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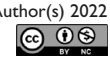

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The Chagos Islands and international orders: human rights, rule of law, and foreign rule

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Abstract

This article uses the Chagos Archipelago that is administered by the United Kingdom, used as a military base by the US, and claimed by Mauritius, as a case study to explore competing international orders and move the theorization of international orders forward. Considering international orders as functionally and geographically limited sets of rules, I focus on those three sets of orders that functionally relate to human rights, the rule of law, and foreign rule. I show that those orders that promote human rights and the rule of law more consistently and reject foreign rule have extended their geographic scope. The Chagos Islands dispute is an intriguing case study to probe shifts of and attempts to protect these orders as a vote in 2019 at the United National General Assembly forced states to take sides. At the same time, my analysis highlights that realpolitik prevents the full overturn of the challenged orders.

Keywords

Chagos Islands, foreign rule, human rights, international orders, rule of law

This article explores competing sets of international orders, which I view as geographically and functionally limited, and aims to move the theorization of such orders forward. The case of the Chagos Archipelago – a group of seven atolls comprising around 60 mostly small islands in the middle of the Indian Ocean – and the questions of which country has the right to claim sovereignty over it and whether its forcefully removed inhabitants have a right to return, is a promising case study to investigate the parallel existence of orders, shifts over time, and to draw insights for other cases.

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The Chagos dispute is not a case like Westphalia (1648), Versailles (1918), San Francisco (1945), or the end of the empires in the 1960s, which are 'moments of order building'.[1] Yet, we can use the case to take stock of the situation regarding the geographical shape of some functionally limited orders. For a vote at the General Assembly of the United Nations (UN) in 2019 forced states to take sides on such substantial issues as human rights, rule of law, and foreign rule. When the United Kingdom (UK) as the colonial power transferred the Chagos Archipelago in 1965 to the newly created British Indian Ocean Territory and expelled the islands' inhabitants, the Chagossians, to create space for a military base jointly run with the United States (US) on the largest island of the archipelago, Diego Garcia, only a few protested. Another set of orders was dominant at that time, when the Cold War was at its height, one that accepted the breach of human rights, violations of the rule of law, and foreign rule. This had changed by 2019 when 116 states voted in favor of a non-binding resolution of the UN General Assembly that requested the UK to hand the archipelago to Mauritius,[2] after the International Court of Justice (ICJ) had ruled in an advisory opinion that the UK 'has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible'.[3] Fifty-six states abstained and only six opposed the resolution. The guardians of the earlier dominant orders had become increasingly isolated. Yet, with the US considering its military base on the largest island of the archipelago, Diego Garcia, indispensable – also in light of China's growing military presence in the region – realpolitik thus far prevailed and the UK did not transfer the administration of the islands.

This appraisal shows that the case is an intriguing example to illustrate the existence of competing orders, trace their shifts, and thereby add substance to that strand of the theoretical and empirical literature that considers international orders not as holistic but foresees the existence of more than one order.[4] To move the theorization of orders forward, I draw on the existing literature on such orders as well as on the one about international regimes and base my analysis on three assumptions. First, orders are functionally and geographically limited, that is to say they serve a specific purpose (function) within a defined (geographic) area. This implies that functionally similar orders can exist in parallel. Second, orders are not static but regularly shift. Followers of one order – state and non-state actors alike – try to increase the support base of the orders they promote, that is, they seek to extend the geographical scope. Finally, increasing support for one order might result in the crumbling of a competing order. Yet, only power shifts will lead to the eventual fall of an order, particularly if realpolitik considerations are part and parcel of powerful states' refusal to accept the shifting orders fully.

Orders, shifting orders, and actors

Drawing on the literature on international orders and international regimes, I view international orders as sets of rules in international politics, which are followed by international actors. These orders are not necessarily universal. Rather they are functionally and geographically limited. Put differently, other than English School writer Hedley Bull, who offered an important intellectual stimulus for the study of international orders, which he defined 'as an actual or possible situation or state of affairs',[5] this article does not assume that there is *one* international order which is promoted and followed by what

Bull calls the international society.[6] Rather – as later work of the English School suggests – the international system comprises several 'thin international societies',[7] suggesting there is more than one order in international politics. More recently, Christian Reus-Smit added to that debate when he highlighted the fragmentation of international orders by pointing to the 'diversity regimes' that underpin such orders.[8] Likewise, Trine Flockhart speaks of a 'multi-order world',[9] Mette Eilstrup-Sangiovanni and Stephanie Hofmann use the notion of a 'multifaceted' order,[10] and Ziya Öniş and Mustafa Kutlay refer to an 'age of hybridity'[11] to denote the existence of parallel orders.

