

Is the British Government legally bound by the International Court of Justice to hand over the Chagos Archipelago to Mauritius?

Background: The Islands have been under continuous British Sovereignty since 1814. Within the British Empire they were at different times administered from the Seychelles and Mauritius. In 1965, prior to Mauritian Independence, the 'British Indian Ocean Territory' was created and in 1966 Diego Garcia was made available to the US Government, reportedly as a part of a deal with the UK involving a reduction on the price of Polaris missiles.^{i,ii} The UK had previously compensated the colony of Mauritius as a part of its independence negotiations and provided a range of guarantees. The British Chagossians were removed from the island and now live in the UK, Seychelles and Mauritius and are entitled to British Overseas Territories passports.

The Mauritian Government later contested UK sovereignty on the basis that the UK should not have detached BIOT from Mauritius prior to independence. The latest iteration involved a successful campaign in the UN General Assembly to request an advisory opinion from the International Court of Justice (ICJ), which made its opinion known in February 2019.ⁱⁱⁱ The advisory opinion was that the UK should not have detached BIOT from Mauritius prior to independence as this conflicted with the right to 'self determination' as set out in the 'Declaration on the Granting of Independence to Colonial Countries and Peoples.'^{iv}

Reasons why the UK does not need to accept/act on the Advisory Opinion:

1. It's advisory. It is an opinion of the ICJ that came out of a (non-binding) General Assembly Resolution to ask the Court's opinion based on the (non-binding) General Assembly Resolution on 'decolonisation'. There is no legal reason or mechanism to compel the UK to hand over sovereignty.^v
2. The Chagos Archipelago was never Mauritian. There is no question of 'handing back' the territory. The administrative link within the British Empire was for convenience only, they are over 1,300 miles distant.
3. The proposed deal, involving a 'lease back' of one of the islands for 99 years, is less secure than sovereignty. Mauritius could change its constitution, re-litigate the matter in the ICJ to improve its terms and leave the UK/USA in a weak position in danger of continual shake downs. Importantly the lease does not contain all of the surrounding Chagos islands, which could, unprotected by British sovereignty, be vulnerable to Chinese pressure to instal listening posts.^{vi}
4. Mauritius is not a long-standing western ally, indeed it has been litigating with the UK for many years. It is currently run by the 'Militant Socialist Movement' of PM Pravind Jugnauth, who is seeking to gain electorally from the 'deal'.
5. There is no guarantee that the ICJ would accept this deal as the end of 'decolonisation' as the deal effectively detached Diego Garcia from the rest of BIOT. The UK could well end up in Court again.
6. The Chagossians themselves are not keen on returning to Mauritian rule. They were traditionally the black creole population not treated well by Mauritius. In fact, one Creole island, Rodrigues itself shows signs of wishing to leave Mauritius.^{vii}
7. The US acquiescing in the UK's acceptance of this ruling sets a bad precedent for other overseas bases. For instance Guam is on the list of 'colonies' set up by the UN's decolonisation committee.

The alternative action is for the UK to continue as at present sure of long-term sovereignty and able to meet its obligations to the USA.

ⁱ BIOT website; <https://www.biot.gov.io/about/history/>

ⁱⁱ *New York Times*, 17th October 1975; <https://www.nytimes.com/1975/10/17/archives/usbritish-deal-on-diego-garcia-in-66-confirmed.html>

ⁱⁱⁱ *Utrecht Journal of International and European law*; <https://utrechtjournal.org/articles/10.5334/ujiel.492>

^{iv} UN, GA resolution 1514 (XV); <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-granting-independence-colonial-countries-and-peoples>

^v The UK specifically exempted disputes with Commonwealth states (i.e Mauritius) when it accepted the jurisdiction of the Court. “The Government of the United Kingdom of Great Britain and Northern Ireland accepts as compulsory ipso facto and without special convention, on condition of reciprocity, the jurisdiction of the International Court of Justice... other than: (ii) any dispute with the government of any other country which is or has been a Member of the Commonwealth”; <https://www.icj-cij.org/declarations/gb>

^{vi} The US Air Force Satellite Control Network based in Seychelles had to relocate in BIOT after the Seychelles sought to change the terms of its lease/rent.

^{vii} *Peoples Despatches*, 24th July 2019; <https://peoplesdispatch.org/2019/07/24/state-of-mauritius-represses-pro-independence-protesters-in-rodrigues/>

Other:

Policy Exchange: Sovereignty and Security in the Indian Ocean, Why the UK should not cede the Chagos Islands to Mauritius, Dr Yuan Yi Zhu, Dr Tom Grant and Professor Richard Ekins KC (Hon) October 27, 2023; <https://policyexchange.org.uk/publication/sovereignty-and-security-in-the-indian-ocean/>

The Critic Magazine: “The Great British Giveaway, The handover of the Chagos Islands reflects a wider lack of realism in UK foreign policy’ 5th October 2024; <https://thecritic.co.uk/the-great-british-giveaway/>

The Critic Magazine: “A craven surrender The handover of the Chagos Islands to Mauritius represents a mindless and unjust capitulation to a foreign power” 4th October 2024; Yuan Yi Zhu; <https://thecritic.co.uk/author/yuan-yi-zhu/>

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28th October 2024