ORBIS Working Papers

The Advisory Opinion of the International Court of Justice on the Chagos Archipelago and the Future of the Chagossians

Charles Slidders

2020 / 10

upf. Universitat Pompeu Fabra Barcelona

International Public Law and International Relations Research Group

Charles Slidders

PhD student in International Law and International Relations at UPF
cslidders@gmail.com

Orbis Working Papers (OWP) contain work in progress by members of the Research Group on International Law and International Relations at Universitat Pompeu Fabra, as well as by fellow researchers and project partners. Content of OWP may become part of eventual publications in journals or books. All works published as OWP are the responsibility of authors alone.

Carrer Ramon Trias Fargas, 25
08005 Barcelona – SPAIN
Orbis Website: www.upf.edu/orbis

Cover design and edition: Josep Ibáñez
E-mail: josep.ibanez@upf.edu

ORBIS Working papers are available free of charge at www.upf.edu/orbis

THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE CHAGOS ARCHIPELAGO AND THE FUTURE OF THE CHAGOSSIANS

Charles Slidders

Case Note

This article reviews and analyses the ICJ's decision: '*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*'. The Advisory Opinion called for the rapid cessation of UK administration over the Archipelago and Diego Garcia (a US military base). On 21 May 2019, the UN General Assembly endorsed the Advisory Opinion and 'demand[ed]' the cessation of UK administration within six months. The article analyses the Advisory Opinion in regard to the crystallization of the right to self-determination and its corollary right to territorial integrity of a colonial unit, the right's *jus cogens* status, and the exercise of the Court's discretion in bilateral disputes. The article also addresses the UK's response to the opinion and the UN resolution and the impact on the Chagossians.

Introduction

Fifty years after the resident population of the Chagos Archipelago were forcibly expelled from their homeland in the middle of the Indian Ocean by the British to make way for a United States military base, the International Court of Justice and the United Nations General Assembly has considered British conduct and the deportation of the Chagossians[1] in the context of the right to self-determination.

In 1965, Mauritius was a British colony and, like many other colonies at the time, was on the path to independence. The Chagos Archipelago was part of the colony and was

[1] The Chagos Archipelago was uninhabited until the late 18th century, when it became sporadically occupied and, in 1793, the French established a coconut plantation using slave labour, which also exported cordage made from coconut fibre, and sea cucumbers. *See*, 'Who are the Chagossians', UK Chagos Support Association. Available at https://www.chagossupport.org.uk/who-are-the-chagossians.

administered by the British colonial government as part of Mauritius. Before enabling independence, the UK decided to detach the Chagos Archipelago from Mauritius and to lease its main island, Diego Garcia, to the United States (US) for military purposes. In separating the islands from their traditional administrative centre of Mauritius, the UK ignored Mauritius' territorial integrity and the rights and interests of both Chagossians and Mauritians.

On 22 May 2019, the United Nations General Assembly 'demand[ed]' that the United Kingdom (UK) cease its administration of the Chagos Archipelago within six months (the 'Resolution').[2] The General Assembly voted in support of the Resolution by an overwhelmingly majority.[3] The Resolution endorsed the February 2019 Advisory Opinion of the International Court of Justice ('ICJ') in the matter of the '*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*' (the 'Advisory Opinion').[4] The Advisory Opinion found that UK's continued administration of the Chagos Archipelago was unlawful and the decolonization of Mauritius was incomplete.[5] Despite the Resolution and the Advisory Opinion, the UK remains steadfast in its refusal to concede that it is under any legal obligation to relinquish control of the Archipelago.

In the Advisory Opinion, the Court[6] determined that the Declaration on the Granting of Independence to Colonial Countries and Peoples (the 'Decolonization Declaration'),[7] adopted by the UN General Assembly in December 1960, crystalized the right to self-

[2] GA (Draft) Res. 73/L.83/Rev.1, 17 May 2019 (at the time of writing only the draft resolution was available; the adopted resolution, GA Res. 73/297, was not then available on the UN Official Documents System).

[3] There were 116 votes in favour, and 6 against (Australia, Hungary, Israel, the Maldives, the UK, the US), with 56 abstentions. UN Meetings Coverage, *General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization*, 24 May 2019, at 1, available at https:// www.un.org/press/en/2019/ga12146.doc.htm.

[4] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 25 February 2019, [ICJ Reports (2019), ****], General List No. 169 (the 'Advisory Opinion'). Available at: https://www.icj-cij.org/en/case/169/advisory-opinions.

[5] Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (2016).

[6] A reference to the 'Court' is a reference to the majority of the court delivering the Advisory Opinion. The Judges hearing the case were President Yusuf and Vice-President Xue; and Judges Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam and Iwasawa. Only Judge Donoghue dissented. As will be discussed *infra*, a number of other judges submitted separate concurring opinions, concurring with the outcome but not necessarily the Court's reasoning.

[7] GA Res. 1541 (XV), 15 December 1960.

determination in the context of decolonization. The Court also found that the maintenance of the territorial integrity of the colonial unit is a corollary to the right to self-determination; that is the right to self-determination required the maintenance of the territorial boundaries of the colonial unit. The Court accordingly found that the decolonization of Mauritius had not been completed and that the UK should end its administration of the Archipelago as rapidly as possible.

The Court also found that the UN General Assembly was to determine the mode of concluding the decolonization of Mauritius. The Advisory Opinion provided only limited guidance on implementing the Mauritians' and Chagossians' right to self-determination. That limited guidance is reflected in the Resolution, which simply provides that UK administration of the Archipelago is to cease within six months 'thereby *enabling Mauritius* to complete the decolonization of its territory as rapidly as possible.'[8] It appears that the UN will allow Mauritius to determine the modalities of its own decolonization. A more complete enunciation of the options available to the UN would assist the General Assembly and Mauritius in choosing the most appropriate (and lawful) methodology to complete the decolonization process.

The Resolution also urges the UK 'to cooperate with Mauritius in facilitating the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago.'[9] The UK has consistently maintained that resettlement and ongoing inhabitation of the Archipelago is not feasible.

