

IN THE INTERNATIONAL COURT OF JUSTICE

ADVISORY OPINION, THE LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965

MEMORIAL OF THE REPUBLIC OF THE MARSHALL ISLANDS

COMES NOW the Republic of the Marshall Islands and for their memorial for the Court states the following:

STATEMENT OF LAW

1. The General Assembly during the 71st Session on 22 June 2017 adopted Resolution 71/292, which was entitled “Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”. This resolution posed two legal questions for the Court to consider:
 - a. “[w]as 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. [w]hat are the consequences under international law, including obligations 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 particular, those of Chagossian origin?”
2. Resolution 1514 (XV) states in:
 - a. Operative Clause 2 “[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”
 - b. Operative Clause 5 “[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire...”
 - c. Operative Clause 6 states “[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.
3. Resolution 2066 (XX) was solely on the topic of Mauritius and calls upon the United Kingdom of Great Britain and Northern Ireland to fulfill its obligations as a member of the United Nations, and as outlined in Resolution 1514 to not dismember Mauritius in violation of Mauritius’ territorial integrity.

4. Resolutions 2232 (XXI) and 2357 (XXII) again called upon the United Kingdom of Great Britain and Northern Ireland to remember its commitments as a member of the United Nations and in previous resolutions and end its administration over Mauritius.

STATEMENT OF FACT

In 1776 the first settlement was established on the Diego Garcia Island, a part of the Chagos Archipelago. At this time, the archipelago was under the administration of France. It was an important spot for ships navigating the Indian Ocean and by the end of the 18th Century, the population of the settlement on Diego Garcia reached around 300.¹ In 1814, the territory transferred to the United Kingdom as a result of the Treaty of Paris. The United Kingdom began using the archipelago for the occasional transfer of slaves. The population on Chagos grew enormously, reaching 789 people in the 1881 census.²

It was not until 1965 when the true tragedy of the Chagossian population began. The desire for independence in Mauritius, which was connected to Chagos, began to grow. The United Nations, having been established just 20 years prior, was pushing for countries to decolonize and hand over control to the non-self-governing territories. However, the United Kingdom and the United States had intentions to construct a military base on Diego Garcia. If the base were to be built, the United Kingdom needed control over Chagos.

In April British Foreign Secretary Greenwood visited Mauritius to meet with the leader of the Mauritius Council of Ministers, Dr. Seewoosagur Ramgoolam. In a secret meeting, the two agreed on the conditions for Mauritian independence. Mauritius would gain in its independence, and in exchange, the United Kingdom would retain control over Chagos Archipelago and pay Mauritius a total of £3 million.³ Three years later, in 1968, Mauritius was granted its independence and became a free country.

STATEMENT OF JURISDICTION

1. The request for an advisory opinion from this Court was made by the General Assembly pursuant to Article 96, Paragraph 1 of the Charter of the United Nations.
2. Article 65 of the Statute of the International Court of Justice gives the Court the ability to issue an advisory opinion if a legal question is posed to it by an authorized body. Of the requests for an advisory opinion that have previously been made by the General Assembly, the Court has never refused any requests.⁴

ARGUMENTS

1. This Court has competence to answer the request for an advisory opinion in General Assembly Resolution 71/292. Furthermore, this Court is appropriate in delivering an advisory opinion. The Court, as noted in the *Namibia Advisory Opinion*, does not need to consider or address any political questions or issues which may be connected to the issue

¹ Durup, Julien. "The Chagos. A short history and its legal identity." 2013.

² *Ibid.*

³ *Ibid.*

⁴ *Reservations to the Convention on the Prevention and Punishment on the Crime of Genocide* I.C.J. Reports 1950 p. 19; *Constitution of the Maritime Safety Committee of the Inter-Governmental Maritime Consultative Organization* I.C.J. Reports 1960, p. 153.

at hand.⁵ An advisory opinion is intended to guide the work of the United Nations and add to the discourse and deliberations of the United Nations on topics before it.

2. The process of decolonization of Mauritius was not complete when Mauritius was granted independence in 1968. When a territory is segmented, whether artificially or allegedly, the segmentation of a territory prior to independence being granted then the administering power is interfering with the territorial sovereignty and unity of the territory. This sentiment is outlined in Resolution 1514 (XV). The Republic of the Marshall Islands believes that the United Kingdom's forced segmentation of Chagos relies upon a strict and rigid interpretation of *uti possidetis juris*. The Court has referred to this as a "photograph of the territory" at a time when independence occurs.⁶ However, while this may be the case, the Court must give attention to the political nature at the time when independence occurred.
3. When scrutiny is applied to the text of the Lancaster House Undertakings and the consent obtained by Mauritius, it is clear that the consent was coerced, and that Mauritius had no option but to agree to the segmentation if it wanted independence. Judges Kateka and Wolfram in the Permanent Court of Arbitration noted that there was a clear inequity between the United Kingdom and Mauritius at the time of the agreement.⁷ This inequity has led to the United Kingdom benefiting greatly from their continued administration over Chagos.
4. There are many legal consequences and obligations which face the United Kingdom for their continued administration of Chagos. There have been many United Nations General Assembly resolutions passed within the past 60 years which have called upon the United Kingdom to end its administration and return control to Mauritius and allow for the removed Chagossian population to return to their native land. The United Kingdom is a member of the United Nations and has obligations to end colonization. This continued violation of this principle faces the United Kingdom with these obligations and consequences.

SUMMARY AND REQUESTS

The Republic of the Marshall Islands prays that this Court exercise its powers and issues an advisory opinion on this matter. This issue has come up time and again in the General Assembly, and the Court issuing an advisory opinion will help to further guide the deliberations and discussions of the General Assembly and United Nations as a whole relating to decolonization. Furthermore, we pray that the Court find the United Kingdom has violated its obligations as a member of the United Nations in continuing to administer authority over the Chagos Archipelago. The General Assembly has demanded the United Kingdom end this administration, but these demands seem to have fallen on deaf ears. The people of Mauritius deserve their land that was once a part of their territory, and the expelled Chagossian people deserve to return to their native land.

⁵ *Legal Consequences for the States of the Continued Presence of South Africa in Namibia (South-west Africa) notwithstanding Resolution 276 (1970) of the Security Council Advisory Opinion* I.C.J. Reports 1971 p. 24 para. 34.

⁶ *Case Concerning the Frontier Dispute (Burkina Faso/Mali)* I.C.J. Reports 1986, pp 586, para. 30.

⁷ *Dissenting and Concurring Opinion of Judge James Kateka and Rudiger Wolfram Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* Permanent Court of Arbitration 2015 p. 19-20 para. 77-78.