

IMPLICATION TO STATUS OF DIEGO GARCIA: AN ENFORCEMENT OF ICJ ADVISORY OPINION OVER CHAGOS ARCHIPELAGO

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Abstrak

Pada tanggal 25 Februari 2019, Mahkamah Internasional mengeluarkan Pendapat Hukum dalam Konsekuensi Hukum dari Pemisahan Kepulauan Chagos dari Mauritius pada Tahun 1965 setelah dimintakan oleh Majelis Umum PBB dengan Resolusi Nomor 71/292 pada 22 Juni 2017. Mahkamah juga menyatakan bahwa Britania Raya memiliki kewajiban untuk mengembalikan administrasi dari Kepulauan Chagos ke Mauritius sebagai bentuk dekolonisasi. Artikel ini akan menganalisis bagaimana Pendapat Hukum Mahkamah Internasional memiliki dampak terhadap masalah Kepulauan Chagos terutama dengan masalah fungsi wilayah Diego Garcia sebagai markas militer Amerika Serikat di Smaudera Hindia, apakah akan tetap dilaksanakan Bersama Britania Raya atau perjanjian akan diambil alih oleh Mauritius. Dengan menggunakan metode normatif legal, artikel ini akan menyimpulkan dampak Pendapat Hukum dari Mahkamah Internasional kepada kepemilikan Kepulauan Chagos dan juga bagaimana Amerika Serikat akan melanjutkan kegiatan militernya.

Kata kunci: Pendapat Hukum, Kepulauan Chagos, Konsekuensi Hukum

Abstract

By the February 25th 2019, International Court of Justice (ICJ) released an advisory opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965 after requested by the UN General Assembly by the resolution no. 71/292 of June 22nd 2017. The court mention that United Kingdom (UK) has an obligation to return the administration of Chagos Archipelago back to Mauritius to complete the decolonization. This article analyses the impact of the ICJ Advisory Opinion on the Chagos Archipelago to the function of the Diego Garcia atoll as the United States (US) Military Base in Indian Ocean. The purpose of this article is to examine the future of utilization of Diego Garcia atoll, as the US military base after the Advisory Opinion released, either it come to an end since it was made by exchange of notes between UK and US, or could be operated by US under the Mauritius approval. By applying normative legal research, this article will conclude the implications of the advisory opinion on the legal ownership of the Chagos Archipelago, and the way US Military base could carry out its functions in Indian Ocean.

Keywords: *ICJ, Advisory Opinion, Chagos Archipelago, Legal Consequences,*

Introduction

International Court of Justice, as an international legal institution that hears cases involving legal complaints between consenting states. Its jurisdiction is carefully defined to preserve the sovereignty of the states involved. The court provides two important functions in world politics: first, its decisions constitute formal and explicit legal judgements regarding who is right and wrong in a given dispute; and second, these decisions enter into the political discourse of states, despite the absence of precedent, and may have substantial influence beyond their legal terms.

The other court activity as "Advisory Opinion".¹ Described in Article 96 of the UN Charter and in the Statute of ICJ in article 65-68, that anybody could ask for The Court's opinion "on any legal question" by the UN General Assembly or the Security Council. The opinion that the court then return is "Advisory" which means there is no any binding obligation on any state or organization.²

By the February 25th 2019, International Court of Justice (ICJ) pussblish an advisory opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965 after requested by the UN General Assembly by the resolution no. 71/292 of June 22nd 2017. The court mention that United Kingdom (UK) has

an obligation to return the administration of Chagos Archipelago back to Mauritius to complete the decolonization.

Chagos Archipelago or Chagos Islands are a group of seven atolls comprising more than 60 islands in the Indian Ocean. Located about 310 miles in the south of Maldives.³ It is coterminous with the British Indian Ocean Territory. Lying at the center of the Indian Ocean region and out of the path of cyclonic storms, the territory is strategically located.⁴ It constitutes a semicircular group, open to the east, comprising the Salomon Islands, Peros Banhos atoll, Nelsons Island, the Three Brothers Islands, the Eagle Islands, Danger Island, the Egmont Islands, and Diego Garcia atoll.⁵ A commissioner of the Foreign and Commonwealth Office in London administers the territory. Although there is no permanent civilian population on the islands, generally about 4,000 U.S. and British military and contract civilian personnel were stationed there. The territory has a total land area of 23 square miles (60 square km).⁶

Historically, Chagos archipelago is belong to Mauritius, a country which

¹ Rrecaj, B. T. (2020). Legal Consequences of The Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ Advisory Opinion, 25 February 2019, General List No. 169). *Utrecht J. Int'l & Eur. L.*, 35, 50.