British reticence about compliance with the Resolution and the Advisory Opinion is based primarily on its assertion that the Diego Garcia military base is of vital importance to the defence and security of the UK and its allies. However, the Mauritian government has publicly, and repeatedly, committed to entering into a long-term arrangement with the US for the continued operation of the defence facility.[10]

The future of the Archipelago and the dispossessed Chagossians remains uncertain despite the Advisory Opinion and the Resolution.

---

[8] GA (Draft) Res. 73/L.83/Rev.1, at ¶3 (emphasis added).

[9] *Ibid.*, at ¶4.

[10] UN Meetings Coverage, *supra* note 2, at 2.

I. Factual Background

A. The Chagos Archipelago

The Chagos Archipelago is a chain of islands in the Indian Ocean approximately 2,200 kilometres north-west of Mauritius; 3,500 km east of Tanzania's coast; 1,800 km south-southwest of the southern tip of India; and almost 5,000 km west-northwest of the west coast of Australia. Diego Garcia is an atoll of about 27 square kilometres and is the main island of the Chagos Archipelago.[11]

Despite the vast ocean distance between Mauritius and the Chagos Archipelago, the British, from 1814 until Mauritius' independence, administered the Archipelago as a dependency of the colony of Mauritius.[12] At all relevant times prior to separation, the Chagos Archipelago, including its main island of Diego Garcia, was considered part of the British colony of Mauritius.

B. Diego Garcia - A US Naval Facility

In the early 1960s, the United States military was looking for a naval base proximate to South Asia, Africa and the Middle East. The British and Americans had already agreed, in 1961, to jointly assume responsibility for the purported defence 'gap' between the Suez Canal and Singapore. Diego Garcia was perfect for a US naval base. In early 1964, the US expressed an interest in utilizing 'British-owned' Diego Garcia as a future military installation.[13]

C. The Independence of Mauritius and the 'Detachment' of the Archipelago

In the early 1960s, at the same time that the US and the UK were discussing the joint defence of the Indian Ocean, Mauritius' own independence movement, conceived at the end of the Second World War, was gaining momentum. In 1947, the British created a legislature as the first step towards self-rule and, in 1961, agreed to eventually grant independence at some unspecified later time. However, before resolving any questions

[11] Advisory Opinion (or 'Adv. Op.'), at ¶26.

[12] *Ibid.*, at ¶28.

[13] *Ibid.*, at ¶31.

of independence, the British were determined to 'detach' the Chagos Archipelago from Mauritius.

Only six months after the US and the UK had discussed the use of Diego Garcia for 'defence purposes,' the British appointed governor discussed separating the Chagos Archipelago with the Premier of Mauritius. The Mauritian Premier Ramgoolam was not averse to a military facility at Diego Garcia, but he would not agree to the separation of the Archipelago; he would only countenance a long-term lease. One year later the Governor put the same proposal to Mauritius' Council of Ministers. The Council of Ministers also opposed the separation of the Archipelago from Mauritius and likewise preferred a long-term lease. Shortly afterwards, at a constitutional conference conducted at Lancaster House in London, ostensibly to discuss the pending independence of Mauritius, the Premier reiterated his opposition to the detachment of the Archipelago.

The British Foreign and Defence secretaries co-opted Labour Prime Minister Sir Harold Wilson into a plan to cajole Premier Ramgoolam into consenting to the detachment of the Archipelago. In a meeting on 23 September 1965, Prime Minister Wilson 'fright[ened]' Premier Ramgoolam into believing Mauritian independence depended on the detachment of the Chagos Archipelago,[14] and he emphasized that detachment would happen one way or the other.[15] The British Government always maintained that they could simply detach the Archipelago by executive order, suggesting that Mauritius' consent was irrelevant. Later on that same day, the Premier of Mauritius indicated that the detachment proposal was 'acceptable in principle,'[16] and agreement was confirmed by the Mauritius Council of Ministers six-weeks later.[17] As part of what became known as the 'Lancaster House Agreement', the British agreed to pay £3million compensation

[14] *See*, U.K. Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965); Written Statement of the Republic of Mauritius, 1 March 2018, Annex 59, p. 1 ('Sir Seewoosagur Ramgoolam is coming to see you at 10:00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.').

[15] *Ibid.*, at p. 5. ('The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, *without* Mauritius consent but this would be a grave step.' (Emphasis in original)).

[16] Adv. Op., at ¶108.

[17] *Ibid.*, at ¶112

to the Mauritian government in addition to any compensation to be paid to Chagossians, enable Mauritius' access to marine resources in and around the Archipelago, and that if the need for the military facilities disappeared, 'the islands should be returned to Mauritius.'[18] Prime Minister Ramgoolam reportedly stated, in reference to the Lancaster House Agreement, '[t]here was a nook [*sic*] around my neck. I could not say no. I had to say yes, otherwise the [noose] could have tightened.'[19] In 1982, the Mauritian Legislative Assembly's Select Committee on the Excision of the Archipelago said, of the British conduct precipitating the Lancaster House Agreement, that it would 'not fall outside the most elementary definition of blackmailing.'[20]

Three days after the formal adoption of the Lancaster House Agreement by the Mauritius Council of Ministers, on 8 November 1965, the British government, by way of an order-in-council, detached the Chagos Archipelago from Mauritius.[21] The British Indian Ocean Territory Order 1965 established a new colony -- the British Indian Ocean territory or BIOT -- consisting of the Chagos Archipelago and three islands that were similarly detached from the Seychelles (the Aldabra, Farquhar and Desroches islands).[22]

D. The UN Condemns the Detachment of the Chagos Archipelago

The UN General Assembly reacted almost immediately to the detachment of the Chagos Archipelago. On 16 December 1965, in a resolution on the 'Question of Mauritius,' the General Assembly noted with 'deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the [Decolonization]

---

[18] *Ibid.*

[19] *See*, Separate Opinion of Judge Robinson ('Robinson Op.'), at ¶90 (referring to statement in Mauritius Legislative Assembly, *Reply to PQ No. B/1141* (25 Nov. 1980), p. 4223).

[20] Robinson Op., at ¶93 (citing Mauritius Legislative Assembly, *Report of the Select Committee on the Excision of the Chagos Archipelago*, No. 2 of 1983, June 1983, para. 52 E). If the British conduct in procuring the Lancaster House Agreement amounts to 'coercion' it would appear to be without legal effect pursuant to Article 51 of the VCLT.

