



BRIEFING PAPER

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Disputes over the British Indian Ocean Territory: February 2021 update

By Claire Mills

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Contributing Authors: Patrick Butchard, international law specialist

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Summary

Between 1968 and 1973 the British Government cleared the entire Chagos Archipelago of its inhabitants in anticipation of a US military base on the biggest island, Diego Garcia. The Archipelago was made a colony, the British Indian Ocean Territory (BIOT). It subsequently became a British Overseas Territory.

Two main disputes have arisen from these events. One has been between the Chagos Islanders and the British Government over the legality of their removal and whether they have a right to return. The other has been between the UK and Mauritius about sovereignty over the BIOT. In 1965 the UK undertook that it will cede sovereignty to Mauritius once the BIOT is no longer required for defence purposes.

A May 2013 [Library briefing](#) surveyed the origins and subsequent evolution of these disputes, including past and ongoing legal cases brought before British, European and international courts. This paper summarises the main developments since May 2013. It is an update to a [briefing previously published in December 2019](#).

Chagossian resettlement?

In June 2015 the Supreme Court heard an application for the 2008 verdict of the House of Lords – which ruled that the use in 2004 of Orders in Council to prevent the Chagossians from returning had been lawful – to be set aside. In June 2016 the Supreme Court ruled against the application by a majority of three to two. But, with a fresh resettlement feasibility study recently completed, it also said that the Government should reconsider the ban on the Chagossians returning home as it may no longer be lawful.

However, in November 2016 the previous Government announced that it had decided not to allow resettlement. The decision provoked condemnation from Mauritius and supporters of the Chagossian cause in the UK and became the subject of judicial review. In February 2019, the Divisional Court found for the Government. Lawyers for the Chagossians sought permission to appeal the verdict, which was granted in July 2019.

That appeal was heard in May 2020 and a [judgement](#) was passed down in July. The appeal centred around the applicability of the European Convention on Human Rights (ECHR) to the Chagos Islands, whether the Divisional Court had applied the right level of scrutiny to the Government's decision making, and the rationality of the decision made by the Government in 2016. The appeal was dismissed on all grounds.

There has also been ongoing debate about the best use of – and motives behind – a £40 million support package for Chagossians, to be spent over a ten-year period, which was announced when the decision on resettlement was made.

Status of the Marine Protected Area

In 2015 a Marine Protected Area (MPA), previously introduced by the British Government around the Chagos Archipelago (apart from Diego Garcia, where there is a US military base), was ruled by a Tribunal under the UN Convention on the Law of the Sea to have been established without proper regard to the rights of Mauritius. Some legal commentators have taken this as tantamount to saying that the MPA is unlawful. The UK disagrees with this interpretation.

The UN Tribunal was more equivocal on sovereignty than the Mauritian Government, which brought the case, hoped it would be. It declined jurisdiction on the issue but found that the UK's 1965 undertaking to cede sovereignty to Mauritius when the BIOT is no longer required for defence purposes is binding under international law.

Chagossians in the UK have been seeking to challenge the establishment of the MPA through the English courts since 2013. They argued that it was created for an improper purpose – to prevent resettlement – and that the consultation process prior to its establishment had been inadequate. However, the High Court and Court of Appeal found against the Chagossians and in February 2018 the Supreme Court did so too.

Sovereignty dispute

In July 2016 Mauritius said that it would seek a referral by the UN General Assembly to the International Court of Justice, in order to obtain an Advisory Opinion on sovereignty. Advisory Opinions are not legally binding but can carry great legal weight.

Mauritius put the matter before the General Assembly in June 2017, which referred the matter to the Court. The ICJ issued an Advisory Opinion in February 2019, in which it found that 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”. It went on to assert that the UK is therefore “under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.”

The UK Government rejected the Advisory Opinion but said it was open to further bilateral talks with Mauritius. On 22 May 2019, the UN General Assembly passed a resolution which endorsed the Opinion and called on the UK to end its administration of the BIOT within six months. The UK Government did not accept this resolution. The six-month deadline passed on 22 November without UK acknowledgement. Mauritian prime minister Pravind Jugnauth subsequently called the UK an “illegal colonial occupier”. The Mauritian Government indicated that it was exploring the possibility of bringing crimes against humanity charges against individual British officials at the International Criminal Court (ICC). In October 2020 a submission was filed with the ICC accusing the BIOT Commissioner, Deputy Commissioner, and the UK’s military representative BIOT, of apartheid.

In January 2021 a Special Chamber of the International Tribunal for the Law of the Sea ruled in a dispute between Mauritius and the Maldives regarding the delimitation of their maritime boundary. The Tribunal rejected arguments that it had no jurisdiction in the case and subsequently determined that Mauritian sovereignty over the Chagos Archipelago had been inferred by the 2019 ICJ Advisory Opinion. The UK has rejected the ruling, arguing that as a non-party to the ITLOS dispute, its ruling can have no legal effect on the UK. However, there is a broad consensus among commentators that the ruling puts greater international legal pressure on the UK Government. It has also led many to, once again, question the legality of the Marine Protected Area.

US military base on Diego Garcia

In November 2016 the decision was made to extend the US military base on Diego Garcia until 2036.

The Biden administration has not made any public statements about the US’ military presence in Diego Garcia, or the wider sovereignty dispute between the UK and Mauritius. Given the number of challenges facing the new administration, both domestically and abroad, it is uncertain whether the BIOT sovereignty issue will be high on Biden’s agenda.

However, efforts to highlight the sovereignty dispute have reportedly been made to the new administration by the Mauritian Government and Chagossian supporters. The Mauritian Government has offered to lease the base to the US for 99 years, far longer than the current deal for access to 2036.

1. Chagossian resettlement?

1.1 2013 feasibility study

In July 2013, the Conservative-Liberal Democrat Coalition Government [announced](#) a new study on the feasibility of resettling Chagos Islanders, undertaking to reach a decision about the right of return by the time of the May 2015 election. A previous 2002 study, which concluded that resettlement was not feasible, was viewed by many as seriously flawed.

The new feasibility study was carried out by KPMG. It undertook a multi-dimensional analysis of the feasibility of three resettlement options: large-scale resettlement; medium-scale resettlement; and pilot, small-scale resettlement. The study included indicative cost estimates for each of the options.

Significantly, Diego Garcia was included in the study. Until this point, discussion about resettlement had largely focused on the outer islands, in part because it was believed that the US would not want the island, where it has a military base, included.

Because of its position on sovereignty, the Mauritian Government declined to engage with the new feasibility study on resettlement, although it supported the Chagossians on the issue.

KPMG submitted its [report](#) in January 2015. While accepting that there were challenges to resettlement, including significant amendment to the legal and constitutional framework of BIOT, it found that there were no “fundamental legal obstacles”.

The Coalition Government made the KPMG study public in February 2015, [saying](#) that it was an “important milestone, enabling interested parties with different perspectives to better understand the range of issues affecting any potential resettlement.” It added that it provided “a solid basis on which to begin our Policy Review”.

1.2 2015 public consultation

In August 2015 the previous Conservative Government began a short consultation exercise with Chagossians and other interested parties that ran until the end of October that year. A [summary](#) of the consultation responses was published in January 2016. Amongst the headlines was the finding that 98 per cent of 895 Chagossian respondents supported resettlement.

The All-Party Parliamentary Group (APPG) on the Chagos Islands broadly welcomed the outcome of the consultation exercise but said that the resettlement options set out by the Government in it had been overly restrictive. The group also queried the assumption of the Government that only UK funds would be available for resettlement, arguing that [other funding sources](#), including the US Government and the EU, could be available.

Following the publication of the summary of consultation responses, the Government said that it would consider the outcome before coming to

a decision on resettlement. However, it did not provide a timeframe for doing so.