² Kuźniak, B., & Kabat-Rudnicka, D. (2021). Advisory Opinion or Judgment? The Case of the Chagos Archipelago. *Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza*, 13, 45-75.

³ Sheppard, C. R., Ateweberhan, M., Bowen, B. W., Carr, P., Chen, C. A., Clubbe, C., ... & Yesson, C. (2012). Reefs and islands of the Chagos Archipelago, Indian Ocean: why it is the world's largest no-take marine protected area. *Aquatic Conservation: marine and freshwater ecosystems*, 22(2), 232-261.

⁴ Erickson, A. S., Walter III, L. C., & Mikolay, J. D. (2010). Diego Garcia and the United States' Emerging Indian Ocean Strategy. *Asian Security*, 6(3), 214-237.

⁵ Britannica Editorial Staffs, (n.d) *British Indian Ocean Territory*, <https://www.britannica.com/place/British-Indian-Ocean-Territory#ref70630>, [Accessed March 27th 2019]

⁶ *Ibid.*

located in the east of Africa. Prior to 1965, the Chagos Archipelago was administered as a dependency of the then-colony of Mauritius. The Archipelago was detached from the colony of Mauritius on 8 November 1965, following a series of meetings with certain Mauritian political leaders, leading ultimately to the agreement of the Mauritius Council of Ministers to detachment. In exchange for Mauritian agreement, UK made certain undertakings, including that it would provide compensation to Mauritius; that fishing rights would remain available to Mauritius as far as practicable; that the Archipelago will be return to Mauritius when no longer needed for defense purposes; and that the benefit of any oil or minerals discovered would be preserved for Mauritius. The meetings between Mauritian leaders and the United Kingdom on the issue of detachment coincided with the 1965 Constitutional Conference that led to the decision that Mauritius would become independent. In the course of this arbitration, the Parties disagreed as to whether the issue of detachment was link to independence and whether Mauritian consent to detachment was gave voluntarily.⁷

Mauritius and the UK both claim sovereignty over the Chagos Archipelago. The largest island of the Chagos Archipelago – Diego Garcia – has since the late 1960s housed the most important US military base in the Indian Ocean.⁸ The UK leased the

island for defense purposes to the US in 1966, prior to Mauritian independence in 1968. The 50-year lease of Diego Garcia is due to be renewed in 2016.⁹ Then in 1965, the British acquired the Chagos Islands and made an agreement with Mauritius that the Chagos Islands would belong to the British to be used as military and defense headquarters. The agreement still entitles the people of Mauritius to fish as far as possible on the Chagos Islands and the minerals or oil found in the area are inherited to Mauritius. When the Republic of Mauritius became independent in 1968, the Chagos islands were not returned to Mauritius and the people of the islands had to be expelled because the American military headquarters would be built in one of its islands, the island of Diego Garcia. Starting in 1980, Mauritius tried in various forums to fight for its rights to the Chagos Islands again but, had not succeeded. In 2009, the UK wanted to establish the Chagos Islands as a conservation area (Marine Protected Area-MPA) and discuss this with Mauritius bilaterally on which Mauritius refused. Public consultations were also carried out in the range of 2009-2010 but were fruitless, then on April 1, 2010, the United Kingdom unilaterally declared the Chagos Islands to be MPA and December 20, 2010, Mauritius disputed this matter at PCA.

Mauritius then request for four submissions to PCA, namely¹⁰:

⁷ Chagos Marine Protected Area Arbitration Press Release (2017), p.2

⁸ Robertson, G. (2012). Who owns Diego Garcia? Decolonisation and Indigenous rights in the Indian Ocean. *University of Western Australia Law Review*, 36(1), 1-30.