[21] Adv. Op., at ¶33.

[22] *Ibid.* The new colony was called the British Indian Ocean Territory or 'BIOT.' The Seychelles continued under British administration until 1976. When the Seychelles attained independence, the Aldabra, Farquhar and Desroches islands were returned. In supporting the Resolution, the UN representative of the Seychelles Islands observed that '[i]t would stand to reason that the same precedent be applied in the case of Mauritius.' UN Meetings Coverage, *supra* note 2, at 3.

Declaration, and in particular of paragraph 6 thereof.'[23] The Decolonization Declaration stated that the territorial integrity of any colonial unit is 'incompatible with the purposes and principles of the Charter of the United Nations.'[24] Twelve months later the General Assembly adopted another resolution concerning a number of island territories, including Mauritius, and reiterated that the dismemberment of any colonial territory, particularly for military purposes is contrary to the principles of the UN Charter.[25] In 1967, the UN's Committee of Twenty-Four deplored 'the dismemberment of Mauritius and the Seychelles' and called upon the United Kingdom 'to return to these Territories the islands detached therefrom.'[26]

Despite the UN's hostile reaction, the UK continued to detach the Chagos Archipelago from Mauritius, lease Diego Garcia to the United States and deport the Chagossians. The US built a military facility on Diego Garcia. On 12 March 1968, Mauritius became an independent state and Sir Seewoosagur Ramgoolam became the first Prime Minister.

E. The Resettlement of the Chagos Islanders

As a precondition to leasing Diego Garcia, the US required the UK to take responsibility for providing vacant possession of the islands. Between 1967 and 1973 (primarily in July and September, 1971), the British forcibly removed the entire resident population of the Chagos Archipelago –approximately 2,000 people.[27] And in 1971, the British issued an ordinance prohibiting Chagossians from returning to the Archipelago.[28]

---

[23] GA Res. 2066 (XX), 16 December 1965.

[24] Declaration, at ¶6.

[25] UN GA Res 2232 (XXI), 20 December 1966.

[26] Adv. Op., at ¶39. In 1961, the United Nations established a special committee -- the 'Committee of Twenty-Four' -- to monitor the implementation of the Decolonization Declaration. The United Nations and Decolonization, Committee of 24 (Special Committee on Decolonization), available at https://www.un. org/ en/decolonization/specialcommittee.shtml

[27] *Ibid.*, at ¶43. In an internal cable from 1966, the UK government manifested its attitude towards the Chagossians, describing Chagossians as 'a few Tarzans or Man Fridays.' D.A. Greenhill, British diplomatic cable dated 31 August 1966, relating to the depopulation of the Chagos Archipelago. *See* Binoy Kampmark, 'The Chagos Islands Case, WikiLeaks and Justice', International Policy Digest, 28 February 2019, available at: https://intpolicydigest.org/2019/02/28/the-chagos-islands-case-wikileaks-and-justice.

[28] *Ibid.*, at ¶121.

The UK, pursuant to a 1972 agreement, paid £650,000 to Mauritius 'in full and final discharge of the United Kingdom's undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago.'[29] Despite the purported compensation, the Mauritian government remained hostile to the detachment of the Chagos Archipelago. In 1979, Prime Minister Ramgoolam told the Mauritian parliament that 'we had no choice' other than to agree to the detachment of the Chagos Archipelago.[30]

On 3 November 2000, a British Divisional Court ruled that the relevant parts of the 1971 ordinance were invalid.[31] On the same day, the British government repealed the entirety of the 1971 ordinance and immediately replaced it with another ordinance that allowed Chagossians to return to the Archipelago, with the exception of Diego Garcia.[32] Accordingly, Chagossians could legally return to one of the outer islands of the Archipelago after 2000. Contemporaneously, the British Foreign Secretary stated that the UK government was looking into the feasibility of resettling the Chagos Islanders.[33] In December 2001, the Human Rights Committee, after reviewing the United Kingdom's periodic report recommended that the UK should 'seek to make exercise of the Îlois' right to return to their territory practicable.'[34]

The first feasibility study addressing the resettlement of the Chagossians was completed in June 2002.

The study indicated that, while it may be feasible to resettle the islanders in the short term, the costs of maintaining a long-term inhabitation were likely to be prohibitive.

[29] Adv. Op., at ¶117.

[30] Mauritius Legislative Assembly, *Speech from the Throne, Address in Reply: Statement by the Prime Minister of Mauritius*, 11 Apr. 1979, at p. 456; *see also*, Robinson Op., at ¶93.

[31] *Regina (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs & another (No. 1)*, (2000); *see also* Adv. Op., at ¶121.

[32] Adv. Op., at ¶122.

[33] *Ibid.*, at ¶121.

[34] *Ibid.*, at ¶123. Chagossians are also referred to as 'Îlois.'

Even in the short term, natural events such as periodic flooding from storms and seismic activity, were likely to make life difficult for a resettled population.[35]

Two years later, in 2004, the United Kingdom, by executive order, again declared return to the Archipelago illegal.[36] Once again, in 2007, these orders were declared invalid by UK Courts as an 'abuse of power' by the UK government but ultimately the House of Lords, on 22 October 2008, upheld the Government's appeal and held that the executive orders were valid. The UK government then ordered another feasibility study, conducted between 2014 and 2015, which again concluded that although resettlement was possible, it would have high and indeterminate costs and long-term liabilities for the British taxpayer.[37] Ultimately, the British government, on 16 November 2016, decided against resettlement on the 'grounds of feasibility, defence and security interests and cost to the British taxpayer.'[38]

*** *** ***

Almost 50 years after Mauritius' independence and the detachment of the Chagos Archipelago, the UN General Assembly requested an advisory opinion from the ICJ and referred two questions to the court.[39]

II. The Advisory Opinion

The General Assembly requested that the ICJ advise on two questions (the 'General Assembly Request'). The first whether the decolonization of Mauritius was complete, following the detachment of the Chagos Archipelago, and, second, what are the consequences in international law arising from the UK's continued administration of the Archipelago.[40] These questions primarily raise two substantive issues; first, the issue of

[35] *Ibid.*, at ¶124.