This understanding of a non-holistic order can be linked to the literature on regime complexes, which assumes that there is more than one set of rules in the international system and which explores how these sets of rules are related to one another. This literature holds that regimes – or sets of rules – have a geographic domain as well as a limited functional scope and promotes the notions of 'overlapping', 'nested', and 'horizontal' regimes to denote their simultaneous existence.[12] Recent literature on international orders reflects this understanding, with Katharina Coleman, Markus Kornprobst, and Annette Seegers stressing that the surge of research on the functional limits of orders (or regimes) needs to be accompanied by a regional (or geographical) dimension of orders.[13]

Orders themselves are not static but subject to change and support for orders can likewise shift. In fact, changes are the norm and not the exception as, for example, Richard Lebow, Shipping Tang, and Michael Zürn highlight.[14] Power shifts in the international system are the key source of such change, with the dominant power having the ability to impose orders.[15] Yet, this is not the only source for adjustments. Shipping Tang identifies institutional transformation and changes with regard to the internalization of orders as additional sources for the shift of orders. 'Institutionalization' here denotes the degree to which institutions that coordinate the implementation of those norms and principles that stand at the core of the orders have been set up and to the extent to which they are able to influence human interactions. 'Internalization' refers to the acceptance of the orders and their inherent rules and norms. The latter are considered as legitimate if these orders are internalized. In Tang's view, power shifts directly point to the transformation of orders, whereas changes with regard to the institutionalization and internalization of orders only 'foretell the order's transformation'.[16] Put differently, if the institutionalization and the internalization of orders crumble, orders will become instable. Yet, as long as no power shift occurs, the orders will survive in a fragile condition, even though they are keenly challenged.

The literature on regime complexes and institutional choice, too, helps to grasp shifts and the emergence of orders since it scrutinizes the reasons for the creation of overlapping or competing sets of rules. According to this literature, change comes out of dissatisfaction with the status quo, which can lead to the establishment of new regimes or institutions.[17] Scholars working on a related topic, namely international norms, share this view, with some even considering contestation, that is, a 'range of social practices, which discursively express disapproval of norms' as a 'meta-organising principle of governance in the global realm'[18] and thus being inherent in any order. This links to the view of Lebow, Tang, and Zürn, who see orders as being constantly in flux.

In line with Bull's thoughts, I investigate not only those elements of international orders that are formally institutionalized (such as through international organizations or

regimes) or enshrined in international law but also those elements that remain informal as such informal elements can also be internalized.[19] By taking this perspective, I align with the literature on global governance that points to formal and informal institutions and stresses their ability to provide government-like services even though they are not necessarily formally institutionalized.[20] This literature also informs us about the broad range of actors which are involved in promoting, defending, undermining, and creating international orders. Broadly speaking, we can distinguish between 'traditional' and 'non-traditional diplomats', with the former referring to states and international organizations and the latter alluding to individuals that, for example, represent civil society, national or multinational corporations, and religious groups or otherwise have an influence given their popularity, such as singers and sportspersons.[21]

The Chagos case study: introducing orders and actors

Drawing on this theoretical discussion, I argue that in geographical terms there are currently at least two sets of international orders with regard to the Chagos case. One set supports the various functional orders that can be linked to the substance of the ICJ advisory opinion and the subsequent UN resolution, while the other set of orders stands by the claims of the UK (and the US) of holding sovereignty over the archipelago at the expense of the rights of Mauritius and the Chagossians. Whereas the former is spreading around the globe, the latter is on retreat. The picture of simultaneously existing orders, which can be defined in geographic terms, is complicated by the existence of functionally different orders that are partly in line with and partly intersect with the geographical dimension. Indeed, some actors support the ICJ advisory opinion, but do so because they want to strengthen the ICJ and the rule of law and therefore respect any opinion of that Court, while taking a back seat in questions on the (il)legitimacy of foreign rule. On the contrary, others hold the view that foreign rule and the denial of the right for self-determination are unacceptable and thus out of principle support Mauritius and the Chagossians irrespective of their otherwise adherence to the rule of law. I concentrate on three functionally different international orders herein, namely human rights, on the respect for rule of law, and the legitimacy of foreign rule, for I consider these three orders the most crucial and most contested aspects in the Chagos case.

When it comes to actors involved in the Chagos case, we can find both traditional and non-traditional diplomats influencing the three sets of orders under scrutiny in this article. The group of non-traditional diplomats relevant herein comprises the evicted Chagossians and their children, who fight not only for their right to return but also for the recognition of their suffering and some form of reparation. Their agenda is not necessarily in sync with that of the government of Mauritius, mainly because the Chagossians were poorly treated in Mauritius (and elsewhere) after their forceful removal, lived under unacceptable conditions, and received virtually no help from Mauritius' government or those of the UK and the US. Besides fishing rights, sovereignty over the archipelago has been the main concern of the Mauritian government, which argues that the transfer of the islands to the British Indian Ocean Territory violated international law. The government of Mauritius – traditional diplomats in the terminology above – did not suggest that the US must leave its base, but touted the idea

that the base could continue operating under its sovereignty and that the Chagossians could only return to the other islands of the archipelago.

The African Union (AU), another traditional diplomat and Africa's prime organization comprising all African states, has emerged as a voice of the continent since its establishment in 2002.[22] The AU made its first appearance before the ICJ in the Chagos case, condemned the continued colonization of the archipelago, and called for an end to foreign rule over the islands. This anti-imperial agenda that also stresses the right of self-determination is widely shared by other actors – traditional and non-traditional diplomats alike – who similarly advocate the end of British rule over the islands. Particularly states from Africa and the Global South more broadly promote this view. Another group of actors, including, for example, the German government, are concerned with strengthening international institutions and are therefore interested in the Chagos case in which they have otherwise no stakes.