⁹ M. Waibel. Mauritius V. UK: Chagos Marine Protected are Unlawful, <https://www.ejiltalk.org/mauritius-v-uk-chagos-marine-protected-area-unlawful/> [Accessed March 27th 2019]

¹⁰ See, Chagos Marine Protected Area Arbitration (2017) Press Release, p.2

1. The United Kingdom does not have the right to make MPAs in the Chagos archipelago because the UK provides its coastal country;
2. UK does not allow the Chagos archipelago as an MPA because Mauritius is a coastal country that has sovereignty in the Chagos Islands and Britain must recognize it;
3. The UK is not entitled to take Mauritian actions in the Chagos Islands through the Commission regarding the Limit of the Continental Shelf; and
4. MPA development is not in accordance with the procedural requirements and obligations stipulated in the United Nations Fish Stock Agreement (Implementing Agreement in UNCLOS 1982 concerning fisheries).

PCA judgement on March 19, 2015, Mauritius submissions for number 1 and 2 been rejected because the Chagos Archipelago were not under the sovereignty of Mauritius, and the agreement between Mauritius and UK in 1965 strengthened UK rights because the islands were used as military and defense headquarters, but must be returned if it is no longer used. Then the court also granted permission for Mauritius for recreational purposes in the Chagos islands. The UK must also protect and maintain marine wealth and minerals contained in the sea around the Chagos Islands and the UK cannot regulate the MPA area based on article 2 paragraph 3, article 56 paragraph 2 and article 194 paragraph 4 UNCLOS 1982.

Continued to the concerted effort led by African Union, the UN General Assembly (UNGA) adopted resolution 71/292 with 94 votes in favor, 15 against and 65 abstentions to seek an advisory opinion from the ICJ on the legal consequence of the separation of the Chagos Archipelago from Mauritius in 1965.¹¹ This decolonization will affect many if law aspects begin from the nationality of Chagossians (People of Chagos Archipelago) who was transmigrated to Mauritius and UK. Moreover, it will affect several programs in Chagos Archipelago such as the Marine Protected Area (MPA), and the utilization of the Diego Garcia as the US military base.

Concerning about the Diego Garcia, when UK government unilaterally declared a 640.000-km² 'no-take' MPA in which all-commercial fishing and extractive activities were prohibited around the Chagos Archipelago, they make an exception for Diego Garcia.¹² In relation to the US military base on Diego Garcia, the 1966 exchange of notes between the UK and the US made the Chagos Archipelago available for 50 years (i.e. until 2016), whereupon the agreement would roll over automatically for a further 20 years (i.e. until 2036) unless terminated by either government between 2014 and 2016.¹³ For all this matters, how the impacts of the advisory opinion on the legal and social administration of the Chagos Archipelago and the citizens,

¹¹ Laura Jeffery. (2019). The International Court of Justice: Advisory Opinion on the Chagos Archipelago. *Anthropology Today*, 35(3), 24–27. <https://doi.org/10.1111/1467-8322.12508m>, p.24

¹² *Ibid*, pg. 26

¹³ *Ibid*, pg. 26

which will transferred from UK to Mauritius, and how will the US could carry out its military base functions in Indian Ocean.

Seeking through the map, one can see the most convenient methods of projecting power into the direction of the Middle East, the Persian Gulf, South Asia, Southeast Asia, and the South China Sea. Their use allowed the Pentagon to react instantly to events in the “hot spots” and to conduct military campaigns during the Gulf War of 1990-1991 and the anti-terrorist war in Afghanistan and Iraq.¹⁴ For this purpose, 16 separate units were located on Diego Garcia, including a naval support base and a strategic bomber airfield base, the point locations for guided missile submarines and a nuclear weapons storage. The base was important both for maintaining tight control of the oil streams from the Gulf into South Asia, Southeast Asia, and North Asia, and for curbing China’s military rise and the presence of the Chinese submarines in the Indian Ocean.¹⁵

However, whether after the released of advisory opinion, the 7-atolls management will automatically return to the motherland or else, still managed by the colony? These question will be analyzed by determining the ICJ advisory opinion itself and how to implement it.

¹⁴ Vine, D. (2004). War and forced migration in the Indian Ocean: the US military base at Diego Garcia. *International Migration*, 42(3), 111-143.