[36] *Ibid.*

[37] *Ibid.*, at ¶129.

[38] *Ibid.*

[39] GA Res. 71/292, 23 June 2017.

[40] Adv. Op. at ¶7:

self-determination in the decolonization context, and second, the territorial integrity of colonial units.

A. The ICJ's Jurisdiction and the Exercise of Its Discretion to Grant an Advisory Opinion

While the primary substantive issue confronted by the ICJ pertained to the right of self-determination, the ICJ was also required to address a number of jurisdictional and procedural issues. The Court had to determine whether it had jurisdiction to issue an advisory opinion. The ICJ's jurisdiction is based on Article 65 of the Statute of the ICJ which provides that 'the Court *may* give an advisory opinion on *any legal question*' at the request of the UN.[41] The Court unanimously held that the two questions were legal questions. The more difficult issue was whether the ICJ *should* exercise its discretion to grant an advisory opinion.

1. Bilateral Disputes and the Necessity of State Consent

The UK submitted to the Court that the ICJ should not exercise its discretion because the issue before it was a bilateral dispute between Mauritius and the United Kingdom and neither party had submitted to the jurisdiction of the ICJ. To 'render an advisory opinion would contravene "the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent."'[42] The UK continues to maintain this position in opposition to the Resolution. The Court rejected the submission on the basis that the opinion requested was on the matter of decolonization, which had

(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 particular those of Chagossian origin?

[41] Art. 65, United Nations, *Statute of the International Court of Justice*, 18 April 1946, available at: https://www.refworld.org/docid/3deb4b9c0.html (emphasis added).

[42] Adv. Op., at ¶83 (quoting *Western Sahara,* pp. 24-25, ¶¶32-33; *Interpretation of Peace Treaties,* p. 71).

a particular concern to the UN and included questions about the General Assembly's role in the decolonization process.

Separately, Judge Joan Donoghue dissented on the issue of the Court exercising its discretion because it did so in the absence of the UK's consent:

[T]he Advisory Opinion has the effect of circumventing the absence of United Kingdom consent to judicial settlement of the bilateral dispute between the United Kingdom and Mauritius regarding sovereignty over the Chagos Archipelago and thus undermines the integrity of the Court's judicial function.[43]

Judge Tomka also dissented to the Court exercising its discretion, concluding that the Court had exceeded what was required by the General Assembly Request by making 'an unnecessary pronouncement on 'an unlawful act of a continuing character' by the United Kingdom.'[44] In doing so, according to Judge Tomka, the Court 'intrude[d] upon the bilateral dispute between Mauritius and the United Kingdom.'[45] Judge Gevorgian voted in favour of the exercise of the Court's discretion and all other questions voted on by the Court, but he was also of the view, like Judge Tomka, that the Court should not have addressed the issue of State responsibility and should not have ruled 'that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act.'[46] According to Judge Gevorgian, the Court 'crossed the thin line separating the Court's advisory and contentious jurisdiction'[47] by dealing with aspects of the bilateral dispute without the United Kingdom's consent.[48]

[43] Dissenting Opinion of Judge Donoghue ('Donoghue Dissent'), at ¶1.

[44] Declaration of Judge Peter Tomka (Tomka Decl.'), at ¶8.

[45] *Ibid.*, at ¶7. Judge Tomka dissented to the exercise of the Court's discretion and, like Judge Donoghue, voted against its exercise. But unlike Judge Donoghue, Judge Tomka concurred with every substantive finding of the Advisory Opinion and voted in their favour. Judge Donoghue voting against the Court exercising its discretion and also voted against every substantive decision of the Court.

[46] Declaration of Judge Kirill Gevorgian, at ¶5.

[47] *Ibid.*

[48] *Ibid.*, at ¶4.

2. The Marine Protected Area and the UNCLOS Arbitration

The UK also submitted that the ICJ should decline to exercise its discretion on the basis of *res judicata* because of the preceding arbitration between Mauritius and the UK.[49] In April 2010, the United Kingdom announced the creation of a marine protected area in and around the Chagos Archipelago (the 'Marine Protected Area' or 'MPA'). In December 2010, Mauritius initiated arbitration proceedings pursuant to United Nations Convention on the Law of the Sea ('UNCLOS')[50] primarily on the basis that its rights to the fishing and natural resources of the area around the Archipelago were ignored. The UNCLOS Arbitral Tribunal ultimately held that the Lancaster House agreement included binding undertakings by Britain to return the Archipelago to Mauritius when it was no longer needed for defence purposes, provide Mauritius with fishing rights and retain the benefit of oil and mineral resources for Mauritius.[51] The attempt to exclude Mauritians from exercising fishing rights by the creation of the MPA therefore disregarded Mauritius' interests, rendering the MPA unlawful.[52] The Tribunal, however, held that it did not have jurisdiction to determine Mauritius' claim to sovereignty over the Archipelago.[53]

The ICJ rejected the UK's submission that it refrain from exercising its jurisdiction on the basis of *res judicata* because 'its opinion "is given not to states, but to the organ which is entitled to request it."'[54] Furthermore, the ICJ noted that the issues before the UNCLOS arbitral tribunal were different to those before the ICJ.[55] However, the ICJ did state that it 'will consider any relevant judicial or arbitral decision.'[56]

[49] *The Matter of the Chagos Marine Protected Area Arbitration, (Mauritius v. UK)*, PCA, Award, 18 March 2015.

[50] UN General Assembly, *Convention on the Law of the Sea*, 10 December 1982, available at: https://www.refworld.org/docid/3dd8fd1b4.html

[51] *Mauritius v. UK*, PCA, at ¶488

[52] *Ibid. See also,* Michael Waibel, *Mauritius v. UK: Chagos Marine Protected Area Unlawful*, EJIL! Talk, 17 April 2015. Available at https://www.ejiltalk.org/mauritius-v-uk-chagos-marine-protected-area-unlawful/.

[53] *Mauritius v. UK*, PCA, at ¶206.

[54] Adv. Op., at ¶81(quoting *Interpretation of Peace Treaties*, p. 71).

