



ICJ Advisory Opinion on Chagos Archipelago: A Reading from India

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The International Court of Justice (ICJ) issued its advisory opinion on the issue of Chagos Archipelago to the United Nations General Assembly (UNGA) on February 25, 2019. The Republic of Mauritius has been raising the issue as part of the completion of its decolonisation process. In the process, it claims legitimate sovereignty over the archipelago of Chagos Islands which were 'detached' from Mauritius 'under duress' by the United Kingdom (UK) on November 8, 1965. Independence and the detachment of Chagos Islands came as a package to the Mauritians. The Mauritian Council of Ministers, after tough negotiations, was ready to lease the Islands to UK,¹ but "had no choice"² other than accepting the package proposal as UK wanted nothing less than sovereignty over them.



The British Indian Ocean Territory (BIOT) and the Marine Protected Area

¹ See, paragraph 100 of the ICJ Advisory Opinion issued on February 25, 2019.

² In a discussion on the detachment of the Chagos Archipelago, On 11 April 1979, Prime Minister Ramgoolam told the Mauritian Parliament "we had no choice".

Chagos Archipelago includes more than 60 small individual islands in the Indian Ocean, currently administered by UK as British Indian Ocean Territory (BIOT). The UK has claimed that the 'detachment' was legal as it happened with the agreement of the Mauritian representatives.

Mauritius has been raising the issue of Chagos Archipelago at international fora. In June 1980, a majority in the Mauritian Parliament made its first call on UK to return Chagos Archipelago. On October 9, 1980 the Mauritian Prime Minister in his address to the UNGA made a formal claim to the Archipelago.³ Most recently, on June 22, 2017 the UNGA adopted resolution 71/292 referring the issue to the ICJ for its advisory opinion. The resolution posed the following questions to the ICJ:

- (a) Was the process of decolonisation of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1966 and 2357 (XXII) of 19 December 1967?
- (b) What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the UK of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement of the Chagos Archipelago of its nationals, in particular those of Chagossian origin?

The opinion issued by the ICJ in response to these UNGA questions gives a non-binding ruling. The Court established that "as a result of the Chagos Archipelago's unlawful detachment", the decolonisation process in Mauritius was "not lawfully completed"⁴ when Mauritius became independent in 1968; and there are consequences, under international law, of the continued administration of the Chagos Archipelago by the UK.

The Court reviewed the circumstances under which the Mauritian Council of Ministers agreed in principle to the detachment of Chagos Archipelago, and considered that the detachment "was not based on the free and genuine expression of the will of the people concerned." It concluded that the continued administration of the Chagos Archipelago by the UK constitutes "a wrongful act entailing international responsibility of that state."⁵ Therefore, the UK is "under an obligation to bring an end to its administration of Chagos Archipelago as rapidly as possible...in a manner consistent with the rights of people to self-



Photo Courtesy: The Hindu

³India's written statement submitted to ICJ.

⁴See, paragraph 173 and 174 of the ICJ Advisory Opinion issued on February 25, 2019.

⁵See, paragraph 177 of the ICJ Advisory Opinion issued on February 25, 2019.

determination.”⁶ Further, the process and modalities of the decolonisation of Mauritius is to be decided by the UNGA in exercise of its functions related to decolonisation. The Court viewed that the issue of the resettlement of Mauritian nationals or people of Chagossian origin on the Chagos Islands may be addressed by the UNGA as it is related to the protection of their human rights.

The complications

The UNGA, after the ruling, is expected to debate on the issue and give its recommendations in a resolution with a binding effect in the spirit of the UN Charter. The UNGA may also recommend enlisting the Chagos Archipelago in the UN Committee of Twenty-Four handling the issue of decolonisation of non-self governing territories.⁷ Given the composition of the Assembly and the turn of history with a shifting world order, it is unlikely that it would favour UK’s position, which has repeatedly failed legal enquiries from the decolonisation aspect. Pertaining to the current realities on ground, there would be legal as well as practical consequences of any UNGA resolution consistent with the Court’s Advisory.