[Fears](#) were expressed that the Government might hold over its decision until after the Supreme Court had ruled on an application to set aside the [2008 House of Lords verdict](#) on the lawfulness of prohibiting resettlement.¹

1.3 Supreme Court ruling – June 2016

The Supreme Court [heard](#) the application in June 2015. The grounds for the application were that the 2008 judgment was partly based on the 2002 feasibility study, which had now been shown to be flawed, and that documents which demonstrated this were not disclosed (under the “duty of candour”) to the Chagossians’ lawyers during the original proceedings.

The Supreme Court published its ruling on 29 June 2016. By 3:2 it [ruled](#) against setting aside the 2008 Lords verdict. While disappointed by the outcome, many supporters of the Chagossians argued that all was far from lost. In the [press summary](#) of the ruling the Court stated:

It is now open to any Chagossian to mount a fresh challenge to the failure to abrogate the 2004 orders in the light of the 2014-15 study’s findings, as an alternative to further lengthy litigation [...]

The 2014-15 study in question is the KPMG resettlement feasibility study outlined above.

The APPG stated in July 2016:

While accepting that it was a legal defeat the Group saw it as an ethical victory for the Chagossians, giving them the moral high ground. They were encouraged by the unequivocal message of all five judges that in the light of the KPMG feasibility study the Government should reconsider the ban on the Chagossians returning to their homeland since it may no longer be lawful. Also that if the Government failed to restore the right of abode then Chagossians would be able to challenge it by way of judicial review on the grounds of irrationality, unreasonableness and/or disproportionality.

1.4 Government decision on resettlement

On 16 November 2016 the Government announced that it had decided against resettlement. FCO Minister Baroness Anelay of St Johns said in a Lords’ [Written Statement](#):

I am today announcing that the Government have decided against resettlement of the Chagossian people to the British Indian Ocean Territory on the grounds of feasibility, defence and security interests, and cost to the British taxpayer. In coming to this decision the Government have considered carefully the practicalities of setting up a small remote community on low-lying

¹ In 2008 the House of Lords ruled 3:2 that the use of Orders in Council in 2004 to prevent the Chagossians from returning was lawful and not an abuse of power (overturning the verdicts of the High Court in 2006 and the Court of Appeal in 2007). See the [2013 Library briefing](#) for more detail.

islands and the challenges that any community would face. These are significant, and include the challenge of effectively establishing modern public services, the limited healthcare and education that it would be possible to provide, and the lack of economic opportunities, particularly job prospects. The Government have also considered the interaction of any potential community with the US Naval Support Facility—a vital part of our defence relationship.

The Government will instead seek to support improvements to the livelihoods of Chagossians in the communities where they now live. I can today announce that we have agreed to fund a package of approximately £40 million over the next 10 years to achieve this goal. This money addresses the most pressing needs of the community by improving access to health and social care and to improved education and employment opportunities. Moreover, this fund will support a significantly expanded programme of visits to BIOT for native Chagossians. The Government will work closely with Chagossian communities in the UK and overseas to develop cost-effective programmes which will make the biggest improvement in the life chances of those Chagossians who need it most.

Advocates for the Chagossians were quick to express disappointment at the decision. The APPG on the Chagos Islands issued a [statement](#) rejecting the “Government’s premise that feasibility, defence and security interests and cost were sufficient grounds for not agreeing to a pilot resettlement”. The group also questioned whether:

The Government had properly considered the Supreme Court conclusions that in the light of the KPMG study, maintaining the ban on Chagossian return may no longer be lawful, and that if the Government failed to restore the right of abode it would be open to Chagossians to mount a new challenge by way of judicial review.

The Government of Mauritius [condemned](#) the “unilateral decision”, reiterating that it did “not recognise the legality of the actions that the UK has purported, or is purporting, to take in respect of the Chagos Archipelago as they are in breach of international law”.

1.5 Subsequent court proceedings

Judicial review of the resettlement decision on – February 2019

A [judicial review](#) of the Government’s November 2016 decision took place before the UK Divisional Court in December 2018.

The Court issued its [ruling](#) on 8 February 2019, finding against the Chagossian challenge to the decision to refuse to allow or support resettlement. It also refused an application by lawyers for the Chagossians for leave to appeal the verdict.

The UK Chagos Support Association said it was distressing “to hear the court’s verdict while “Chagossian human rights are still being violated”.²

² <https://www.chagossupport.org.uk/post/2019/02/20/chagossians-lose-high-court-challenge>

Court of Appeal ruling – July 2019

Lawyers for the Chagossians lodged an appeal against the Divisional Court's February 2019 decision to refuse them leave to appeal. On 16 July 2019, the Court of Appeal subsequently [granted](#) that leave to appeal.

Significantly, in doing so it referred to the Advisory Opinion on sovereignty of the BIOT given by the International Court of Justice on 25 February 2019 (see [Advisory Opinion of the ICJ](#)), just over two weeks after the Divisional Court's original decision. The Court held that the arguments made in this Opinion should be heard during the appeal.

Appeal hearing – May 2020

The appeal was heard in May 2020 and a [judgement](#) was passed down in July. The appeal centred around the applicability of the European Convention on Human Rights (ECHR) to the Chagos Islands,³ whether the Divisional Court had applied the right level of scrutiny to the Government's decision making, and the rationality of the decision made by the Government in 2016. The appeal was dismissed on all grounds.⁴

Responding to the decision, one of the claimants Olivier Bancoult said: "We're very disappointed with the latest ruling and so are all the people who believe in the fundamentals of human rights,". He subsequently committed to challenging the ruling at the Supreme Court and the European Court of Human Rights.⁵

The case is still awaiting permission to appeal to the Supreme Court.

1.6 Chagossian support package and restoring the right of abode

Further to the November 2016 decision on resettlement, the UK Government announced a £40 million package to support improvements to the livelihoods of Chagossians in the communities where they were living.⁶

In the aftermath of the announcement there was considerable debate about how to spend the funds. The Government hoped to engage with all Chagossians in the process of deciding how the money should be spent. However, the Chagos Refugees Group [rejected](#) the package. Some Chagossians appeared to view the money as an attempt to [persuade](#) them to abandon the idea of resettlement. The UK Government [said](#) in February 2017 that the package is "separate from legal proceedings or challenges over resettlement."

³ [Al-Skeini & Others v UK \(App. No. 55721/07\), 2011](#) was one of a number of court cases that extended the territorial application of the ECHR. This is examined in greater detail in [Overseas Operations \(Service personnel and veterans\) Bill](#), House of Commons Library, 22 September 2020

⁴ See [Court of Appeal press release, R on app of Hoareau & Anr v The Sec. of State for Foreign & Commonwealth Affairs](#) for a summary of the judgement.

⁵ ["UK faces court fights as islanders want their home back"](#), Bloomberg, 31 July 2020

⁶

In March 2017, the Government [confirmed](#) that it would be undertaking “a significantly expanded programme of heritage visits to the British Indian Ocean Territory”.

The APPG continued to argue in favour of a pilot resettlement but also suggested that a compromise acceptable to both the Chagossians and the UK Government, pending further developments on the issue, could be restoration of the “right of abode” on the islands for Chagossians. It was restored by the then Labour Government in 2000 (with the exclusion of Diego Garcia), remaining in effect until the 2004 Orders in Council were issued.

The APPG [argued](#) in April 2017:

As Lord Bingham (presiding Law Lord) put it in his 2008 judgment “It cannot be doubted that the right (of abode) was of intangible value, and the smaller its practical value the less reason to take it away”. There is nothing to stop the FCO restoring the right of abode as distinct from the right of resettlement [...] It would cost the FCO nothing while redressing its damaged human rights record and reputation.