The government of the UK stands at the center of the case. It faces supporters of Chagos' independence (both from within the UK and from elsewhere), but thus far seems convinced of its need to have global significance; its 'special relationship' with the US promises this with the UK shouldering international responsibility and facing the pressure whereas the US can hide behind the colonial power. The Chagos Archipelago is a little regarded but, notwithstanding, fundamental pillar of this relationship.[23] The US has a clear position with regard to the Chagos case: it needs Diego Garcia to project its power and influence in the region – particularly amid China's rising military presence in the region – and to facilitate military operations along the wider Indian Ocean Rim. Its base on the Chagos Archipelago is just too perfect from its perspective for it is close enough to be of vital help for any military operation from Iraq to Afghanistan but far away from any other place, allowing it to act undisturbed and in secrecy.

Shifting international orders

The UN General Assembly resolution of May 2019 is a moment we can use to take stock of the international orders related to human rights, rule of law, and foreign rule. For it laid open the rules that are at the heart of the parallel existing, competing orders and because it forced actors – here primarily states – to take sides, thus informing us about their geographical scope and shifts over time.

Human rights

Despite being enshrined in international documents like the Universal Declaration of Human Rights of 1948, human rights – including the right to live, liberty, and security – were often deemed less important than national security concerns and great power competition during the Cold War. While realpolitik can still trump human rights (witness the suffering of the Rohingyas in Myanmar, the US-led 'war on terror', or Belarus' use of migrants to blackmail the European Union), these rights are nowadays better protected than at any time in modern history. The establishment of the UN Human Rights Council and the International Criminal Court as well as the adoption of the 'responsibility to protect' show that human beings, their rights, and their protection now play a central role in

international politics.[24] The UN General Assembly was one of the institutions that laid the ground for the stricter protection of human rights, inter alia through the adoption of the Universal Declaration of Human Rights in 1948. The suffering of the Chagossians, who the UK forcefully expelled from their homeland to live elsewhere in extreme and chronic poverty, is an intriguing case to trace the changes of the order related to human rights. At the same time, the case highlights that realpolitik can still hold sway over human rights, therefore being an indication that Tang's assumption holds that international orders will crumble if their institutionalization and internationalization is challenged, but do not necessarily fall if no power shift has taken place.

In the early 1960s, when the US military came up with the plan of building a base on Diego Garcia, it made clear from the beginning that the removal of the 1500–2000 Chagossians from the archipelago was mandatory, for it considered any local population near its bases as a potential threat.[25] The military worried about nationalism and anti-imperialism in Africa and Asia and feared espionage as well as uncontrollable liaisons between locals and military staff. The UK was willing to carry out the expulsion of the Chagossians and thus attack the islanders' human rights.[26] From 1968 onwards, the colonial administration ordered fewer stocks of food, causing food shortages given that the islands' inhabitants depended on imported food such as rice and milk. Medical and school staff began to leave the archipelago in light of the deteriorating conditions, which further worsened with the partial closure of the plantations on the islands, leaving Chagossians unemployed. Islanders who went to Mauritius for vacation or medical treatment were not allowed to return. With the postal service being interrupted and the Chagos Islands not being connected to the telephone network, Chagossians on the islands did not learn about this fait accompli. In 1971, Diego Garcia was finally closed and the Chagossians on the island were deported. Being loaded on overcrowded ships for several days and only allowed to take a small box of their belongings with them, inhabitants from Diego Garcia were sent on their journey to Mauritius. Those not sailing directly to Mauritius (or the Seychelles) went to the other larger islands of the archipelago, Peros Banhos and Salomon, which remained open. In 1972 and 1973, however, when the situation worsened there, too, given the neglect of the British colonial administration, the Chagossians on these islands were also deported. On 26 May 1973, the last Chagossians left the archipelago.

The UK and the US shamelessly accepted the consequences for the Chagossians. They knew that there would be little resistance given that an international order, which allowed realpolitik to prevail over human rights, was widely accepted – especially if those suffering from the human rights abuses were easy to overlook. In fact, selecting Diego Garcia as the location for a base reflects a pattern identified by Katherine McCaffrey: such 'bases are frequently established on the political margins of national territory, on lands occupied by ethnic or cultural minorities or otherwise disadvantaged populations'.[27] With regard to the Chagos Islands, the governments of the UK and the US could assume that Mauritian leaders, who were mostly of Indian descent, 'would probably care little about uprooting an isolated, mostly African population whose ties to Mauritius were historically tenuous'.[28] The Mauritian leaders indeed paid little attention to the Chagossians at that time. The government of the now independent Mauritius accepted the payment of 650,000 Pounds for the resettlement of the Chagossians but did little to integrate the islanders into

Mauritian society. Instead, the Chagossians were socially marginalized. Unequivocal cables from the US embassy in Mauritius about the dire conditions of the Chagossians and calls that the US government should assume responsibility for them fell on deaf ears in Washington. A diplomat at the US embassy in Mauritius noted in hindsight with regard to the Chagossians that '[t]here weren't many of them. [. . .] They didn't add up to much of a problem. They were easily pushed aside'.[29]