¹⁵ Nina Lebedeva. America’s Military Base on Diego Garcia: What’s next?, <https://www.globalresearch.ca/americas-military-base-on-diego-garcia-whats-next/5559816> [accessed 2nd June 2019]

Method

This study will use normative legal research with a case approach. Besides cases, research will also look at how international history and customs play a role in regulating relations between international subjects and comparing existing cases. Since the research utilizes a normative legal research, the data collection technique is library research method with explanatory analysis. In this research, researcher used the qualitative research method which is not numerical, that can be found from tapes, interview, or written materials which mostly from the advisory opinion itself. Other sources as books, regulations, resolutions, judgements from an international tribunal, journals, news, etc. also put an effort to support this research. Explanatory Analysis is a study that aims to test a theory or hypothesis to strengthen or even reject existing research theories or hypotheses. Explanatory research is fundamental and aims to obtain information, information, and data on things that still unknown.

Analysis

1.1. Factual Background

Prior to 1965, the Chagos Archipelago was administered as a dependency of the then-colony of Mauritius. The Archipelago was detached from the colony of Mauritius on 8 November 1965, following a series of meetings with certain Mauritian political leaders, leading ultimately to the agreement of the Mauritius Council of Ministers to detachment.

Before examining the events leading to the adoption of the request for the advisory opinion,

the Court recalls that the Republic of Mauritius consists of a group of islands in the Indian Ocean comprising approximately 1,950 sq km. The main island of Mauritius is located about 2,200 km south-west of the Chagos Archipelago, about 900 km east of Madagascar, about 1,820 km south of Seychelles and about 2,000 km off the eastern coast of the African continent.¹⁶

Between 1814 and 1965, the Chagos Archipelago was administered by the United Kingdom as a dependency of the colony of Mauritius. From as early as 1826, the islands of the Chagos Archipelago were listed by Governor Lowry-Cole as dependencies of Mauritius. The islands were also described in several ordinances, including those made by Governors of Mauritius in 1852 and 1872, as dependencies of Mauritius. The Mauritius Constitution Order of 26 February 1964 (hereinafter the “1964 Mauritius Constitution Order”), promulgated by the United Kingdom Government, defined the colony of Mauritius in section 90 (1) as “the island of Mauritius and the Dependencies of Mauritius”.¹⁷

On 8 November 1965, by the British Indian Ocean Territory Order 1965, the United Kingdom established a new colony known as the British Indian Ocean Territory (hereinafter the “BIOT”) consisting of the Chagos

Archipelago, detached from Mauritius, and the Aldabra, Farquhar and Desroches islands, detached from Seychelles.¹⁸ The talks between the United Kingdom and the United States resulted in the conclusion on 30 December 1966 of the “Agreement concerning the Availability for defense purposes of the British Indian Ocean Territory” and the conclusion of an Agreed Minute of the same date.¹⁹

In February 1964, talks commenced between the Governments of the United Kingdom and the United States on the “strategic use of certain small British-owned islands in the Indian Ocean” for defense purposes. During these talks, the United States expressed an interest in establishing a military communication facility on Diego Garcia. At the end of the talks, it was agreed that the United Kingdom delegation would recommend to its Government that it should be responsible for acquiring land, resettling the population and providing compensation at the United Kingdom Government’s expense; that the Government of the United States would be responsible for construction and maintenance costs and that the United Kingdom Government would assess quickly the feasibility of the transfer of the administration of Diego Garcia and the other islands of the Chagos Archipelago from Mauritius.²⁰

¹⁶ See, International Court of Justice Advisory Opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965, para.25

¹⁷ *Ibid*, para. 27.

¹⁸ *Ibid*, para. 33.

¹⁹ *Ibid*, para. 36.

²⁰ *Ibid*, para. 94.

According to a declassified internal United Kingdom document dated 23 and 24 September 1965 (Record of UK-US Talks on Defense Facilities in the Indian Ocean, United Kingdom, FO 371/184529), the Governments of the United Kingdom and the United States considered that, rather than detaching the islands of the Chagos Archipelago from Mauritius and the islands of Aldabra, Farquhar and Desroches from Seychelles in two separate operations, their interests would be better served by carrying out the detachment “as a single operation” in order to avoid “a second row” in the United Nations. According to the same document, during the talks, the United Kingdom explained to the United States that the detachment of the Chagos Archipelago from Mauritius would take place in three stages; in the final stage it was envisaged that, when the defense facilities were installed on an island, “it would be free from local civilian inhabitants”.²¹

Mauritius is committed to the continued operation of the base in Diego Garcia under a long-term framework, which Mauritius stands ready to enter into with the parties concerned”.²² He reiterated this

view before the Court when he stated that “Mauritius recognizes [the] existence [of the base on Diego Garcia] and has repeatedly made it clear to the United States and Administering Power that it accepts the future operation of the base in accordance with international law”.²³

1.2. Legal Dispute

(a) “Was the process of decolonization 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 1965, 2232 (XXI) of 20 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 United Kingdom 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 on the Chagos Archipelago of its nationals, in

²¹ *Ibid*, para 96.