But the Government [said](#) that it had no plans to restore the right of abode to Chagossians.

The APPG also decided that, while continuing to support a pilot resettlement, it would also “identify ways of strengthening the bonds between the Chagossians and their homeland” through the £40 million package announced in November 2016. The APPG’s view was that this could best be achieved by creating ways for Chagossians to [live and work](#) on the islands – for example, through the [creation](#) of environmental, scientific and heritage employment opportunities, as well as promoting leisure activities for the staff on the US military base in Diego Garcia.

The Conservative minority government formed following the June 2017 general election endorsed the veto on resettlement decided upon by its predecessor. During its period in office, it sought to make progress on spending the £40 million package.

Some Chagossian groups took part in heritage visits to the Chagos Islands. But the Government continued to face [opposition](#) from sections of the Chagossian community, including the Chagos Refugees Group and a group living in the Seychelles who boycotted the visits.

In March 2019 the Government [said](#) that it was continuing to “work to identify areas for broader support package funding” and in late-2019 it [sought](#) the views of Chagossians living in the UK on two proposals in the areas of English-language proficiency and the recognition of international qualifications and skills.

Recent developments

After nearly five years, the FCDO revealed in November 2020 that it had spent £570,000 of available funds to date.⁷ However, those sums have recently been questioned after an article in [The Observer](#) suggested

⁷ PQHL113144, British Indian Ocean Territory: overseas aid, 17 November 2020

that less than £12,000 of the £40 million fund had actually been spent and funds had been returned to the FCDO.

One of the most recent projects to be funded under the initiative is an English language training course in Mauritius.

The programme of heritage visits to BIOT for native Chagossians have also continued. To date, eight heritage visits have been funded, involving 154 people. However, the programme has currently been suspended due to the coronavirus pandemic.⁸

Considerable opposition to the initiative from within the Chagossian community remains. In a June 2020 statement to the National Assembly, the Mauritian Prime Minister reiterated his Government's view that:

it cannot be expected to work with the UK Government for the delivery of a purported £40 million support package said to be aimed at improving the livelihoods of Mauritians of Chagossian origin, where that package is premised on the United Kingdom's continued illegal occupation of the Chagos Archipelago.⁹

At the end of October 2020 the Government [issued a call for bids](#) for funding for the 2020/21 financial year. In this latest round of funding projects must support Chagossians living in the UK.

Funding from 2021/22 onwards for projects in the UK, Mauritius and Seychelles will reflect the outstanding funds in the support package and be divided annually (to 2026).

The Government has also invited Chagossian community members across the UK, Mauritius, and Seychelles to register their interest in helping to shape the future of the programme and ensure projects are designed to meet the needs of communities.

In November 2020 the Government expressed its determination to "use the Support Package to address the aspirations of those Chagossians who wish to return or resettle, and all the community: the desire for better lives, and to maintain a connection to the Territory".¹⁰ It went on to confirm:

The detail of the package is kept under constant review and we remain committed to engaging with Chagossians to explore ways to better deliver its objectives.

The Support Package was announced in 2016 and is not affected by the International Court of Justice Advisory Opinion of 25 February 2019.

⁸ PQHL10686, British Indian Ocean Territory: sovereignty, 30 November 2020

⁹ [Statement to the National Assembly](#), 15 June 2020

¹⁰ PQHL10686, British Indian Ocean Territory: sovereignty, 30 November 2020

2. The status of the Marine Protected Area

The Marine Protected Area (MPA) imposed a total ban on fishing around the Chagos Archipelago, apart from Diego Garcia. It was unilaterally established by the then Labour Government in April 2010, despite Mauritian protests.

2.1 UN Arbitral Tribunal ruling

On 18 March 2015 an Arbitral Tribunal under the UN Convention on the Law of the Sea unanimously [ruled](#) that the Marine Protected Area (MPA) declared by the UK, is not compatible with obligations under the Convention to give proper regard to the rights of Mauritius. It went on to state:

In concluding that the declaration of the MPA was not in accordance with the provisions of the Convention, the Tribunal has taken no view on the substantive quality or nature of the MPA or the importance of environmental protection. The Tribunal's concern has been with the manner in which the MPA was established, rather than its substance. It is now open to the Parties to enter into the negotiations that the Tribunal would have expected prior to the proclamation of the MPA, with a view to achieving a mutually satisfactory arrangement for protecting the marine environment, to the extent necessary under a "sovereignty umbrella".

Mauritius also supplied evidence to the Tribunal to back up its claim that, when it was established, FCO officials saw the MPA as a means of preventing Chagossian resettlement. However, the Tribunal did not accept this evidence, concluding that there was no suggestion of "improper purpose".

The ruling of the Tribunal is final and binding.

Some legal commentators have interpreted the Tribunal's ruling as tantamount to saying that the MPA is unlawful.

The UK's position is that the Tribunal did not say this, but it does accept that the tribunal found that the manner in which it was established was unlawful:

Contrary to subsequent speculation, the Tribunal's finding was therefore not to declare the MPA illegal, but rather that the United Kingdom should have consulted the Republic of Mauritius more fully about the establishment of the MPA, so as to give due regard to its rights. The Government of the United Kingdom and the Government of Mauritius have now begun bilateral consultations to do this, and we remain committed to working with the Republic of Mauritius to explore all aspects of its interests in relation to the MPA.¹¹

¹¹ British Indian Ocean Territory: <https://biot.gov.io/environment/marine-protected-area/>

The Government reiterated its commitment to cooperation in answer to a Parliamentary Question in June 2015:

In respect of the Tribunal's findings about the process of establishing the MPA, it noted that it is now open to the UK and Mauritius to enter into negotiations to take account of Mauritian interests in the marine environment of the Territory.

The Government wishes to implement the award in the spirit of greatest possible cooperation, and has written to the Mauritian government several times since the award, making a proposal to hold consultations about the protection of the marine environment as early as July.¹²

And again, in March 2019:

The UK consistently reiterates its willingness to discuss scientific work in the British Indian Ocean Territory (BIOT) with Mauritius. The BIOT Marine Protected Area (MPA) is highly valued by scientists from many countries who consider it a global reference site for marine conservation in an ocean which is heavily overfished. Ministers are committed to further consultation with Mauritius about the establishment of the MPA in order to have due regard to its rights and interests, as directed by the Arbitral Tribunal of the UN Convention on the Law of the Sea. Implementation of the Tribunal's Award started with a series of bilateral talks, the latest of which took place in August 2016.¹³

However, the Mauritian Government has not taken up the offer because it is unwilling to address the issue of the MPA in isolation from that of sovereignty of the BIOT.

2.2 Supreme Court ruling on the MPA

Chagossians living in the UK have been seeking to challenge the establishment of the MPA for several years. The original ground was that the public consultation process was flawed because it failed to acknowledge that resettlement was feasible. An additional ground was that the consultation failed to mention Mauritian or Chagossian fishing rights.

Lawyers for the Chagossians subsequently included reported statements by British officials in a 2009 US diplomatic cable published by Wikileaks about the motive behind establishing an MPA. It was claimed that these statements showed that the motive was to prevent Chagossian resettlement. Lawyers for the FCO argued that US government cables should not be admitted as evidence because this violated the 1961 *Vienna Convention on Diplomatic Relations*.

In June 2013, the High Court [found against](#) the Chagossians. The case went to the Court of Appeal. In May 2014 it [upheld](#) the verdict of the High Court, although in the course of doing so it [overturned](#) the High Court's ruling that leaked diplomatic cables should be considered inadmissible.