International actors likewise paid little attention to the expelled islanders and thereby accepted the dominance of the order that puts realpolitik first and human rights second. The UN General Assembly disapproved the detachment of the Chagos archipelago from Mauritius prior to independence. Yet, its resolutions 2066 (XX) and 2232 (XXI) of 1965 and 1966 did not call for the protection of the Chagossians or promote their (human) rights. Rather, these resolutions were concerned with the questions of self-determination, independence, and territorial integrity, not of the Chagos Islands themselves but of Mauritius as a whole.[30] A resolution adopted in 1980 by the Organization of African Unity, the AU's predecessor, also called for the return of the islands to Mauritius but did not mention the Chagossians or their suffering.[31] While there was such widespread disinterest in the fate of the Chagossians, there were at least some backbenchers in the UK Parliament, like Jeremy Corbyn and Robin Cook, who would later on assume crucial positions in the UK, who raised some awareness about the concerns of the Chagossians. Yet, they did so with little effect. The order that placed realpolitik over human rights stood firmly, while the competing order that called for a more consistent respect of human rights found only modest support in the Cold War years and had a limited geographical scope.

At a time when the more consistent promotion of fundamental human rights gained momentum, following the end of the Cold War and some human tragedies – particularly those in Rwanda and Srebrenica – the islanders and their fate started receiving wider attention. This was because Louis Oliver Bancoult, a Chagossian activist, went to court in 1998 to present the Chagossian case.[32] In essence, he attempted to legally pursue the Chagos deportation as a human rights issue. Bancoult's ensuing legal battle thus became one piece of the mosaic that contributed to the crumbling of the order that put realpolitik first and human rights second. Bancoult eventually won his cases before the High Court of England and Wales in 2000 and again in 2006, when the Court ruled that the Chagossians have a right to return to the archipelago. In 2007, the Court of Appeal confirmed this ruling. During the final hearings in 2006, Sir Sydney Kentridge QC, who represented the Chagossians in court, described the way the islanders were treated as 'outrageous, unlawful and a breach of accepted moral standards'.[33]

Another piece of the mosaic that shifted the situation in favor of the order that promotes human rights more consistently with regard to the Chagos case was a report from the UN Human Rights Committee. In 2001, when considering the situation in the UK in a periodic report, the Committee concluded that the government 'should, to the extent still possible, seek to make exercise of the [Chagossians'] right to return to their territory practicable. It should consider compensation for the denial of this right over an extended period'.[34] The Chagossians and their rights had now become part of the debate about the fate of the islands, which was no longer concerned exclusively with Mauritius' claims or the (il)legitimacy of the rule of the UK.

Both instances show that institutions like the UN Human Rights Committee and the High Court of England and Wales have institutionalized and internalized the respect for human rights. From their perspective, human rights prevail above realpolitik and strategic security interests. The fate of the Chagossians appears unacceptable and fixing the situation was a necessity in their eyes. This included the recognition of the human rights of the islanders and in its slipstream their right to return and some form of restoration. This stands in stark contrast to the resolutions of the 1960s that did not mention the human rights of the Chagossians and the lack of any kind of attention that they received at that time.

The ICJ's advisory opinion of 2019 further reflects and manifests the crumbling of the international order that allowed realpolitik to trump human rights. In its request for an advisory opinion, the General Assembly had not specifically asked for a discussion of or judgment about human rights matters in the Chagos case. Hence, the February 2019 ICJ advisory opinion fell short of discussing at length the implications of the continued presence of the UK on the human rights of the Chagossians. It called upon the General Assembly to complete the decolonization of Mauritius, that is, to transfer sovereignty over the archipelago to it, and noted '[a]s regards the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly' in the subsequent process.[35] Some of the Court's judges, however, felt that the advisory opinion should go further. In their separate statements, they highlighted the deplorable situation of the Chagossians and stressed that the protection of human rights should be at the center of the legal arguments. Most explicit on that was Judge Cançado Trindade, who recalled UN General Assembly resolution 1514 (XV) of 1960 on the illegitimacy of colonialism and declared that foreign domination like that of the Chagos Islands constitutes 'a denial of fundamental human rights'.[36] He went further: 'In my own conception, the right to life—of forcibly displaced Chagossians and their descendants—comprises the right to dignified conditions of living', a right he saw violated in the case.[37]

In May 2019, the UN General Assembly welcomed the ICJ advisory opinion and affirmed that the resettlement of the Chagossians 'must be addressed as a matter of urgency'.[38] Only six states voted against this resolution (Australia, Hungary, Israel, Maldives, the UK, and the US), whereas 116 states voted in its favor. Fifty-six abstained. We can interpret the voting behavior of those states, which included Canada, France, Germany, and most members of the European Union, as a general support for the advisory opinion. At the same time, it reflects their close relations with the UK and the US – and their dependence on the security provisions of these NATO partners, provisions that include the installations on Diego Garcia. Notwithstanding the abstentions, their voting behavior indicates support for an international order that puts human rights before realpolitik has extended its geographical scope for more states supported it in 2019 than during the Cold War years. Such rights have become institutionalized and internalized through entities like the European Union, through legal documents such as the 2005 World Summit outcome that enshrined the Responsibility-to-Protect, or through international aspirations like the Millennium and Sustainable Development Goals.