[55] *Ibid.*

[56] *Ibid.*

B. Self-Determination in the Decolonization Context

The Court was required to determine when the right to self-determination in the colonial context crystallized as an *erga omnes* rule of customary international law.[57] Customary international law is constituted through general practice accepted as law.[58] That is, general state practice and *opinio juris* -- state practice will amount to customary international law if the practice is adhered to because of a belief that it is a legal obligation to do so.[59]

1. The Declaration Is Evidence of Custom Even Though It Is Formally Only a Recommendation

In 1960, the UN adopted the Decolonization Declaration, which declared that '[a]ll peoples have the right to self-determination'[60] and '[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 UN Charter.[61] The UK submitted that the Declaration 'is nothing more than an aspirational instrument,'[62] and the Court agreed that the Decolonization Declaration alone 'is formally a recommendation.'[63] The Court held that despite its formal status, the Decolonization Declaration had normative value and was "'evidence important to establishing the existence of a rule or the emergence of an *opinio juris*."'[64]

---

[57] Adv. Op., at ¶148.

[58] Art. 38, Statute of the ICJ, *supra* note 30.

[59] Here, the Court quoted from its decision in *North Sea Continental Shelf*, Judgment, I.C.J. Reports 1969, p. 44, para. 77:

> Not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it.

Adv. Op., at ¶150.

[60] GA Res. 1541 (XV), Art. 2.

[61] *Ibid.,* Art. 6.

[62] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, General List No. 169, Written Statement, The United Kingdom of Great Britain and Northern Ireland, 15 February 2018 (the 'UK Subm.'), at ¶8.80.

[63] Adv. Op., at ¶152.

[64] *Ibid.*, at ¶151 (quoting *Legality of the Threat or Use of Nuclear Weapons,* Advisory Opinion, I.C.J. Reports 1996 (I), pp. 254-255, para. 70).

To determine whether the Decolonization Declaration provides evidence of a customary norm, the Court considered its normative character and the conditions of its adoption. The Court held that it is of a 'normative character' in that 'it affirms that "[a]ll peoples have the right to the self-determination."' The Declaration was adopted by a vote of 89-0, with 9 abstentions, and '[n]one of the states participating in the vote contested the existence of the right of peoples to self-determination.'[65] Accordingly, the Court held that the Declaration was evidence of the existence of the right to self-determination upon its adoption in 1960.

The Court continued by emphasizing the right to self-determination was included, in almost identical terms, as the first human right in both the International Covenant on Civil and Political Rights ('ICCPR') and the International Covenant on Economic, Cultural and Social Rights ('ICECSR').[66] Not only did the ICCPR and the ICESCR (collectively, the 'Human Rights Covenants') provide a specific right of self-determination in the decolonization context, it required state parties to 'promote the realization of the right of self-determination.'[67] The Human Rights Covenants were evidence of the status of the right to self-determination in customary international law. The Court also noted that the right to self-determination was reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in 1970 (the 'Declaration on International Law').[68]

The Court also held that the right to self-determination includes a right to the territorial integrity of the non-self-governing territory in customary international law. 'Both State practice and opinio juris at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination.'[69]

---

[65] Adv. Op., at ¶152.

[66] International Covenant on Civil and Political Rights, 1966, 999 UNTS 171; and, International Covenant on Economic, Social and Cultural Rights, 1966, 999 UNTS 3.

[67] ICCPR, Art. 1(3); ICESCR, Art. 1(3).

[68] Adv. Op., at ¶155.

[69] *Ibid.*, at ¶160.

2. When Did the Right to Self-Determination in the Decolonization Context Become *Jus Cogens*?

Article 53 of the Vienna Convention on the Law of Treaties states that:

> a peremptory norm of international law is a norm accepted and recognized by the international community of States *as a whole as a norm from which no derogation is permitted* and which can be modified only by a subsequent norm of international law having the same character.[70]

As such, the difference between an ordinary rule of international law and a *jus cogens* norm of international law relates, primarily, to whether derogation is permissible.[71] The Court did not even refer to *jus cogens* or peremptory norms of international law in the Advisory Opinion, but simply stated that 'respect for the right to self-determination' is 'an obligation *erga omnes*.'[72] In failing to decide on the *jus cogens* status of the right to self-determination, the Court failed to not only address the status of the right, but also missed an opportunity to clarify the nature and character of *jus cogens* -- a contested issue.[73] Judges Antônio Augusto Cançado Trindade, Patrick Robinson and Julia Sebutinde, in their individual separate opinions, while concurring with the outcome of the Advisory Opinion, each took issue with the majority's supposed failure to specifically find that the right to self-determination in the decolonization context is *jus cogens* or a peremptory norm.[74]

Judge Cançado Trindade, adopting a 'universalist and humanist' approach, found that the right to self-determination was *jus cogens*.[75] Judge Robinson stated that 'the Court's case law, state practice and *opinio juris*, and scholarly writing are sufficient to warrant characterizing the right to self-determination as a norm of *jus cogens*, and to justify the

---

[70] Art. 53, Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331 ('VCLT') (emphasis added).

[71] Ulf Linderfalk, 'What Is So Special About Jus Cogens? - On the Difference between the Ordinary and the Peremptory International Law', 14 *International Community Law Review (ICLR)* (2012) 3, at 4.

[72] Adv. Op., ¶180. *See also* Robinson Op., ¶76 ('While *jus cogens* norms give rise to *erga omnes* obligations, *erga omnes* obligations are not necessarily the consequence of *jus cogens* norms.').

[73] Linderfalk, *ICLR*, at 11.

[74] While Judge Robinson described the Court's failure to address *jus cogens* as 'interesting,' Judge Cançado Trindade noted that the Court failed to address *jus cogens* 'for reasons which escape my comprehension.' The Separate Opinion of Judge Cançado Trindade (the 'Cançado Trindade Op.'), at ¶169.