The Court of Appeal also refused leave to appeal to the Supreme Court. However, in February 2015 an [application](#) was lodged with the Supreme

¹² PQ2407, 23 June 2015

¹³ PQHL230784, 19 March 2019

Court by lawyers for the Chagossians. This application was made concurrently with the application on the 2008 Lords verdict (see above).

Initially the Supreme Court was thought likely to render judgment on both applications at the same time. However, in its June 2016 ruling on whether or not to set aside the 2008 Lords ruling, the Court said it would [hear this appeal separately](#) in 2017.

The Supreme Court heard the [appeal](#) on behalf of the Chagossians on 28-29 June 2017. It issued its [judgment](#) on 8 February 2018. Although there was not unanimous agreement amongst the seven judges about every element of the Court of Appeal's decision, the Supreme Court endorsed its verdict that the MPA was not created for an improper purpose and that the consultation process prior to its establishment had been lawful.

The Chagos Refugees Group expressed its disappointment about the judgment, contrasting it with the ruling of the UN Tribunal (see above).¹⁴

2.3 Implications of the ITLOS ruling on the Mauritius/Maldives maritime boundary dispute

Questions have once again been raised about the legality of the MPA following a January 2021 ruling by a Special Chamber of the International Tribunal for the Law of the Sea on a [dispute between Mauritius and the Maldives](#) regarding the delimitation of their maritime boundaries.

In that judgement, the Special Chamber effectively considered the Chagos Islands to be a sovereign part of Mauritius (see [Ruling of the International Tribunal for the Law of the Sea](#) below).

Several commentators have argued that the ruling means that the MPA "no longer has legal effect" and would make the patrolling of fishing waters by the UK, unlawful.¹⁵

As outlined below, the UK has rejected the ruling.

¹⁴ "Statement by Chagos Refugees Group following the decision of the Supreme Court in the UK dated 8th February 2018

¹⁵ <https://sites.google.com/site/thechagosarchipelagofacts/home>

3. Sovereignty over the Chagos Archipelago and the process of decolonisation of Mauritius

3.1 Position of the UN Arbitral Tribunal

While not directly about the issue, Mauritius's legal challenge to the MPA (see above) inevitably included its longstanding claim to sovereignty over the BIOT.¹⁶ By a majority of three judges to two, the Arbitral Tribunal found that it did not have jurisdiction to consider sovereignty. This had been the UK's [argument](#).

However, the Tribunal did find that the undertaking given by the UK in 1965 – namely, to cede sovereignty to Mauritius once the BIOT is no longer required for defence purposes – is binding under international law.

3.2 Referral to the International Court of Justice (ICJ)

In July 2016, Prime Minister Jugnauth announced that Mauritius would table a resolution at the UN General Assembly referring the issue of sovereignty to the International Court of Justice (ICJ) for an Advisory Opinion. This decision appeared to come in response to a statement by Baroness Anelay of St Johns to which Mauritius had taken exception:

The United Kingdom value the historic relationship of trust and cooperation that we share with the Republic of Mauritius. It is therefore with great concern that we note the intention the Prime Minister of Mauritius expressed to the Parliament of Mauritius on 17 May to seek a referral by the UN General Assembly to the International Court of Justice this autumn, in order to obtain an advisory opinion in relation to the British Indian Ocean Territory (Chagos Archipelago).

Referral of this matter to the International Court of Justice would cause lasting damage to Mauritius' bilateral relations and we have respectfully sought the Prime Minister of Mauritius' assurance that he does not intend to proceed with such action, and that he will return to a constructive path. Mauritius stands to benefit from friendly relations, including in relation to the British Indian Ocean Territory, where the UK and Mauritius are already engaged in talks that aim to implement the United Nations Convention on the Law of the Sea arbitral award of March 2015 and give due regard to Mauritius' interests in matters of marine conservation in the British Indian Ocean Territory.¹⁷

In the end, Mauritius did not push for an early vote on a resolution at the General Assembly. Instead, the two sides agreed to resume talks.

The [UN Charter](#) (Article 96) states that the UN General Assembly and Security Council may request advisory opinions from the ICJ on "any legal question".

The ICJ [has held that](#) "the purpose of the advisory function is not to settle—at least directly—disputes between States, but to offer legal advice to the organs and institutions requesting the opinion".

¹⁶ It is worth noting that Mauritius refuses to use the term BIOT, preferring to speak of the Chagos Archipelago. It also prefers to use the phrase 'completion of decolonisation' to describe the issue at stake, rather than 'sovereignty'.

¹⁷ PQHL941, 13 July 2016

But Mauritius made it clear that, if there was no progress on sovereignty by June 2017, it would trigger a vote without further delay.

There was another round of talks in November 2016.¹⁸

In its response to the UK Government's November 2016 decision not to allow Chagossians to resettle in the Chagos Archipelago, Mauritius said:

The Government of Mauritius will relentlessly pursue its initiatives in conformity with international law to complete the decolonisation of Mauritius, thereby enabling Mauritius to effectively exercise its sovereignty over the Chagos Archipelago. In light of the above, and in view of the purported unilateral actions of the UK, Mauritius would be fully justified in taking forward the completion of the process of decolonisation, which is now on the agenda of the current session of the UN General Assembly, with a view to putting the matter before the International Court of Justice for an advisory opinion.

There were further rounds of talks in January and March 2017.

Unconfirmed reports [suggested](#) that the previous UK Government had proposed some sort of 'co-management' arrangement for the outer islands but that its Mauritian counterpart had rejected the idea, insisting that the question of Chagossian resettlement should also be on the table for discussion.

Mauritius and its allies, which included the African Union and some South American states, eventually triggered a debate and vote on a resolution at the UN General Assembly on 22 June 2017.¹⁹ This step effectively brought the UK-Mauritius talks to an end. [Resolution 71/292](#) was passed by [94 votes to 15](#). 65 countries abstained, including a significant number of EU member states. 19 did not vote.

The questions which Resolution 71/292 asked the ICJ to address in its advisory opinion were:

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?

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?

¹⁸ For the view of Mauritius on events during the run-up to the November 2016 talks, see the [Private Notice Question](#) to the Prime Minister in the National Assembly on 29 November 2016.

¹⁹ For further background, see: "[Statement by Ambassador Matthew Rycroft, UK Permanent Representative to the United Nations](#)", 22 June 2017; [UN summary of meeting contributions](#), 22 June 2017

Mauritius welcomed the result, as did many supporters of the Chagossian cause. Philippe Sands, who acted as legal counsel for Mauritius, [said](#):

The vote, passed by an overwhelming majority, sends a strong signal about the UN's attachment to decolonisation [...] Its arguments that Chagos is about security and a bilateral matter between it and Mauritius were given short shrift.

An FCO spokesperson responded to the vote by [saying](#):

Sovereignty of the BIOT is clearly a matter for the UK and Mauritius to resolve ourselves. Taking this dispute to the ICJ is an inappropriate use of the ICJ mechanism. This is reflected in the fact that over half of General Assembly members did not vote for the resolution.

In a [Written Statement](#) made on 26 June 2017, Sir Alan Duncan, Minister of State in the FCO, elaborated further on this point:

[...] This is an inappropriate use of the ICJ advisory mechanism because it is an attempt to circumvent the principle that no State should be compelled to have its bilateral disputes submitted for judicial settlement without its consent, not least on matters of sovereignty. This is a matter for the UK and Mauritius to resolve bilaterally.

He continued:

The UK Government has made significant proposals to Mauritius which respect and recognise their long term interest in the archipelago. We have offered, without prejudice to our sovereignty, a framework for the joint management, in environment and scientific study, of all the islands of the territory except for Diego Garcia, and we have offered enhanced bilateral security cooperation. These offers were relevant to the dispute and were seriously made. We are disappointed that the Government of Mauritius chose to reject them and to walk away from bilateral talks and instead decided to use multilateral mechanisms.