Yet, with regard to the human rights of the Chagossians, little has happened since then. They could not return to their islands and did not receive any compensation for their suffering. The fact that the UK and US governments have not left the archipelago is an indication that despite fervent challenges to the previously dominant order, it has not yet fallen. Only in early 2021, after a defeat at the International Tribunal for the Law of the Sea, did the UK government affirm its refusal to hand over the islands. There is a link to the dominant place the UK and more so the US continue to occupy in the international system.

The islanders did not give up and they continued their battle in the UK courts. The arguments of one of their representatives at the Court of Appeal in mid-2020 was that if the UK 'is in effective control of the territory, it is required to observe human rights'.[39] Hence, so their view went, the UK government must enable the resettlement of the Chagossians, and not accept that they would be arrested if they tried to resettle. For them, '[t]he continued exclusion of Chagossians is a human rights issue, and it's an ongoing issue rather than a historical one'.[40]

Rule of (international) law

The rule of law, a notion that can be traced back to the Greek philosopher Aristoteles, has become a central feature of modern states and increasingly one in international politics. It constitutes a principle of governance according to which every person, institution, and entity, including states, is accountable to laws, which are supreme. The UN sees the concept as being at the heart of its mission and aims at safeguarding that national governments comply with the international law.[41] The ICJ is an important vehicle in this regard and part of the order that institutionalizes the rule of law.

Various court decisions and political maneuvers during the past two decades suggest that a growing number of actors are trying to uphold an international order that embraces the rule of law and puts it above other concerns such as security issues and power politics. At the latest, with the ICJ advisory opinion of 2019 and the following UN General Assembly resolution, the UK and the US became rather isolated guardians of an international order that accepts not obeying international law if it runs counter to their interests. This isolation led the British newspaper *The Guardian* to comment that this is an 'urgent wake-up call' for the country.[42] The UK as well as the US find it increasingly hard to justify their obvious breach of international law in the Chagos case and face mounting pressure to acknowledge their violation thereof. Yet, as shown above, they continue to withstand that pressure, also because there are jurisdictional and procedural limits, such as that resolutions of the UN Generally Assembly are legally non-binding.

Legal and political efforts to uphold the rule of law internationally were often missing during the Cold War, a period in time when the UK's government could get away with the detachment of the Chagos Islands from Mauritius, even though it knew that this move violated international law.[43] In 1960, the UN General Assembly had adopted resolution 1514, which had declared that '[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country [is] incompatible with the purposes and principles of the Charter of the United Nations'.[44] Being aware of this, officials of the UK and the US had to search for ways to downplay the detachment of the

Chagos Islands. The Chagossians, a 'few Tarzans or Man Fridays' as one official called them, were not their main concern.[45] They were more worried about Mauritius' leadership. The chosen approach toward the latter was as simple as it was effective: giving them a 'platinum handshake' as an official in the UK Foreign Office called it.[46] That handshake entailed the acceptance of Mauritius' independence (which came in 1968) and financial compensation. Seewoosagur Ramgoolam, Mauritius' independence leader and later on first prime minister of Mauritius, had little choice but to accept.

Few within the UK and the US complained about the actions in light of the Communist encroachment, which allowed the governments to take any measures to counter it, including undermining the rule of law. An international order prevailed that allowed bending (if not violating) international law if it was to the benefit of security concerns. A military base on Diego Garcia would certainly meet such concerns. Newspapers in the UK and US went as far as to hold back reporting on the suffering of the Chagossians[47] and allies of the UK and the US likewise did not complain as they benefitted from the US military installations. The Chagossians had no lobby to voice their anger. As cynical as it sounds, they 'proved to have considerably less clout than giant tortoises', a reference to the fact that the US government's first choice for their Indian Ocean base was the island of Aldabra, which lies north of Madagascar and is the breeding ground of rare giant tortoises, 'whose cause would [have been] championed noisily by publicity-aware ecologists'.[48] With no critique from outside and the Mauritian government facing domestic troubles after decolonization, including riots and a state of emergency that ran from 1971 to 1975 (unrelated to the Chagos issue),[49] the Chagos case was effectively off the table.

After 1998, when Bancoult started his legal battle, national and international courts frequently challenged the UK's continued colonial administration over the Chagos Islands and even more so its refusal to allow the Chagossians the right to return. In 2000, when the first rulings of the national courts came out, UK Foreign Minister Robin Cook decided to allow the Chagossians to return to their islands – bar Diego Garcia.[50] Yet, 9/11 and the subsequent war in Afghanistan, during which Diego Garcia played an important role, and the US's increasing interest in the Indo-Pacific region,[51] changed the situation and led to the reversal of Cook's initiative. In 2004, the UK government used an Order-in-Council – in effect, a political maneuver to sideline parliament and the public as in this case the monarch simply approves the instructions of the Privy Council, which is a body of advisors comprising senior politicians that acts covertly – to overturn earlier judicial decisions, thus reversing Cook's advance and manifesting its rule over the archipelago. Bancoult went to the Court of Appeal in 2007 and won. Yet, in 2008, the House of Lords eventually found in favor of the government's revised position and upheld the Order-in-Council, thus showing UK-internal procedural limits to push the Chagossians' case. The window of opportunity that had opened briefly for the Chagossians and the rule of law to prevail during the 1990s closed, with new security concerns again putting realpolitik above the rule of law (and human rights).

