy the colonial injury inflicted against the Chagossians, Mauritius sustains the commodification of the islands, seeking to ‘freely’ extract monetary value from them, by contractually permitting the US and the UK military control over Diego Garcia. More, the fluidity of arguments of will, autonomy and consent risk take-up within conservative, far-right quarters. For example, a small portion of Chagossian claims to self-determination have been annexed to arguments seeking to sustain the colonial BIOT. This offers social justice, humanitarian cover to right wing pressure groups, such as the Great British PAC¹⁶² and the UK Reform party,¹⁶³ which have deployed self-determination arguments in service of colonial nationalism. Future research would be needed to disentangle such argumentative, policial ‘diagonalisms’.¹⁶⁴

Feminist, postcolonial and TWAIL perspectives allow us to see beneath the veil of consent, freedom of contract, and formal equality in international law. They help bring to the fore the insidious exercise of power, *de facto* inequality and territorial disposability which marks

¹⁶¹ Chagos Islanders Movement (CHA0030) (n 106).

¹⁶² Claire Bullivant, ‘Self-determination for all but the Chagossians: The Guardian’s lopsided Chagos story’, *Great British PAC* (12 June 2026) <https://www.greatbritishpac.com/news/self-determination-for-everyone-except-the-chagossians-the-guardians-one-sided-chagos-narrative> accessed 28 June 2026.

¹⁶³ Susanna Siddell, ‘Nigel Farage hailed as Chagossians’ closest ally while islanders demand Keir Starmer’s resignation’, *GB News* (21 March 2026) <https://www.gbnews.com/politics/nigel-farage-chagos-islands-keir-starmer-closest-ally-deal> accessed 28 June 2026; see also ‘Mr Farage argued the UK should sell the territory and “get a few billion quid”’ in Rhiannon James, ‘Chagos Islands should be sold to the US not “corrupt Mauritius” – Farage’, *Independent* (26 February 2025) <https://www.independent.co.uk/news/uk/home-news/nigel-farage-chagos-islands-mauritius-anneliese-dodds-commons-b2705422.html> accessed 28 June 2026.

¹⁶⁴ Naomi Klein, *Doppelganger: A Trip into the Mirror World* (Penguin 2023) 102.

contemporary neocolonialism. Crucially, in pursuing inter-state, military stability and national security, the future of the Chagossians remains uncertain. Their embodied, dispossession has been rendered secondary to the freedom of disposability over the territorial body of the imagined personified state. At the time of writing, Diego Garcia looks foreclosed to the indigenous Chagossian peoples for generations to come.