Seychelles, which has a resident Chagossian community, publicly expressed [support](#) for the position taken by Mauritius.

3.3 Advisory Opinion of the ICJ

The deadline for written submissions to the ICJ was 1 March 2018, with comments on the submissions of other States due by 15 May. Public [hearings](#) took place on 3-6 September 2018.

The ICJ issued its [Advisory Opinion](#) on 25 February 2019.

It unanimously [found](#) that it had jurisdiction to give the advisory opinion and, by twelve votes to two, decided to comply with the request for an advisory opinion.²⁰

On the substance of the case the court:

(3) by thirteen votes to one, is of the opinion that, having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to

Advisory Opinions are not legally binding but can carry great legal weight.

²⁰ The [Court's Statute](#) confirms that the Court has discretion whether or not to give the advisory opinion requested.

independence in 1968, following the separation of the Chagos Archipelago;

(4) by thirteen votes to one, is 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, is 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.

As many had anticipated, the ICJ did not take a definitive view on the question of sovereignty. But it did endorse the UN Arbitral Tribunal's 2015 finding that the undertaking given by the UK in 1965 – namely, to cede sovereignty to Mauritius once the BIOT is no longer required for defence purposes – is binding under international law.

Initial reaction

The UK Government gave its first reaction to the ICJ's Advisory Opinion on 26 February 2019, when FCO Minister Sir Alan Duncan [answered](#) a question in the Commons from Helen Goodman:

Helen Goodman (Bishop Auckland) (Lab)

Yesterday, the International Court of Justice found that the UK's control of the Chagos islands is illegal and wrong. This damning verdict deals a huge blow to the UK's global reputation. Will the Government therefore heed the call of the ICJ to hand back the islands to Mauritius, or will they continue to pander to the United States military?

Sir Alan Duncan

The hon. Lady is labouring under a serious misapprehension: yesterday's hearing provided an advisory opinion, not a judgment. We will of course consider the detail of the opinion carefully, but this is a bilateral dispute, and for the General Assembly to seek an advisory opinion by the ICJ was therefore a misuse of powers that sets a dangerous precedent for other bilateral disputes. The defence facilities in the British Indian Ocean Territory help to keep people in Britain and around the world safe, and we will continue to seek a bilateral solution to what is a bilateral dispute with Mauritius.

The Mauritian Prime Minister Pravind Kumar Jugnauth issued a statement following the decision. He [said](#):

This is a historic moment for Mauritius and all its people, including the Chagossians who were unconscionably removed from their homeland and prevented from returning for the last half century. Our territorial integrity will now be made complete, and when that occurs, the Chagossians and their descendants will finally be able to return home.

The Advisory Opinion was welcomed by Chagossian representatives and supporters of their cause. In the immediate aftermath, the APPG on the Chagos Islands [urged](#) the UK Government to "seize this opportunity to engage in serious discussions with Mauritius for an overall settlement".

In the weeks following the ICJ decision, there was further reaction. Writing on the UK Human Rights Blog on 4 March 2019, Dominic Ruck Keene [said](#):

[..] the inevitable consequence of its finding that decolonization process concerned was illegal is that either the UK has no sovereignty over the islands, or it does have sovereignty but is obliged to hand over sovereignty to Mauritius.

[...] The key significance of the judgment to the UK, and even more perhaps to the US, is the court's finding that the continued presence of the UK in the Chagos Archipelago is a wrongful act...²¹

On 30 April 2019, Sir Alan Duncan gave the UK Government's formal response to the Advisory Opinion in a Written Statement to the House of Commons. It [restated](#) its previous stance in more detail, concluding:

As the Foreign Secretary confirmed to PM Jagnauth on 27 April 2019, Mauritius is a valued friend, trading partner and member of the Commonwealth. We are fully committed to our bilateral relationship and also want to deepen and intensify engagement with Mauritius. With regard to the very important matter of the Chagossians we are continuing our work to design a support package worth approximately £40m, to improve Chagossian livelihoods in the communities in Mauritius, the Seychelles and the UK where they now live.

3.4 UN General Assembly endorsement of the ICJ Advisory Opinion

The Advisory Opinion was due next to be considered by the UN General Assembly, which had originally asked for it. The General Assembly has the responsibility of ensuring the completion of the decolonisation of Mauritius. The ICJ's Opinion reminded all UN member states of their obligation to cooperate with these efforts.

Mauritius and supporting countries put a resolution to the General Assembly on 22 May 2019. [Resolution 73/295](#) welcomed the Advisory Opinion, and affirmed:

- (a) Because the detachment of the Chagos Archipelago was not based on the free and genuine expression of the will of the people of Mauritius, the decolonization of Mauritius has not been lawfully completed;
- (b) The Chagos Archipelago forms an integral part of the territory of Mauritius;
- (c) Since the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the continued administration of the Chagos Archipelago by the United Kingdom of Great Britain and Northern Ireland constitutes a wrongful act entailing the international responsibility of that State;
- (d) The United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;

The resolution specifically called on the UK to end its administration of the BIOT within six months. It also called on the UK to work with

²¹ The UK Government must decide whether to accept the resolution, rather than "adopt" it.

Mauritius to facilitate the resettlement of Chagossians who wished to return to the archipelago.

116 countries [voted for the resolution](#), six against (Australia, Hungary, Israel, Maldives, UK and the US), with 56 abstentions (including EU countries such as France and Germany).

Speaking at the General Assembly, both the UK and Mauritius Governments reiterated their long-standing positions as they argued against and for the resolution.

The UK's Ambassador to the UN, Karen Pierce, also [said](#) that the text of the resolution went beyond the Advisory Opinion in specifying a six-month deadline for the UK to act, which improperly extended the scope of the Opinion.

Prime Minister Jugnauth regretted that the UK had been unwilling to put a joint resolution to the General Assembly. He argued that the Advisory Opinion did have legal consequences, as all UN Member States must respect international law.

In June 2019, the Queen's Birthday Party at the British High Commission in Port Louis, capital of Mauritius was cancelled. Foreign Office Minister Baroness Goldie [said](#):

Queen's Birthday Parties are a celebration of Her Majesty The Queen's Birthday. They are an opportunity to celebrate the relationships between the UK and other countries. Coming so soon after the unjustified and incendiary remarks made about the UK by the Mauritian Prime Minister, it did not feel appropriate to hold an event in Mauritius this year.

Passing of the November 2019 deadline

On 5 November 2019, the outgoing Conservative minority government made a final [Written Statement](#) in Parliament before it was dissolved ahead of the December 2019 general election. The statement reiterated the UK's position on sovereignty of the BIOT.

The 22 November 2019 deadline set by the General Assembly for the UK to end its administration of the BIOT subsequently passed without UK acknowledgement. Mauritian Prime Minister, Pravind Jugnauth, was reported as [saying](#) in response: "This situation clearly leaves the UK as an illegal colonial occupier." He added that the UK Government's "defiant criticism of the ICJ and its blatant disregard for the Advisory Opinion of the Court and UNGA Resolution 73/295, undermine its long-standing commitment to a rules-based international system".

In a letter in *The Times* on 26 November, David Snoxell, Coordinator of the APPG on the Chagos Islands, argued that "the UK is isolated on this issue [...] We cannot preach to other governments what we are unwilling to do ourselves".

