

Advisory Opinion of the ICJ on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, 25 February 2019

On 25 February 2019, the International Court of Justice (ICJ) has given its Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. The Court was almost unanimous – its decision not to exercise discretion and decline giving an opinion was made by 12 votes to 1, while its findings on the merits were made by 13 votes to 1 (Judge Donoghue dissenting). In that Opinion, the Court, (1) unanimously, found that it has jurisdiction to give the advisory opinion requested; (2) by twelve votes to two, decided to comply with the request for an advisory opinion; (3) by thirteen votes to one, was of 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; (4) by thirteen votes to one, was of the opinion that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible; (5) by thirteen votes to one, was of the opinion that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius, since self-determination is an obligation *erga omnes*, and that the United Nations General Assembly (UNGA) must ensure the protection of the human rights of the expelled Chagossians.

On the issue of the exercise of discretion/propriety to give an opinion, Judge Tomka joined Judge Donoghue in noting that the Court should have declined giving an opinion, consistently with his prior position in the Kosovo Advisory Opinion. The Court effectively gets around this problem by labeling the advisory proceedings as being about decolonization, an issue in which the UNGA has a longstanding interest, rather than about sovereignty.

The questions on which the advisory opinion of the Court had been requested, set forth in resolution 71/292 adopted by the General Assembly on 22 June 2017, read as follows: (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?” The Court found that the separation of the Chagos Archipelago from the British colony of Mauritius was contrary to the duty of an administering power to respect the national unity and territorial integrity of Mauritius, and that accordingly the decolonization of Mauritius was not completed in conformity with international law. As a consequence, the Court found that the UK’s continuing administration of the archipelago, which includes the largest US naval base in the Indian Ocean, Diego Garcia, is a continuing internationally wrongful act, which the UK is under an obligation to cease as soon as possible.