²² Statement of Sir Anerood Jugnauth in the General Assembly, on the occasion of the adoption of resolution 71/292 requesting the advisory opinion. United Nations, Official Records of the General Assembly, SeventyFirst Session, Plenary Meetings, 88th meeting, A/71/PV.88, p. 8. A similar statement was made by the Prime Minister of Mauritius, Mr. Pravind

Jugnauth, at the meeting of legal advisers in The Hague on 27 November 2017.

²³ CR 2018/20, pp. 30-31, para. 18. Reference was made to the diplomatic correspondence between the Prime Ministers of Mauritius and of the United Kingdom, as well as to the diplomatic correspondence of the Prime Minister of Mauritius and the President of the United States.

particular those of Chagossian origin?”.

1.3. Preliminary Consideration

On receiving a request for an Advisory Opinion, the ICJ draws up a list of those States and organizations that may be able to furnish relevant information. It then organizes written and oral proceedings.²⁴ Unlike contentious proceedings the question of the jurisdiction of the ICJ, and the exercise of its discretion, has (at least so far) not been treated as a preliminary matter. The ICJ does not hold a preliminary stage (as it will often do in contentious proceedings) after which the ICJ would decide whether it has jurisdiction and, if so, whether it should exercise its discretion to give, or refuse to give, an Advisory Opinion.

When the Court is seized of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request. The Court's jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United

Nations to make such a request”. The Court notes that the General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that “*the General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question*”.

Led by Judge Abdulqawi Ahmed Yusuf as the President of the Tribunal from Somalia, and the other 13 member judge namely: judge Xue from China, Judge Tomks from Slovakia, Judge Abraham from France, Judge Bennouna from Marocco, Judge Cancado Trindade from Brazil, Judge Donoghue from United States, Judge Gaja from Italy, Judge Sebutindue from Uganda, Judge Bhandari from India, Judge Robinson from Jamaica, Judge Gevorgian from Russia, Judge Salam from Lebanon, and Judge Iwasawa from Japan.

It is a well-known fact that the questions put to the Court for an Advisory Opinion been required by Article 65 of the Statute of the Court to be *legal* questions.²⁵ The power of the Court is, however, discretionary, and in the exercise of it, it is required to be guided by the principle that “the Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court.”²⁶

²⁴ Anthony Aust. (2010). Advisory opinions. *Journal of International Dispute Settlement*, 1(1), 123-151.
<https://doi.org/10.1093/jnlids/idp005>, p.131-132.

²⁵ Taslim O. Elias, *The International Court of Justice and Some Contemporary Problems*, 1983, Martinus Nijhoff Publishers, The Hague, p.26

²⁶ *Status of Eastern Carelia*, Advisory Opinion, 1923, P.C.I.J. Series B, No. 5, p. 29

The Court observes that an abundance of material has been presented before it including a voluminous dossier from the United Nations. Moreover, many participants have submitted written statements and written comments and made oral statements which contain information relevant to answering the questions. Thirty-one States and the African Union filed written statements, ten of those States and the African Union submitted written comments thereon, and twenty-two States and the African Union made oral statements. The Court notes that information provided by participants includes the various official records from the 1960s, such as those from the United Kingdom concerning the detachment of the Chagos Archipelago and the accession of Mauritius to independence.²⁷

While questioning whether it would be appropriate for the Court to re-examine a question allegedly settled by the Arbitral Tribunal constituted under UNCLOS Annex VII in the *Arbitration regarding the Chagos Marine Protected Area*. The Court recalls that its opinion given not to States, but to the organ, which is entitled to request it. The Court also observes that the principle of *res judicata* does not preclude it from rendering an advisory opinion. In any event, the Court further notes that the issues that were determined by the