3.5 Implementation of UN General Assembly Resolution 73/295

UN General Assembly resolution 73/295 calls upon the UN and all of its agencies “to recognise that the Chagos Archipelago forms an integral part of the territory of Mauritius”.²²

UN cartographic designation

In February 2020 the UN published a [new map of the world](#) in which it designated the Chagos Archipelago as Mauritian territory. Mauritian Prime Minister, Pravind Jugnauth, welcomed the move, noting that it was “without any particular caveat or limitation”. He went on to comment:

The change made to the maps produced by the UN Secretariat confirms the United Nations’ recognition of the sovereignty of Mauritius over the Chagos Archipelago. It also constitutes confirmation of the illegality of the so-called “British Indian Ocean Territory” under international law and of the United Kingdom’s purported administration of the Chagos Archipelago.²³

Mauritius has reportedly approached Google, Apple and World Atlas to adopt the UN’s designation.

Responding to the change the British Government stated:

The UK notes that the designation of the British Indian Ocean Territory has been modified on maps produced by the UN, following UN General Assembly Resolution 73/295. This resolution is not legally binding and the UK voted against its adoption.

This modification by the UN does not alter, or determine, sovereignty of the Chagos Archipelago and it makes no difference to the UK’s position, which we have consistently made clear. The UK has no doubt about our sovereignty over the Chagos Archipelago. Mauritius has never held sovereignty, so we do not recognise its claim. We have, however, made a long-standing commitment to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.²⁴

Report of the UN Secretary General

Resolution 73/295 also requested that the UN Secretary General submit a report on the implementation of the resolution, including any actions by the UK, at the UN General Assembly session in May 2020.

That [report](#) (A/74/834) was released on 12 June 2020. In his observations, the UN Secretary General welcomed the openness of both Parties to dialogue and encouraged “both to continue the dialogue in the hope of resolving the matter in a spirit of constructiveness and collaboration”.²⁵

²² [A/RES/73/295](#), para.6

²³ [Statement to the National Assembly](#), 15 June 2020

²⁴ PQ HL5378, British Indian Ocean Territory: Sovereignty, 22 June 2020

²⁵ United Nations General Assembly, Report of the Secretary General A/74/834, 18 May 2020

Position of the British Government

In a [statement](#) following publication of the Secretary General's report, the Government said:

The United Kingdom voted against [General Assembly resolution 73/295](#) and remains firmly of the view that the International Court of Justice and General Assembly are not the appropriate fora for resolving what is fundamentally a bilateral matter of disputed sovereignty between 2 UN member states. Nevertheless, the United Kingdom was grateful for the opportunity to provide input to this report.

The United Kingdom has no doubt about its sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago and we do not recognise its claim. However, we have a long-standing commitment, first made in 1965, to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment. The United Kingdom is also committed to doing more (on a voluntary basis) to address the aspirations of Chagossians including the desire for better lives and to maintain a connection to the British Indian Ocean Territory (BIOT).

In its submission to the report, the Government also noted:

what is undisputed is that the opinion of the International Court of Justice is advisory and not legally binding. The General Assembly, in its resolution 73/295, adopted following the Court's advisory opinion, does not and cannot create any legal obligations for States Members of the United Nations. Neither the non-binding advisory opinion nor the non-binding General Assembly resolution alter the legal situation, that of a sovereignty dispute between the United Kingdom and Mauritius. The General Assembly is not the appropriate forum to resolve such a bilateral dispute. Any action in the General Assembly that seeks to cut across a bilateral dispute by specifying how or when a non-binding advisory opinion might be implemented should be of concern to all Member States.²⁶

Response of the Mauritian Government

On 15 June 2020, the Mauritian Prime Minister [reported to the Mauritian National Assembly](#) on the publication of the UN Secretary General's report. Echoing previous comments calling the UK an "illegal occupier",²⁷ the Prime Minister stated:

I am bound to express my disappointment that the United Kingdom continues to flout the authority of the International Court of Justice and the General Assembly. It has shown no willingness to engage with Mauritius on the specific issue of the completion of its decolonization process.

That the United Kingdom should have withdrawn its unlawful administration from the Chagos Archipelago by 22 November 2019 was a legitimate expectation of the international community and would have been a decent act by a country that claims to be committed to the rule of law and support for international institutions [...]

²⁶ Ibid, p.15

²⁷ "[Mauritius condemns UK position on Chagos](#)", Africa Times, 22 November 2019

The continued unlawful administration by the United Kingdom of the Chagos Archipelago is a manifest illegality as is the 'marine protected area' which the United Kingdom purportedly established around the Chagos Archipelago. The United Kingdom is an illegal occupier of our territory.²⁸

The Mauritian Government also expressed its disappointment that the United States and Australia continued to support the UK "in spite of the clear conclusions of the International Court of Justice and the unambiguous provisions of the UN General Assembly Resolution".²⁹ In its submission to the UN Secretary General's report, the United States reiterated its view that the right of States to determine how to peacefully settle their disputes on a bilateral basis is a "fundamental principle of international law".³⁰

The postponement of future action in the UN General Assembly, until its session in September 2021, has been regarded as an opportunity by many, including the APPG on the Chagos Islands, for more constructive dialogue between the UK and Mauritius on these issues.

3.6 Submission to the International Criminal Court of allegations of Crimes against Humanity

After the 22 November 2019 deadline passed without action or comment by the British Government, the Mauritian Government accused the UK of crimes against humanity and indicated that it was exploring the possibility of bringing charges against individual British officials at the International Criminal Court (ICC).³¹

In October 2020 a submission was filed with the ICC accusing the BIOT Commissioner, Deputy Commissioner, and the UK's military representative BIOT, of apartheid.³²

In November 2020 the Government responded to the allegations of crimes against humanity, stating:

The UK does not accept this characterisation of the removal of Chagossians from the British Indian Ocean Territory (BIOT), or subsequent treatment of former inhabitants. Nor is this a description used by either the International Court of Justice (ICJ) in its Advisory Opinion, or the United Nations Convention on the Law of the Sea (UNCLOS) Tribunal members in the Award in respect of the circumstances of the removal of Chagossians.

The UK Government has expressed sincere regret about the manner in which Chagossians were removed from BIOT in the 1960s and 1970s. While it has decided not to support resettlement, the UK Government is determined to address the aspirations of Chagossians which make them seek to resettle,

²⁸ [Statement to the National Assembly](#), 15 June 2020

²⁹ *ibid*

³⁰ United Nations General Assembly, Report of the Secretary General A/74/834, 18 May 2020, p.17

³¹ "Chagos Islands dispute: UK accused of 'crimes against humanity' by Mauritius", *BBC News Online*, 27 December 2019

³² [UK Chagos Support Association](#), 15 November 2020

which are the desire for better lives, and the desire to maintain a connection to the Territory.³³

3.7 Ruling of the International Tribunal for the Law of the Sea

In September 2019 [a dispute between Mauritius and the Maldives](#) regarding delimitation of their maritime boundary was transferred to a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS).

Among its [preliminary objections](#) the Maldives held that the Tribunal did not have the jurisdiction to decide on the maritime boundaries between itself and Mauritius due to the existing sovereignty dispute between Mauritius and the UK over the Chagos islands. It argued that the UK "is an indispensable third party to the present proceedings, and, as the UK is not a party to these proceedings, the Special Chamber does not have jurisdiction over the alleged dispute".³⁴

Mauritius contended, however, that the UK was not an indispensable party in this case, due to the ICJ advisory opinion in February 2019. It claimed that it has sovereignty over the Chagos Archipelago and thus it is "the State with an opposite or adjacent coast to the Maldives within the meaning of... the Convention".³⁵

On 28 January 2021 the Special Chamber delivered its [judgement](#) on the preliminary objections raised by the Maldives.