The UK has leased Diego Garcia, the largest of the islands in the Chagos Archipelago, to the United States (US) which has a fully functional military base on the island. In fact, the detachment of the Archipelago was induced by the Cold War era Indian Ocean security plans of the UK and US. To make room for the US military base, between 1967 and 1973, the UK implemented a forced evacuation of the Ilois or Chagossian people residing on the Archipelago. According to the currently effective administrative order, no civilian can reside in BIOT without permission. The base, since establishment, has been actively used for US operations in the Middle East, Iraq, Afghanistan and surveillance of the Indian Ocean Region (IOR), making it of high strategic importance for both the US and UK to maintain their global influence. Therefore, any consequence, legal or practical, cannot be dissociated from the strategic viewpoint of the parties involved as well as the countries in the IOR, including India.



Naval Support Facility Diego Garcia (AFP Photo /USAF) © AFP

The legal and the practical perspectives (military base and civilian resettlement issues) on the ruling are currently at odds with each other as the UK and US are likely to ignore any adverse advisory or decision by the ICJ or even the UN. The IOR is back on the strategic radar of major world powers, making the transfer of Chagos Archipelago to Mauritius more unlikely in the near future.

⁶See, paragraph 178 of the ICJ Advisory Opinion issued on February 25, 2019.

⁷ After the independence of Mauritius and its detachment from the country, Chagos Archipelago was no more in the agenda of the UN Committee of Twenty-four tasked with decolonisation.



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The UK has consistently opposed every move by Mauritius to get back its lost territory and ignored all adverse resolutions by the UNGA. The UK Foreign and Commonwealth Affairs Office has repeatedly appealed against the UK court rulings in favour of resettlement and more compensation to the evacuated Chagossian/Ilois people. After UK Court of Appeal ruling in favour of resettlement of displaced Chagossians, the House of Lords revoked it in 2008.⁸ In its ostensible attempt of being sensitive towards evacuated people and those who were prevented to return, the UK conducted two studies, but finally decided against resettlement in November 2016 on “grounds of feasibility, defence and security interests and cost to the British taxpayer”.⁹

In another development, on April 1, 2010, the UK declared the area around Chagos Archipelago as a Marine Protected Area (MPA), which was termed illegal by a tribunal of the Permanent Court of Arbitration on March 18, 2015. The tribunal based its judgement on the Lancaster House undertakings by UK that provided fishing, oil and mineral rights to Mauritius together with a promise of returning Chagos Islands if the need of “facilities” on the island disappeared. However, in 2018, UK Supreme Court also rejected the argument that the MPA was designed to render the resettlement of Chagossians impracticable.

The framing of the issue in terms of the resettlement of the Chagossian people to their homelands, although legally and morally persuading, has become difficult; and may persist even if UK returns the territory in future.

Significance of the Case from Indian Perspective

As a consistent supporter of the Mauritian position, India submitted a detailed written statement to the ICJ; and stood with Mauritius’ claim over Chagos Archipelago. The Advisory is a welcome step from the perspective of India’s traditional policy stand against colonialism. Its position on the issue helps bolster a close relationship with Mauritius.

India has lived with the US base on Diego Garcia since the tense cold war era; and does not foresee it disappearing due to the ICJ Advisory on the Issue of Chagos Archipelago. Although India, in the past, has stood for the of the proposition of Indian Ocean as a ‘zone of peace’¹⁰ and a denuclearised area putting it at odds with the US base, it has pragmatically adjusted to its existence while simultaneously increasing its naval power. Moreover, given the contemporary convergence of India’s perspective of

⁸ The case was filed against the Secretary of State for Foreign and Commonwealth Affairs to the UK court by Mr. Louis Olivier Bancoult, an activist and leader of Chagos Refugees Group, living in Mauritius.

⁹ See, paragraph 129 of the ICJ Advisory Opinion issued on February 25, 2019.

¹⁰ India supported the UN General Assembly Resolution 2832 (XXVI) on December 16, 1971, declaring the Indian Ocean as a “zone of peace”.

maritime safety and security with the US' Indian Ocean security strategy, the significance of the US base on Diego Garcia has in fact increased. Ideally, India wants to see the Indian Ocean as a 'zone of peace', but the current strategic ambitions of extraregional powers in the area and its cooperation with the US Navy give primacy to strategic balancing.

Conclusion

The issue remains only a legal technical battle of sovereignty between Mauritius and UK, as there is no economic or strategic rivalry between the two. There is no possibility of a fundamental change in strategic realities and military infrastructure on ground, except in unforeseen extraordinary strategic conditions. Even if UK hands over the Islands to Mauritius, the existence of the military base might continue. The issue in this case may pragmatically get transformed into a renegotiation of the lease and compensation for the displaced Chaggosians between Mauritius and US.

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