The UK government continued to disregard the rule of law, thereby de facto supporting – and guarding – the order that puts realpolitik first. In 2009, it floated the idea to secure its rule over the Chagos Islands by establishing a nature reserve around the archipelago. In a leaked cable – available on WikiLeaks – the US embassy in London reported to Washington that the UK government

> would like to establish a 'marine park' or 'reserve' providing comprehensive environmental protection to the reefs and waters of the British Indian Ocean Territory (BIOT) [. . . . T]he establishment of a marine park – the world's largest – would in no way impinge on [the US government's] use of the BIOT, including Diego Garcia, for military purposes. [. . . A Foreign Office official] said that the BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve.[52]

Linking the Chagos question with environmental protection, the UK government thought this would be 'the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the BIOT', as the cable continues.[53]

The UK government went ahead with its plan. Following a public consultation, in which 250,000 people participated (mainly through petitions) of which 90% supported greater marine protection, the Chagos Marine Protected Area was established in April 2010. Despite including Chagossian voices in the report of the public consultation and thus raising awareness about their situation,[54] the UK government earned a lot of support from civil society, environmental activists in particular, for its willingness to establish the protected area and declare it a 'no-take' zone, in which fishing is prohibited. The plan to play out environmental concerns against the rights of the Chagossians worked. And the US did not suffer because the area around Diego Garcia was exempted from the fishing prohibition. In 2010 alone, 'more than 28 tonnes of fish was caught for use by personnel on the base'.[55]

At the same time, voices grew louder promoting an order that is in competition with the one the governments of the UK and the US support insofar as it puts the rule of law first. These voices and their legal successes show that the institutionalization and internalization of the order that accepts breaches of the rule of law crumbled. In the context of the public consultation process, for example, one Chagossian complained that the establishment 'would be a natural injustice. The fish would have more rights than us'.[56] No less important was the start of the legal battle of the government of Mauritius after the protected area was established. Mauritius' government now seized its chance to pressure the UK to justify its rule over the archipelago and, in essence, to obey the rules set out in UN General Assembly resolution 1514 of 1960. It complained about a lack of consultation with it on the establishment of the protected area and added its fear 'that the marine zone effectively prevents any future resettlement by Chagossians because it does not allow any fishing in the zone [, which . . .] would be the only realistic means of living there'.[57] Mauritius went to the Permanent Court of Arbitration, which arbitrates in disputes concerning the UN's law of the sea. In March 2015, this Tribunal found that 'Mauritius holds legally binding rights to fish in the waters surrounding the Chagos Archipelago [and] to the eventual return of the Chagos Archipelago to Mauritius when no longer needed for defence purposes [. . .]'.[58]

The UK government, however, ignored this ruling and the calls of Chagossians and Mauritius' government. Instead, the UK's government found that, '[c]ontrary to subsequent speculation, the Tribunal's finding was therefore not to declare the [Marine Protected Area] illegal, but rather that the United Kingdom should have consulted the

Republic of Mauritius more fully about the establishment of the [Marine Protected Area], so as to give due regard to its rights' and said it had started consultations with its Mauritian counterpart.[59] Once more, the British government bent international law and contravened its institutionalization, in this case against the Permanent Court of Arbitration. To most observers it was, however, clear that the UK government had intentionally established the protected area to ensure that the archipelago remains de-populated and that this move was unlawful.[60] Against this background, Mauritius' government pressured various fronts until the UN General Assembly requested the aforementioned ICJ advisory opinion.

The Chagos Marine Protected Area still exists – also because the UK government linked its establishment to environmental protection, which has become a winning topic in light of climate change. In effect, however, the UK set up what Peter Harris calls a 'trilemma'. Thereby he refers to the de facto linking of three issues (US military presence, UK efforts to protect the natural environment, and the human rights of the removed Chagossians) that the UK otherwise aims to keep and treat separately.[61] At first glance and looking at it from a realpolitik perspective, the UK government had put itself into a comfortable position. Yet, as the ICJ Advisory Opinion makes clear, many understood the game the UK government was playing. This is why the Court disentangled the issues and refused to follow the argument that it should not look into certain aspects of the case because the Permanent Court of Arbitration had already dealt with them.[62] Hence, in effect, the UK's 'trilemma' adds to its dilemma of not knowing how to make a convincing argument of its hold on the Chagos Islands against its obvious violations of international law.