[75] Cançado Trindade Op., at ¶200.

conclusion that it possessed that status in the relevant period 1965-1968.'[76] Likewise, Judge Sebutinde found that the right to self-determination is a peremptory norm and stated that '[t]here can be no doubt that the inalienable right to self-determination sits at the pinnacle of the international legal order.'[77]

The Court, in the Advisory Opinion, held that the right to self-determination crystallized as a rule of customary international law in 1960 with the adoption of the Decolonization Declaration. However, the relevant time period here is 1965-1968 and the question of *when* the right of self-determination became a *jus cogens* norm is open to debate. It is unclear as to when derogation from a right to self-determination was no longer 'permitted'.

In 1960, before the adoption of the Decolonization Declaration in December of that year, 17 new states became members of the UN after being decolonized; a clear indication of state practice accepting the right of colonies to self-determination. However, the majority of colonies were not decolonized until after the Declaration. Almost half of the colonies in Africa were decolonized between 1961 and 1975, none of the British Caribbean was decolonized before the Declaration, most of the now Pacific Ocean states remained colonies until well into the 1970s, and there remains 17 non-self-governing territories.[78] From 1960 to 2002, 54 territories attained self-government. Indeed, the UN General Assembly, in 2011, proclaimed the present decade, 2011-2020, as the Third International Decade for the Eradication of Colonialism.[79]

It is perhaps doubtful that the Decolonization Declaration could have crystallized as a norm of customary international law in 1960, a threshold requirement for a *jus cogens* norm,[80] *and*, simultaneously, precipitated 'a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted.'[81] Instead, at least between 1960 and 1966, it appears that derogation from

[76] Robinson Op., at ¶¶50, 77.

[77] Sebutinde Op., at ¶30.

[78] The United Nations and Decolonization, *History*, available at https://www.un.org/en/decolonization/history.shtml.

[79] *Ibid*.

[80] *See* Robinson Op., at ¶77(a).

[81] Art. 53, VCLT, *supra* note 61.

the right *was the norm* and while the existence of the right was recognized by the international community, it is at least questionable whether the international community *as a whole* recognized that *no derogation* was permitted.[82] At the earliest, the customary international law rule providing a right to self-determination became a *jus cogens* norm 'from which no derogation is permitted' with its inclusion in the Human Rights Covenants in 1966. Judge Robinson seems to implicitly support this interpretation by stating: '[i]ndeed, as a right that is seen as essential for the enjoyment of all the rights entrenched in the ICCPR and ICESCR, how could it not be a norm of *jus cogens*?'[83]

If the Advisory Opinion had addressed the *jus cogens* nature of the right, these issues would, presumably, also have been considered.

3. The UK's Persistent Objections to the Recognition of the Right to Self-Determination Are Irrelevant

Customary international law applies to all states and the ICJ held that, in 1960, 'the right to self-determination crystallized as a customary rule *binding on all states*.'[84] The UK persistently objected to the status of the right to self-determination in international law and maintained that '[e]ven if there had been a customary "right" for the people of a non-self-governing territory to territorial integrity in the 1960s, it would not be binding on the United Kingdom because it was a persistent objector'.[85] The Court held that the right to self-determination applied to the UK and its colonies.

---

[82] The UK was of the view that derogation was permitted. In 1974, '[t]he United Kingdom strongly opposed the inclusion of [article 1], holding that self-determination was a principle not a right. . . . Most of our remaining dependent territories are still not ready to choose their eventual status.' UK Subm. at ¶8.73 (*quoting* Report of Working Group of Officials on the Question of Ratification of the International Covenants on Human Rights, 1 August 1974, Annex D, para. 5).

[83] Robinson Op., at ¶77(c).

[84] Adv. Op., at ¶148 (emphasis added). *See also ibid.,* at ¶161 (''the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them.'' quoting *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, I.C.J. Reports 1971, p. 31, para. 52).

[85] UK Subm., at ¶8.59. According to the British submission, 'the United Kingdom had consistently, throughout the 1950s and 1960s, objected to references to a 'right' of self-determination in UN instruments.' *Ibid.*, at ¶8.71.

The Court concluded that 'as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the "BIOT", the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.'[86]

C. The Value of UN Resolutions (other than the Decolonization Declaration)

A number of judges emphasised the 'significance [attached] to the normative content of the relevant resolutions of the United Nations General Assembly' and observed that '[t]he Court should have paid more attention to the value of key resolutions of the General Assembly.'[87] The UN General Assembly resolutions that were adopted before 1960 and the Decolonization Declaration[88] 'reflect a strong commitment to fundamental human rights' and 'provided a foundation that was essential for the right to self-determination that was definitively elaborated' in the Decolonization Declaration.[89] The UN General Assembly's adoption of the Decolonization Declaration 'crystallized the right of peoples to self-determination in general international law.'[90] Likewise, Judge Salam emphasized the importance of UN Security Council resolutions endorsing the Decolonization Declaration between 1960 and 1965.[91] According to Judge Salam, the UN Security Council resolutions endorsing the Decolonization Declaration 'attests to its binding nature.'[92]

[86] Adv. Op., at ¶174.

[87] Joint Decl., ¶1.

[88] *See* GA Res. Nos. 1188(XII), 11 December 1957; 2621(XXV), 12 October 1970; and 2625(XXV), 24 October 1970.

[89] Joint Decl., ¶2.

[90] *Ibid.*, ¶2.

[91] Declaration of Nawaf Salam, ¶4.

[92] *Ibid.*, ¶5.

III. The consequences of the Advisory Opinion

A. Completing the Decolonization of Mauritius

The UN endorsed the Advisory Opinion and the Resolution demands that the UK cease administering the Archipelago within 6 months (25 November 2019).[93] The Court stated that it is for the UN General Assembly to determine 'the modalities necessary for ensuring the completion of the decolonization of Mauritius,'[94] and noted that '[t]he right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized.'[95] However, the Resolution failed to provide for any modalities and instead simply demanded Britain cease administering the Chagos Archipelago to enable *Mauritius* to continue the process of decolonization.[96] It does not appear that the UN is intending to consider the views of the Chagossians in the completion of Mauritian decolonization. The Court, should have provided additional guidance on the nature and range of the 'modalities' available to the UN.