ITLOS does not have the competence to rule on a territorial dispute. However, the Tribunal stated that the issue had already been determined previously by the ICJ. It argued that while the ICJ's specific ruling was that the decolonisation process had not yet been lawfully completed, the ICJ also inferred which State had sovereignty over the Chagos Archipelago. Paragraph 246 of the judgement states:

The determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the Chagos advisory opinion have legal effect and clear implications for the legal status of the Chagos Archipelago. The United Kingdom's continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations. While the process of decolonization has yet to be completed, Mauritius' sovereignty over the Chagos Archipelago can be inferred from the ICJ's determinations."

Because the legal status of the Islands was inferred from the ICJ judgement, the Tribunal considers that there is no longer a sovereignty dispute that would prevent the Tribunal from having jurisdiction in this matter. In the Tribunal's view, therefore, Mauritius has sovereignty over the Islands and can be regarded "as the coastal state in respect of the Chagos Archipelago for the purpose of the delimitation of a maritime

The ITLOS rejected all of the preliminary objections raised by the Maldives.

³³ PQHL10143, British Indian Ocean Territory: crimes against humanity, 18 November 2020

³⁴ International Tribunal for the Law of the Sea, [Press Summary 313](#), 28 January 2021

³⁵ *ibid*

boundary even before the process of the decolonization of Mauritius is completed".³⁶

ITLOS will now proceed to delimit the maritime boundary.

In a televised message to the Nation, Mauritius' Prime Minister, Pravind Jugnauth, said that "it is undeniable that the Republic of Mauritius is the sole State lawfully entitled to exercise sovereignty and sovereign rights in relation to the Chagos Archipelago and its maritime zones", and that the judgement marks an important step in the struggle of Mauritius to complete the decolonisation process of the Chagos territory, and brings hope for the Chagossian community to get back to their homeland".³⁷

Implications for the UK

In November 2019 the Government acknowledged the ITLOS dispute between the Maldives and Mauritius, arguing:

The UK is not a party to these proceedings, which can have no effect for the UK or for maritime delimitation between the UK (in respect of the British Indian Ocean Territory) and the Republic of the Maldives.

The UK has no doubt as to our sovereignty over the British Indian Ocean Territory (BIOT), which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the BIOT and the UK does not recognise its claim [...]

A fundamental principle of international law and the international legal order is the principle of consent. It follows that the Special Chamber is not in a position to pronounce itself on the sovereignty dispute between the UK and Mauritius without the consent of the UK to resolve the sovereignty dispute before the Special Chamber.

The UK remains committed to implementing the 2015 UNCLOS Arbitral Tribunal Award and seeking direct, bilateral dialogue with Mauritius.³⁸

This position was reiterated by the Government in [answer](#) to a Parliamentary Question on 8 February 2021, relating to the territorial waters of the Chagos Archipelago. It was the first time that the Government had acknowledged the ITLOS ruling:³⁹

The United Kingdom is aware of the judgment delivered on 28 January by the Special Chamber of the International Tribunal for the Law of the Sea formed to deal with the Dispute concerning delimitation of a maritime boundary claimed by Mauritius to exist between Mauritius and Maldives in the Indian Ocean. The UK is not a party to these proceedings, which can have no effect for the UK or for maritime delimitation between the UK (in respect of the British Indian Ocean Territory) and the Republic of the Maldives.

The UK was not a party to the ITLOS dispute and therefore the ruling of the tribunal is not legally binding on the UK.

However, there is broad consensus that the ruling now puts further international pressure on the UK.

³⁶ International Tribunal for the Law of the Sea, [Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean](#), 28 January 2021, para.250

³⁷ [Republic of Mauritius press release](#), 29 January 2021

³⁸ HLWS87, [British Indian Ocean Territory](#), 5 November 2019

³⁹ At the time of writing, two previous Parliamentary Questions relating to the ITLOS ruling and BIOT sovereignty: [PO147923](#) and [PO147924](#) were waiting to be answered.

We have no doubt about our sovereignty over the territory of the British Indian Ocean Territory, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago, and we do not recognise its claim. We have made a long-standing commitment to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.

Owing to the UK's sovereignty over the territory, the prevailing laws and regulations within its 12 nautical mile territorial sea are those enacted in governance of a British overseas territory. The domestic laws and regulations of Mauritius do not apply. As such, there is no requirement for Royal Navy ships to adhere to Mauritian law when within the 12 nautical mile territorial sea.⁴⁰

Lawyer Philippe Sands suggested that ITLOS judges had “opted to punish Britain for ignoring an earlier ruling by the ICJ”. He went on to state:

What this means for the UK is that if it is to have any credibility around the world on the rule of law and its global branding, it needs to move immediately to bring this lamentable situation to an end.⁴¹

More broadly, the ruling is considered by a number of commentators to have wide reaching implications:

The consequences of the ITLOS ruling for the UK's continued administration of the Chagos are serious. For example, the patrolling and arrest of fishing vessels by the UK anywhere in the Chagos would now be unlawful, and it no longer has the right to grant permissions for scientific research. Its claim to an MPA no longer has legal effect. The UK will undoubtedly lose its membership of the Indian Ocean Tuna Commission later this year. Its fisheries management policies for the Chagos are unworkable, with potentially dire consequences for marine conservation in the area.

It is time for the UK to acknowledge that it no longer holds sovereignty over the Chagos and to return the islands to Mauritius. Only by so doing can the islands and their marine natural resources continue to be protected under Mauritian sovereignty and control [...]

Any attempt by the UK to deny the effect of this judgment and the earlier rulings by the International Court of Justice and the United Nations General Assembly will not only damage the UK's reputation but also represent a failure of its policy of conservation both at home and abroad.⁴²

However, a spokesperson for the UK Chagos Support Association suggested that the ruling would have little practical effect for Chagossians:

The UK and Mauritian statements indicate the new ruling is unlikely to make a practical difference for the people of the Chagos Islands, who continue to live with and suffer the consequences of the brutal deportations of 1960s and 1970s.

⁴⁰ PQ148829, British Indian Ocean Territory: Navy, 8 February 2021

⁴¹ “UN court rules UK has no sovereignty over Chagos Islands”, BBC News Online, 28 January 2021

⁴² <https://sites.google.com/site/thechagosarchipelagofacts/home>

They went on to state:

But this is a chance for international attention and the efforts of multiple governments to focus on respecting the rights of Chagossian people, listening to their ambitions and meeting the community's basic needs.⁴³

⁴³ <https://www.chagossupport.org.uk/post/un-tribunal-says-uk-has-no-sovereignty-over-chagos-islands>

4. Extension of the US military presence on Diego Garcia

A December 1966 Exchange of Notes provides for the BIOT to be “made available for defence purposes” by both the UK and the US for an initial period of 50 years.⁴⁴ The US wanted to build a military base on Diego Garcia, the largest island, and proceeded to do so.

Under the 1966 Exchange of Notes a decision on whether to extend the arrangement for a further 20 years had to be made by the end of December 2016.

In November 2016, at the same time as the Government’s announcement on resettlement, it was [confirmed](#) that the US’ military presence would continue for a further 20 years, to December 2036:

Parliament will also be aware that the agreements underpinning the UK/US defence facility will roll over automatically on 31 December if neither side breaks silence. In an increasingly dangerous world, the defence facility is used by us and our allies to combat some of the most difficult problems of the 21st century including terrorism, international criminality, instability and piracy. I can today confirm that the UK continues to welcome the US presence, and that the agreements will continue as they stand until 30 December 2036.

4.1 Approaches to the Biden administration

The Biden administration has not made any public statements about the US’ military presence in Diego Garcia, or the wider sovereignty dispute between the UK and Mauritius. Given the number of challenges facing the new administration, both domestically and abroad, it is uncertain whether the BIOT sovereignty issue will be high on Biden’s agenda.

However, efforts to highlight the sovereignty dispute have reportedly been made to the new administration by the Mauritian Government and Chagossian supporters.