The UK (and the US, which can comfortably hide behind it) realizes that the order it supports – one that accepts the violation of international law if realpolitik demands – has come under attack and has fewer supporters than it used to have during the Cold War. Indeed, there are not only the Chagossians, Mauritius' government, and some national and international institutions that promote an international order that upholds international law but also some governments of otherwise close allies. For several governments the main reason to participate in the ICJ case was to uphold the rule of law. The German government, for example, not only sought to strengthen the rule of law with its submissions at the Court but also endorsed those international institutions that internalize and guard it. During the ICJ hearings it stated that the 'even more fundamental question before this Court [. . . is] the question as to the proper role and function of the Court when advising the political organs of the United Nations'.[63] These states' voting on the General Assembly resolution and the ICJ ruling itself 'was a damaging blow to the UK's international standing and, it is argued, has significantly altered the legal status of the UK's assertion of its sovereignty'.[64] Notwithstanding the increasing support for a competing order that considers the rule of law supreme, the UK and the US continue to disregard the rule of law with regard to the Chagos case and uphold an order that allows the rule of law to be violated if realpolitik demands despite serious challenges to the institutionalization and internalization of that order.[65] The jurisdictional and procedural limits – primarily the fact that UN General Assembly resolutions are non-binding – worked in their favor.

(Il)Legitimacy of foreign rule

With regard to the final issue that I scrutinize herein, foreign rule, we can again see two competing orders: one that considers foreign (or colonial) rule – and by extension neo-colonial behavior – as acceptable and another that perceives it as illegitimate. While the former's geographic scope was considerable in the 1960s, it nowadays finds significantly less support and the order that stands against foreign rule clearly dominates. Even though strictly speaking, the Chagos case must be placed in the narrow context of the right of self-determination of non-self-governing territories, it is illustrative for the wider question of the acceptance of foreign rule.

The discussion on the illegitimacy of foreign rule gained momentum in the 1960s with the collapse of the empires that some European colonial powers had built. Particularly in formerly colonized areas, an order that conceived of foreign rule as illegitimate and inacceptable and called for the right of self-determination had strong supporters such as Kwame Nkrumah and Sékou Touré, the leaders of independent Ghana and Guinea, respectively, who loudly condemned imperialism in national and international fora. The aforementioned UN General Assembly Resolution 1514 of 1960 also holds that '[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations',[66] thus promoting an order that sees foreign rule as illegitimate. Likewise, the Organization of African Unity, established in 1963, pushed for the end of colonization and condemned continued foreign rule on the continent. In short, there were the first indications that the institutionalization and internalization of an order had taken hold that considered foreign rule as illegitimate.

Yet, at the time of its adoption, not all states respected Resolution 1514 and the order it promoted. Particularly those states that abstained – the US, the UK, and other colonial powers, including Belgium, France, Portugal, and Spain – favored a competing order, which allowed them to continue their rule or at least remain in control. Even after the collapse of the empires in the mid-1960s, several powerful voices in Europe continued defending colonialism and acted like colonialists. France's continued engagement in its former colonies – most notably in West Africa – is a classic example, for what has been called 'neo-colonialism'.[67] Colonial powers had accepted and granted independence, yet they still benefitted in economic terms and the former colonies remained dependent. While many lamented this situation, the former colonial powers and their allies did little to change it, as their refusal to agree on a new economic order that benefits both the Global North and the Global South indicates.[68] Rather, several regimes and organizations like the General Agreement on Tariffs and Trade or the World Bank and International Monetary Fund institutionalized the order that accepted the continued dependence and in effect the denial of an all-encompassing independence, insofar as they manifested the dominant position of Western states. This situation continued throughout the 1990s, as in that decade the West enjoyed a monopoly regarding the question of which actors African governments could turn to if they were in financial trouble.

China's rise and its interest in Africa triggered a shift of this order and contributed to the crumbling of the institutionalization and internalization of the Western-dominated order while it helped to extend the geographic scope of the competing order. Beginning

in 2000 with the first Forum on China-Africa Cooperation, China's relations with Africa intensified. Some compare the Chinese engagement in Africa with that of European colonial powers a century earlier, arguing that China had started another scramble for Africa,[69] whereas others stress that China offers an alternative for African states and thus its engagement with the continent has been 'good news for Africa'.[70] Irrespective of the perspective one takes on that question, the fact remains that European states started behaving differently toward Africa in light of China's behavior.[71] In terms of rhetoric as well as in terms of political reality they now pursue a different approach toward the continent as compared to the periods up until the early 2000s. In September 2018, European Union Commission President Jean-Claude Junker spoke of 'Africa – Europe's twin continent',[72] and France's President Emmanuel Macron did not hesitate to call France's colonial-era behavior 'a crime against humanity, a true barbarism'.[73] Macron even began to contemplate returning property that France had looted from its colonies. Other European countries have acted similarly. In 2022, they respect the sovereign equality of African states and the principle of non-interference notably more than in the decades following decolonization. In that light, it has become the consensus to consider foreign rule and behavior that resembles such rule as morally objectionable if not illegitimate.