Arbitral Tribunal in the Arbitration regarding the Chagos Marine Protected Area are not the same as those that are before the Court in these proceedings. It follows from the foregoing that the Court cannot decline to answer the questions on this ground.²⁸

Last preliminary examination point is about the question regarding the questions asked a pending dispute between United Kingdom and Mauritius, Some participants have argued that there is a bilateral dispute between Mauritius and the United Kingdom regarding sovereignty over the Chagos Archipelago and that this dispute is at the core of the advisory proceedings.²⁹ Moreover, the Court observes that there may be differences of views on legal questions in advisory proceedings. However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute. In these circumstances, the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State. The Court therefore cannot, in the exercise of its

²⁷ See, International Court of Justice Advisory Opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965, para.73

²⁸ *Ibid*, para. 81.

²⁹ *Ibid*, para. 82.

discretion, decline to give the opinion on that ground.³⁰

1.4. Arguments of the Court

The Court explained that, in order to pronounce on whether the process of decolonization of Mauritius was lawfully completed having regard to international law, it must determine, first, the relevant period of time for the purpose of identifying the applicable rules of international law and, secondly, the content of that law. In addition, since the General Assembly has referred to some of the resolutions it adopted, the Court, in determining the obligations reflected in these resolutions, must examine the functions of the General Assembly in conducting the process of decolonization.³¹

The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State. It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal

interest in protecting that right. The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect. As 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 during the completion of the decolonization of Mauritius.³²

The court in its decision, finds that it has jurisdiction to give the advisory opinion on this case and decided to comply with the request for an advisory opinion. The court also has the opinion that having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago. Finally stated that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.

For majority voice, the Court states that the decolonization of Mauritius should be completed "*in a manner consistent with the right of peoples to self-determination*" without elaboration. The Court neither determines the eventual

³⁰ Summary of the Advisory Opinion, Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, page 5.

³¹ See, International Court of Justice Advisory Opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965, para.139.

³² *Ibid.* para. 181.

legal status of the Chagos Archipelago, nor indicates detailed modalities by which the right to self-determination should be implemented in respect of the Chagos Archipelago. The Court gives an opinion on the questions requested by the General Assembly to the extent necessary to assist the General Assembly in carrying out its function concerning decolonization. Giving the opinion in this way does not amount to adjudication of a territorial dispute between the United Kingdom and Mauritius.

Judge Xue, She observes that both the United Kingdom itself and the United Nations treated the detachment of the Chagos Archipelago as a matter of decolonization rather than a territorial issue. The archives of the Foreign Office of the United Kingdom reveal that at the time when the detachment plan was being contemplated, the United Kingdom officials were aware, and even acknowledged, that by detaching the Chagos Archipelago and other islands to set up the British Indian Ocean Territory, the United Kingdom was actually creating a new colony.

Judge Gevorgian also mentions in his declaration, Judge Gevorgian, while fully agreeing with the Court's reasoning and findings as made in the Opinion, expresses his disapproval with the Court's statement of responsibility made in paragraph 177, which he considers unsupported by the Court's case law. Judge Gevorgian considers

that a dispute exists between Mauritius and the United Kingdom concerning sovereignty over Chagos, as shown by Mauritius' attempts to bring this case before the Court by way of contentious proceedings.

The Court states that the decolonization of Mauritius should be completed "in a manner consistent with the right of peoples to self-determination" without elaboration. The Court neither determines the eventual legal status of the Chagos Archipelago, nor indicates detailed modalities by which the right to self-determination should be implemented in respect of the Chagos Archipelago. The Court gives an opinion on the questions requested by the General Assembly to the extent necessary to assist the General Assembly in carrying out its function concerning decolonization. Giving the opinion in this way does not amount to adjudication of a territorial dispute between the United Kingdom and Mauritius. The court opinion defines that United Kingdom violates the provisions on decolonization and unlawfully committed. United Kingdom need to hand over the sovereignty of Chagos Archipelago back to Mauritius.