Mauritius has previously said that it would be content to allow the US military base to remain on Diego Garcia as and when it achieves sovereignty over the Chagos Archipelago.

In July 2020 the Permanent Representative of Mauritius to the UN, Jagdish Koonjul, reportedly announced that Mauritius would not only allow the US military to remain in Diego Garcia after a withdrawal by the UK,⁴⁵ but that it would lease the base to the US for 99 years, far longer than the current deal for access to 2036.⁴⁶

⁴⁴ [Exchange of Notes constituting an agreement concerning the availability for defense purposes of the British Indian Ocean Territory](#) (with annexes). London, 30 December 1966, UN Treaty Series, Vol. 603, Reg. No. I-8737

⁴⁵ An offer that Mauritius has made several times in the past.

⁴⁶ [“How a tiny Indian Ocean island could force a US-UK rift”](#), *Defense One*, 10 July 2020

In his statement to the National Assembly in June 2020 the Mauritian Prime Minister had also alluded to the long-term nature of any offer, and his Government's willingness to include the UK if necessary:

Mauritius is conscious of the security concerns expressed by the United Kingdom and the United States, but considers that such concerns cannot justify the United Kingdom's continued unlawful administration of the Chagos Archipelago, the more so since Mauritius has time and again expressed its willingness to enter into a long-term arrangement with the United States or, if needed with the United States and the United Kingdom, in respect of the defence facility on Diego Garcia.⁴⁷

In his congratulatory message to President Biden, Mr Jugnauth also reportedly touched on the issue.⁴⁸

In a [January 2021 article for Conservative Home](#), David Snoxell, Coordinator of the APPG on the Chagos Islands, revealed that the group were also seeking to enlist the support of President Biden:

There is hope, however, in that Joe Biden and his Democratic Administration are more likely to want to see an end to the Chagos saga, as it would provide a long-awaited victory for human rights and the rule of law and a secure future for the US base on Diego Garcia. At its 80th meeting on 2 December, the Chagos Islands (BIOT) All-party Parliamentary Group (APPG) decided to write to the President-elect to enlist the support of the new Administration for an overall settlement of the issues. The Chairman did so on 15 December.

The APPG hopes that the United States will play its part in bringing about an end to these historic injustices. Members anticipate that the new Administration will see that an end to the Chagos tragedy would be in the US longer term interest and outweigh any short-term advantage of maintaining the status quo. It would also be in the UK's best interest.

Petition under the US Foreign Claims Act

In August 2020 [a petition was filed](#) on behalf of a number of Chagossians under the US Foreign Claims Act, which awards compensation for non-combatants' injury, death or property damage by US military personnel overseas. The legal challenge stated:

This is a Foreign Claims Act claim for damages under 10 U.S.C. §§ 2675, 2734, 2736, & Solatia Payment (*US Code of Federal Regulations*, Title 32, Chapter 5, § 536.145) by the following Claimants: Bernard Nourrice and Solomon Prosper, citizens of the Republic of the Seychelles who were born on Diego Garcia Atoll in the Chagos Archipelago and forcibly deported therefrom in a crime against humanity by the United Kingdom to satisfy the terms of its Lease Agreement (*UK-US Exchange of Notes*) with the United States and constituting an act of military aggression and occupation against the peaceful Chagossian people.

The Claimants seek compensation for their emotional and economic damages, and future and past rents and leases as the rightful residents and owners of Diego Garcia Atoll.

⁴⁷ [Statement to the National Assembly](#), 15 June 2020

⁴⁸ ["Mauritius makes play for future with US base on Diego Garcia"](#), Nikkei Asia, 18 November 2020

An article in [The Guardian](#) in December 2020 reported that the claim had been refused by the US Air Force stating that “it has been determined that payment of claims is not in the interests of the US government”.

The legal team behind the claim are now reportedly planning a new legal action following the inauguration of President Biden. The lawyer representing the claimants commented:

The incoming Biden administration seeks to change US foreign policy, and the Chagos archipelago is a good place to begin by recognising the claims of the Chagossians to their property and land and by paying a small restitution, given the immense value the rent-free use of Diego Garcia has provided the United States for the past five decades.⁴⁹

⁴⁹ “What about justice?: Chagos Islanders pin their hopes on Biden”, *The Guardian*, 29 December 2020

5. Citizenship concerns

Concerns have long been expressed about limitations on the rights of some Chagossians in the UK to become British Overseas Territories Citizens. Currently, these citizenship rights only cover Chagossians that were born on the Archipelago and the first generation that was born in the UK.

The profile of the issue has increased in the context of wider public debate about the mistreatment of the Windrush generation.

With [efforts](#) to change the law through the English courts making no progress, UK parliamentarians have taken up the issue. In January 2018, Henry Smith introduced the [British Indian Ocean Territory \(Citizenship\) Bill](#) in Parliament. The Bill's purpose was to

allow persons descended from individuals born in the British Indian Ocean Territory to register as British overseas territories citizens.

Its second reading was originally scheduled for March 2018, but it was objected to then and on several subsequent occasions. When he was Home Secretary, Sajid Javid [met](#) with Henry Smith to discuss his Bill but he gave no indication that the Government would support it.

In July 2018 the Home Affairs Committee published a report on the Windrush generation which included a [section](#) on the Chagos Islanders. It recommended:

133. Chagossians are a unique case but there are parallels with the Windrush scandal in that they are yet another cohort of people whose descendants struggle to access British citizenship. The Government should support Henry Smith MP's Private Member's Bill and allow anyone who can prove that they are descended from a person born on the Chagos Islands to register as a British overseas territories citizen and thereby have a right to remain in the UK.

The Bill had not had its second reading by the time Parliament was dissolved in November 2019 ahead of the December general election. It has not been reintroduced since.

On 14 July 2020 the Government reiterated its position on UK citizenship for Chagossians in answer to a Parliamentary Question that arose out of the change to immigration law relating to [British Nationals Overseas in Hong Kong](#):

Chagossians born on the British Indian Ocean Territory are British Overseas Territories Citizens, and also automatically became British citizens under the British Overseas Territories Act 2002. These individuals therefore already have the right of abode in the United Kingdom.

Under current British nationality law, citizenship is normally only passed on to one generation born abroad. British citizens can make use of existing immigration routes to bring their family members to the UK.

We have no plans to extend the arrangements for British Nationals (Overseas) set out on 1 July 2020 to Chagossians.⁵⁰

However, in a statement to Parliament on 21 July 2020 on the progress in responding to the [Windrush Lessons Learned Review](#) the Home Secretary suggested that the citizenship issues faced by many Chagossians in the UK would be examined as part of a wider review of nationality law to ensure those rules are “fit for purpose”:

Henry Smith (Crawley) (Con): In a similar situation to the Windrush generation are the descendants of Chagos Islanders, whose families were exiled from the British Indian Ocean Territory, and who now face citizenship problems. In the review of nationality law that my right hon. Friend just announced, will she commit to looking at the case of the Chagossian people?

Priti Patel: As I have touched on, this will form part of the Home Office’s wider work on all aspects of nationality law and the complexities of immigration law and the immigration system. As I said, we need time and ability to do this, which is what we are undertaking right now and will continue to do so. In due course I will report back. We will look at all these issues, and I am sure that many more will surface in the weeks and months ahead.⁵¹

The Home Office’s [formal response](#) to the Windrush review, which was published in September 2020 only refers, however, to plans for a review of compliant environment immigration policies, and expresses support for consolidation of primary legislation at some future point. It does not provide any details on the precise scope of any review and it makes no reference to the Chagos Islanders.

⁵⁰ PQ69471, Ilois: right of abode, 14 July 2020

⁵¹ HC Deb 21 July 2020, c2035

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