Given its and its forerunner's history, the AU has become one of the key promotors of the order that treats foreign rule as illegitimate. The organization has an anti-imperial stance at its heart, that is, a deeply internalized position with regard to the illegitimacy of foreign rule. (This is the case even though it does not act fully consistently here for it should not have allowed Morocco to become a member state since that country occupies Western Sahara, which is a de facto colonial behavior.[74]) In January 2017, the AU Assembly of Heads and State and Government reaffirmed 'that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius and that the decolonization of the Republic of Mauritius will not be complete until it is able to exercise its full sovereignty over the Chagos Archipelago'.[75] The AU defended this position during the ICJ hearings, emphasizing that it 'hurts to come in the twenty-first century before Your Honours [the ICJ judges] to contest a call by a colonizer'.[76] In the same vein, the representatives of South Africa, a key member state of the AU, stressed during the hearings that the country 'is duty-bound to participate in this hearing',[77] given its colonial history. The South African representatives went further, noting that '[c]olonialism is an archaic remnant of a previous world order that considered some peoples more worthy than others, and that has left a lasting stain on the conscience of humanity. The completion of decolonization is one of the most pressing and fundamental challenges facing the present international legal order'.[78]

Many speaking during the ICJ hearings stressed that the Chagos case marks a historical moment given that the advisory opinion can set a precedent with regard to the completion of decolonization. Following these arguments, the ICJ found that the decolonization of Mauritius was 'not lawfully completed' and that the UK 'is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible'.[79] Judge Cançado Trindade added that from his perspective the humanization of international law not only led to greater respect for human rights (see above) but also made the right to self-determination a true human right in itself and thus further delegitimizes the UK's rule over the Chagos Archipelago.[80] The advisory opinion might thus

have repercussions for other territories, which are still considered as being under foreign rule, such as Western Sahara and some detached islands.[81] In effect, the ICJ's ruling strengthened the international order that considers foreign rule as illegitimate, and brought the supporters of the order that considers foreign rule acceptable further onto the defensive. The vote on the UN resolution of May 2019 is a clear indication that the former order has spread in geographical terms whereas the latter finds the support of only a limited number of states.

Within the UK itself, several non-traditional diplomats contributed to the undermining of the internalization of the order from within. As such, voices in the UK that challenge the continued colonization of the Chagos Islands from an ethical point of view are getting louder. Analysts and commentators increasingly point to the contradictions of the behavior of the UK government. Some argue that the imperial constitutionalism, which developed in the mid-19th century to administer the colonial possessions and which still applies in the Chagos case, runs counter to the principles that the modern liberal UK promotes internationally.[82] According to *The Guardian*, 'this absolutely should not be the place in the global order that modern Britain seeks'.[83]

While the focus with regard to the questions of foreign rule and decolonization has been on the Mauritian government and its legal and political victories over the past years, one must not forget that Chagossians do not necessarily support a transfer of power from the UK to Mauritius if the UK were to decolonize the archipelago. One islander noted after the General Assembly adopted its May 2019 resolution: 'Nobody has come up with a plan if it does go to Mauritius [. . .] Me personally, I don't want the Mauritian government to have it as I worry they would give it to China or India'[84] thus indicating a mistrust toward the Mauritian government. This mistrust has its roots in the maltreatment of Chagossians by Mauritius' government over the past decades and is nourished by the fact that the Mauritian government has hinted it would not close the US base in case the UK transfers its sovereignty to Mauritius, but keep it open. Yet, not all Chagossians by far share this perspective. Most acknowledge the need to work with the US even if resettled to their islands, since they see the base as an economic opportunity on an otherwise isolated and disconnected group of islands.[85]

Conclusion and outlook

The analysis has traced the shifts of three sets of international orders functionally limited to human rights, the rule of law, and foreign rule and has shown that the geographic scope of two competing, parallel existing sets of orders has considerably shifted since the 1960s. I have displayed that an increasing number of actors nowadays supports those international orders that promote human rights more thoroughly, that value and endorse the rule of law, and that reject foreign or colonial rule, while the orders that put realpolitik over human rights and the rule of law and allow foreign rule are in retreat. The Chagos case study proved helpful to 'take the temperature' of these orders as the vote in the UN General Assembly forced governments around the globe to take sides. Put differently, the case study empirically substantiated my assumptions that we can delineate orders functionally and geographically, that functionally related orders can exist parallel, and that orders are in flux.

At the same time, the case study also suggests that even serious challenges to orders do not necessarily lead to their fall. If my third assumption holds that only a power shift will ultimately lead to shifts of international orders, which might already be in decline but have not yet fallen, we will have to wait until the US is replaced as the dominant state in the international system. For realpolitik will stand in the way of a reconsideration of the US governments' positioning toward the Chagos case. This prospect is problematic for the Mauritian government and even more so for the Chagossians. Yet, their destiny only partly depends on the US, the ultimate beneficiary of the current situation, for the UK holds the keys and must stay the course vis-à-vis those who loudly demand a more consistent promotion of human rights and the rule of law and denounce foreign rule. We are currently witnessing a further declining UK in the post-Brexit period, which in addition faces several internal challenges – the strife for independence in Scotland being the most prominent issue – that further weakens its international position. If this continues, the UK might find itself in a position where it has to decolonize the Chagos Archipelago without the approval of the US, which might not object, as it is likely that Mauritius' government allows the base to remain open. According to Philippe Sands, a UK lawyer and advisor to the Mauritian government, the UK is still trying to come to terms with its place in world politics. From his perspective, the UK 'is a diminished power. It has lost its judge at the International Court of Justice, it has lost a series of resolutions at the UN General Assembly. I think its [*sic*] just taking time to come to the realization, that ist [*sic*] legal situation and is very different, but ultimately I think the UK will comply with the court'.[86]

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