The Court added that 'all Member States must co-operate with the United Nations to put those modalities into effect'[97] and the Resolution '*calls upon* all Member States to cooperate with the United Nations to ensure the completion of the decolonization of Mauritius as rapidly as possible'.[98]

B. The US/UK Agreement and the Future of Diego Garcia

Two judges, Judge Robinson and Judge Sebutinde, also found that the agreement between the United States and the United Kingdom whereby the US leased Diego Garcia and built a military facility is void as a consequence of the right to self-determination being, in their view, a *jus cogens* norm. Judge Robinson stated that because '[t]he 1966 Agreement . . . conflicts with the right to self-determination of the peoples of Mauritius including the Chagossians, [it] is void by virtue of Article 53 of the VCLT, since that right

[93] GA Res. 73/295, at ¶3.

[94] Adv. Op., at ¶179.

[95] *Ibid.*, at ¶157 (quoting *Western Sahara*, p. 36, para. 71).

[96] GA Res. 73/296, at ¶3.

[97] Adv. Op., at ¶¶ 51, 180.

[98] GA Res. 73/296, at ¶5 (emphasis in original).

is a norm of *jus cogens*' and 'is incapable of producing any legal effects.'[99] Likewise, according to Judge Sebutinde '[a]ny treaty that conflicts with the right of the Mauritian people to exercise their right to self-determination with respect to the Chagos Archipelago is void. This has clear implications for the agreement between the United Kingdom/United States.'[100] However, the Advisory Opinion and the other judges do not mention the validity of the 1966 Agreement.

C. Compensation & Resettlement

The UN General Assembly did not specifically request an advisory opinion on the issue of compensation but simply the 'consequences under international law' of the ongoing administration of the Chagos Archipelago by the United Kingdom. However, the Advisory Opinion did review the compensation payments promised and made by the UK. The UK, pursuant to a 1972 agreement, paid £650,000 to Mauritius 'in full and final discharge of the United Kingdom's undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago.'[101] Ten years later, in 1982, the United Kingdom agreed to pay £4 million 'with no admission of liability on the part of the United Kingdom, 'in full and final settlement of all claims."'[102] The £4 million was distributed among 1,344 islanders who were required to sign a release acknowledging that the moneys received were in full and final settlement of any claim against the UK.[103] The UK is now apparently working with Chagossian communities to implement a $US50 million 'support package.'[104] As far as the UK is concerned, resettlement remains impossible.

D. The Reaction to the Advisory Opinion and the Resolution

As soon as the Advisory Opinion was issued the UK government stated that it would carefully consider it, but within a day of the decision the British Government had rejected

[99] Robinson Op., ¶88.

[100] Sebutinde Op.,¶45.

[101] Adv. Op., at ¶117.

[102] *Ibid.*, at ¶119 (*quoting* Art. 2 of the 1982 Agreement between the UK and Mauritius).

[103] ECtHR, *Chagos Islanders v. United Kingdom*, Appl. No. 35622/04, Decision of 11 December 2012.

[104] UN Meetings Coverage, *supra* note 2, at 2.

the ICJ's decision, emphasizing that the decision was advisory and non-binding.[105] A British Member of Parliament, Alan Duncan, went further and attacked the UN:

For the General Assembly to seek an advisory opinion by the ICJ was therefore a misuse of powers which sets a dangerous precedent for other bilateral disputes.[106]

The British maintained that position in opposition to the Resolution, and together with Australia, the United States, and Israel emphasized that the matter is a bilateral dispute, which required the consent of the parties to fall within the ambit of the Court's jurisdiction.

The British government have also repeatedly invoked the purported security and defence benefits of the Diego Garcia base to justify their continued administration of the Archipelago. In opposing the Resolution, the UK's ambassador to the UN maintained that the defence facility 'plays a vital role in efforts to keep allies safe and secure, notably in combatting terrorism, drugs, crime and piracy.'[107]

Conclusion

The future of the Chagos Archipelago remains uncertain despite the UN General Assembly's overwhelming endorsement of the ICJ's Advisory Opinion and its demand that UK's colonial administration cease within 6 months. The UK is adamant that it retains sovereignty over the Archipelago, at least until it is no longer required for defence purposes. But it is difficult to imagine how and when the parties will determine that the facility is not required for defence purposes, and pursuant to the Lancaster House Agreement, the Archipelago is to be returned to Mauritius. Although the UK is

[105] Marlise Simons, U.N. Court Tells Britain to End Control of Chagos Islands, Home to U.S. Air Base, *The New York Times*, Feb. 25, 2019, available at: https://www.nytimes.com/2019/02/25/world/asia/ britain- mauritius-chagos-islands.html.

[106] Ashley Cowburn, Foreign Office minister accuses UN General Assembly of 'misuse of powers' after Chagos Islands judgment, *The Independent*, 26 February 2019, available at https://www. independent.co.uk/news/uk/politics/foreign-office-minister-accuses-un-general-assembly-of-misuse-of-powers-after-chagos-islands-a.

[107] UN Meetings Coverage, *supra* note 2, at 2. *See also*, James Griffiths, UN court ruling puts future of strategic US military base Diego Garcia into question, *CNN*, February 26, 2019, available at https://edition. cnn.com/2019/02/25/asia/uk-chagos-mauritius-intl/index.html.

apparently working with the Chagossian expatriate community towards the provision of a $50 million 'support package' they have no present intention to enable the resettlement of Chagossians on the Archipelago.

The ICJ held that the right to self-determination crystalized as a norm of customary international law in 1960 when the United Nations adopted the Decolonization Declaration. The Court, however, ignored its potential *jus cogens* status and instead simply held that the right to self-determination precipitated *erga omnes* obligations. The Court missed an opportunity to conclusively address the nature of the right to self-determination in the decolonization context and clarify the contested character of *jus cogens* norms.

The Court consequently held that the decolonization of Mauritius had not been completed when it attained independence in 1968, and now the British should cease their administration of the Archipelago, and the decolonization of Mauritius should be completed. The Court left the method of completing the decolonization of Mauritius to the UN General Assembly and provided only limited guidance on what the UN could and should do. Although, there are a range of options available to the UN, to date the UN has only demanded the cessation of UK administration within six months. The Resolution then states that the cessation of UK administration of the Archipelago will enable Mauritius to complete its own decolonization. Here, it would have been beneficial to the UN if the Court had articulated what steps, if any, should be undertaken, apart from the cessation of UK administration, to *complete* Mauritius' decolonization. It would also have been beneficial to the UN for the Court to have specifically addressed the full gamut of 'modalities' available.