Focusing on the Diego Garcia, Judge Cancado Trindade with his separate opinion said: There were, likewise, - he adds, - the successive resolutions of the old Organization of African Unity and African Union (1980-2015) condemning categorically the military basis established in the

island Diego Garcia (in Chagos) as a “threat to Africa”, and calling upon an “expeditious end” of the United Kingdom’s “unlawful occupation of the Chagos Archipelago” with a view to enable Mauritius to exercise its sovereignty over the Archipelago.³³

Judge Peter Tomka in his declaration, also mentioned The highest representative of Mauritius expressed, in the spirit of realism and being concerned about security in the region, reassurances that “the exercise of effective control by Mauritius over the Chagos Archipelago would not in any way pose any threat to the military base” and that “Mauritius is committed to the continued operation of the base in Diego Garcia under a long-term framework, which Mauritius stands ready to enter into with the parties concerned”.³⁴

1.5. An Enforcement to the Advisory Opinion

As the word “Advisory” growing from “Advise”, Advisory opinion only give some guidance on how shall the disputing states should act, while the realization shall be done by both parties. In contrary with the Permanent Court

of Arbitration (Awards) awards that is legally binding, ICJ gave further explanation, that he requesting party, agency or organization remains free to give effect to the opinion as it sees fit, or not to do so at all.

The judgement of the Court has answered the legal questions arising from the UNGA. The Decolonization of Mauritius has not fully achieved because the Chagos Archipelago still condemned as BIOT. The ICJ said that the role of its Advisory Opinion is to advise organs of the United Nations and UN Specialized agencies what the law is in respect of a particular problem, and to help the requester deal with the problem in the future. It is not the task of an Advisory Opinion to the ICJ to settle disputes.³⁵

Unlike judgments handed down in contentious proceedings, the ICJ’s Advisory Opinions are not legally binding. However, the authority of the ICJ as the principal judicial organ of the United Nations attaches to them.³⁶ as perhaps ‘the first ever direct case before the ICJ concerning the doctrine of incomplete decolonization’,³⁷ the advisory opinion has furnished important guidance for the incomplete work of decolonization.

³³ Separate Opinion of Judge Cancado Trindade, Para. 52-55.

³⁴ Statement of Sir Anerood Jugnauth in the General Assembly, on the occasion of the adoption of resolution 71/292 requesting the advisory opinion. United Nations, Official Records of the General Assembly, SeventyFirst Session, Plenary Meetings, 88th meeting, A/71/PV.88, p. 8. A similar statement was made by the Prime Minister of Mauritius, Mr. Pravind Jugnauth, at the meeting of legal advisers in The Hague on 27 November 2017

³⁵ For a concise survey of the history of the ICJ’s approach so far to Advisory Opinions, see M.N.Shaw, *International Law* (6th Ed. CUP, Cambridge 2008) 1108-13.

³⁶ Aust, A. (2010). *Op.Cit.* p.133.

³⁷ Prabhakar Singh, ‘Incomplete Decolonisation’, (Mekong Review, October 2018) online: <https://mekongreview.com/incomplete-decolonisation/> [accessed 17 April 2019].

As the court by its judges has given their opinion, it shown that the decolonization of the Chagos Archipelago need to be completed immediately by giving back the full authorization of Chagos Archipelago to Mauritius, including the authorization on Diego Garcia. UK no longer could use the Chagos Archipelago under defense reason for its own interest. If US still wanted to use the Diego Garcia as their military base, a new arrangement shall be held between US and Mauritius. However, as the Advisory Opinion does not have the binding power through the dispute, the Requesting Party might apply another dispute that concerning more about the decolonization, no longer regarding the status and separation.

Conclusion

International Court of Justice in its Advisory Opinion having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State.

As the court by its judges has given their opinion, it shown that the decolonization of the Chagos Archipelago need to be completed immediately by giving back the full authorization of Chagos Archipelago to Mauritius, including the authorization on Diego Garcia. Diego Garcia is one of all atoll/islands in Chagos Archipelago, which was an object of an agreement

between US and UK for the use of defense and military base of US. Although the opinion of ICJ is advisory option, it is a chance for Mauritius to decide the population's future.

UK no longer could use the Chagos Archipelago under defense reason for its own interest. It is concluded that if US still has an intention to use the Diego Garcia as their military base, a new arrangement need to be held between US and Mauritius, either by changing the parties on the former agreement to continue the arrangement, or set new provisions under both states national interest. If the second choice would be option to solve the problem, new arrangement shall be concluded between Mauritius and US after the decolonization finished.

REFERENCES

Books and Journals

- Jeffery, L. (2019). The International Court of Justice: Advisory Opinion on the Chagos Archipelago. *Anthropology Today*, 35(3), 24–27. <https://doi.org/10.1111/1467-8322.12508>
- Aust, A. (2010). Advisory opinions. *Journal of International Dispute Settlement*, 1(1), 123–151. <https://doi.org/10.1093/jnlids/idp005>
- Taslim O. Elias, *The International Court of Justice and Some Contemporary Problems*, 1983, Martinus Nijhoff Publishers, The Hague, p.26
- Shaw, Malcolm N. *International Law* (6th Ed. CUP, Cambridge 2008) 1108-13.
- Erickson, A. S., Walter III, L. C., & Mikolay, J. D. (2010). *Diego Garcia*

- and the United States' Emerging Indian Ocean Strategy. *Asian Security*, 6(3), 214-237.
- Robertson, G. (2012). Who owns Diego Garcia? Decolonisation and Indigenous rights in the Indian Ocean. *University of Western Australia Law Review*, 36(1), 1-30.
- Vine, D. (2004). War and forced migration in the Indian Ocean: the US military base at Diego Garcia. *International Migration*, 42(3), 111-143.
- Rrecaj, B. T. (2020). Legal Consequences of The Separation of the Chagos Archipelago from Mauritius in 1965 (ICJ Advisory Opinion, 25 February 2019, General List No. 169). *Utrecht J. Int'l & Eur. L.*, 35, 50.
- Kuźniak, B., & Kabat-Rudnicka, D. (2021). Advisory Opinion or Judgment? The Case of the Chagos Archipelago. *Przegląd Prawniczy Uniwersytetu im. Adama Mickiewicza*, 13, 45-75.

World, Wibe, Web

- Britannica Editorial Staffs, *British Indian Ocean Territory*,
<https://www.britannica.com/place/British-Indian-Ocean-Territory>
- Prabhakar Singh, 'Incomplete Decolonisation', (Mekong Review, October 2018) online:
<https://mekongreview.com/incomplete-decolonisation/> [accessed 17 April 2019].
- Lebedeva, Nina. America's Military Base on Diego Garcia: What's next?,
<https://www.globalresearch.ca/americas-military-base-on-diego-garcia-whats-next/5559816> [accessed 2nd June 2019]
- Waibel, M. Mauritius V. UK: Chagos Marine Protected Area Unlawful,
[https://www.ejiltalk.org/mauritius-v-](https://www.ejiltalk.org/mauritius-v-uk-chagos-marine-protected-area-unlawful/)

[uk-chagos-marine-protected-area-unlawful/](https://www.ejiltalk.org/mauritius-v-uk-chagos-marine-protected-area-unlawful/) [Accessed March 27th 2019]

- Lebedeva, Nina, America's Military Base on Diego Garcia: What's Next?
<https://www.globalresearch.ca/americas-military-base-on-diego-garcia-whats-next/5559816>

Regulations, Judgements, and Legal Opinion

- Permanent Court of Arbitration-Chagos Marine Protected Area Arbitration Press Release (2017), p.2
- International Court of Justice Advisory Opinion on Legal Consequences of The Separation of The Chagos Archipelago from Mauritius in 1965, para.25
- Statement of Sir Anerood Jugnauth in the General Assembly, on the occasion of the adoption of resolution 71/292 requesting the advisory opinion. United Nations, Official Records of the General Assembly, SeventyFirst Session, Plenary Meetings, 88th meeting, A/71/PV.88, p. 8. A similar statement was made by the Prime Minister of Mauritius, Mr. Pravind Jugnauth, at the meeting of legal advisers in The Hague on 27 November 2017.
- International Court of Justice Advisory Opinion, Status of Eastern Carelia, 1923, P.C.I.J. Series B, No. 5, p. 29
- Separate Opinion of Judge Cancado Trindade, Para. 52-55.
- Statement of Sir Anerood Jugnauth in the General Assembly, on the occasion of the adoption of resolution 71/292 requesting the advisory opinion. United Nations, Official Records of the General Assembly, SeventyFirst Session, Plenary Meetings, 88th meeting,

A/71/PV.88, p. 8. A similar statement was made by the Prime Minister of Mauritius, Mr. Pravind Jugnauth, at the meeting of legal advisers in The Hague on 27 November 2017