The Court probably exceeded its advisory jurisdiction when it declared British administration of the Archipelago an unlawful act. In doing so, the Court raised questions about the legality of the U.S./U.K. 1966 agreement over Diego Garcia. Two of the concurring judges declared the agreement void. In declaring the UK's administration of the Archipelago continuing unlawful conduct, the Court should have taken the logical next step and addressed the status of the 1966 agreement.

The Chagossians must now wait to see whether the UK ultimately ceases administering the Archipelago on or before 25 November 2019. The UK's reticence to comply with the

Advisory Opinion and the 2019 Resolution undermine the authority of the ICJ and the UN, and the rule of law -- by a state that has long been a proponent of the rule of law.

As an aside - it appears that the dispute between Argentina and the UK over the Malvinas/Falklands Islands has been taken off the back-burner as a result of the Advisory Opinion and the Resolution. In arguing in favour of the Resolution, the Argentinian representative to the UN urged Britain to negotiate over the future of the Malvinas/Falklands Islands.[108] Will this Argentina/UK dispute be referred to the ICJ?

[108] UN Meetings Coverage, *supra* note 2, at 2.

Bibliography

Conventions and Other International Instruments, and UN Resolutions

United Nations, *Statute of the International Court of Justice*, 18 April 1946

Recommendations Concerning International Respect for the Right of Peoples and Nations to Self-Determination, GA Res. Nos. 1188(XII), 11 December 1957.

Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res. 1541 (XV), 15 December 1960.

Question of Mauritius, GA Res. 2066 (XX), 16 December 1965.

Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands , Cocos (Keeling) Islands, Dominica, Gilbert And Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands, GA Res 2232 (XXI), 20 December 1966.

International Covenant on Economic, Social and Cultural Rights, 1966, 999 UNTS 3.

International Covenant on Civil and Political Rights, 1966, 999 UNTS 171.

Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331.

Programme of Action for the Full Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, 2621(XXV), 12 October 1970.

Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, 2625(XXV), 24 October 1970.

United Nations Convention on the Law of the Sea, 10 December 1982.

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, GA Res. 71/292, 23 June 2017.

The opinion of the International Court of Justice on the legal consequences of the separation of Chagos Archipelago from Mauritius in 1965, Draft resolution, A/73/L.84/Rev.1.

Cases & Associated Material

Regina (Bancoult) v. *Secretary of State for Foreign and Commonwealth Affairs & another (No. 1),* (2000).

ECtHR, *Chagos Islanders v. United Kingdom*, Appl. No. 35622/04, Decision of 11 December 2012.

The Matter of the Chagos Marine Protected Area Arbitration, (Mauritius v. UK), PCA, Award, 18 March 2015.

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, General List No. 169, Written Statement, The United Kingdom of Great Britain and Northern Ireland, 15 February 2018.

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, General List No. 169, Written Statement of the Republic of Mauritius, 1 March 2018, Annex 59, U.K. Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965);

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 25 February 2019, [ICJ Reports (2019), ****], General List No. 169.

Other Source Material

Joshua Castellino, 'International Law and Self-Determination: Peoples, Indigenous Peoples, and Minorities,' in Christian Walter, Antje von Ungern-Sertnberg, and Kavus Abushov (eds), *Self-Determination and Secession in International law* (Oxford: Oxford University Press, 2014), 27-44.

Antonio Cassese, 'A Plea For a Global Community Grounded in the Core of Human Rights', in *Realizing Utopia: the Future of International Law* (2012), 137.

Ashley Cowburn, Foreign Office minister accuses UN General Assembly of 'misuse of powers' after Chagos Islands judgment, *The Independent*, 26 February 2019, available at https://www. independent.co.uk/news/uk/ politics/foreign-office-minister-accuses-un-general-assembly-of-misuse-of-powers-after-chagos-islands-a.

Binoy Kampmark, 'The Chagos Islands Case, WikiLeaks and Justice', International Policy Digest, 28 February 2019, available at:

https://intpolicydigest.org/2019/02/28/the-chagos-islands-case-wikileaks-and-justice.

James Griffiths, UN court ruling puts future of strategic US military base Diego Garcia into question, CNN, February 26, 2019, available at https://edition.cnn.com/2019/02/25/asia/uk-chagos-mauritius-intl/index.html.

Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (2016).

Ulf Linderfalk, 'What Is So Special About Jus Cogens? - On the Difference between the Ordinary and the Peremptory International Law', 14 *International Community Law Review (ICLR)* (2012) 3.

Marlise Simons, 'U.N. Court Tells Britain to End Control of Chagos Islands, Home to U.S. Air Base', *The New York Times*, Feb. 25, 2019, available at: https://www.nytimes.com/2019/02/25/world/asia/britain-mauritius-chagos-islands.html.

UK Chagos Support Association, '*Who are the Chagossians*', available at https://www.chagossupport.org.uk/ who-are-the-chagossians.

The United Nations and Decolonization, Committee of 24 (Special Committee on Decolonization), available at https://www.un.org/en/decolonization/specialcommittee.shtml.

The United Nations and Decolonization, *History*, available at https://www.un.org/en/decolonization/ history.shtml.

UN Meetings Coverage, *General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization*, 24 May 2019, at 1, available at https:// www.un.org/press/en/2019/ga12146.doc.htm.

Jure Vidmar, 'The Annexation of Crimea and the Boundaries of the Will of the People, 16 *German Law Journal* 3, 366-383.

Michael Waibel, *Mauritius v. UK: Chagos Marine Protected Area Unlawful*, EJIL! Talk, 17 April, 2015, available at https://www.ejiltalk.org/mauritius-v-uk-chagos-marine-protected-area-unlawful/.

Universitat Pompeu Fabra Barcelona

International Public Law and International Relations Research Group

Carrer Ramon Trias Fargas, 25
08005 Barcelona - SPAIN
Phone no.: +34 935421918
Orbis Website: www.upf.edu/orbis