



**BRIEFING PAPER**

Number 6908, 17 December 2019

# Disputes over the British Indian Ocean Territory: December 2019 update

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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 since 1965 of these disputes, including past and ongoing legal cases brought before British, European and international courts. This update summarises the main developments since May 2013.

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 3 to 2. 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 have sought permission to appeal the verdict. This was granted in July 2019.

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, that was announced when the decision was made, as well as renewed calls for the restoration of the right of abode, perhaps as a prelude to a change of policy on resettlement. £313,000 has been spent so far. There have been a number of Chagossian ‘heritage visits’ to BIOT over the last year, although some sections of the community have been boycotting the visits.

In 2015 a Marine Protected Area (MPA) 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.

In July 2016 Mauritius said that it would seek a referral by the UN General Assembly to the International Court of Justice later in the year 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. It issued an Advisory Opinion in February 2019. 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 by 116-6 (with 56 abstentions) 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".

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.

A decision on whether to extend the life of the US military base on Diego Garcia for a further 20 years had to be made by the end of 2016. A decision to do so was announced in November 2016.

In January 2018, Henry Smith introduced the British Indian Ocean Territory (Citizenship) Bill in the UK Parliament. It sought to allow anybody who is descended from Chagossians born in BIOT to become British Overseas Territories Citizens. At present, only Chagossians born in BIOT and the first generation that was born in the UK can do so. The Bill had still not received its second reading when the previous Parliament was dissolved in November 2019.

# 1. Chagossian resettlement?

## 1.1 2013-15: a new feasibility study conducted

The Conservative-Liberal Democrat Coalition Government [announced](#) a new study on the feasibility of resettling Chagos Islanders in July 2013, 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 submitted its [report](#) in January 2015. While accepting that there were challenges to resettlement, KPMG found that there were no “fundamental legal obstacles”. 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 supports the Chagossians on the issue.

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 2015-16: consultations held and policy review undertaken

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

The All Party Parliamentary Group (APPG) on the Chagos Islands had endorsed a “[pilot resettlement on Diego Garcia](#), work on which should begin immediately when the next government came to office, with a view to the first settlers arriving in early 2016.” KPMG, at the request of the APPG, drew up a proposal for a settlement of 50 people.

The APPG 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 previous Government said that it would consider the outcome before coming to a decision on resettlement. No time-frame was provided.

At the April 2016 meeting of the APPG it was [reported](#) that the issue of resettlement was being discussed by the National Security Council but that there were divisions over it:

It was believed that the PM was sympathetic but some ministers were opposed on financial grounds. It was thought that the PM had therefore asked a neutral minister to carry out a further review. The Group hoped that this would be completed quickly.

[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. The Government said nothing publicly to indicate that this was its intention, but this is what happened.

### 1.3 June 2016: Supreme Court upholds the 2008 Lords verdict

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).

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. Below is an important passage from the [press summary](#) of the ruling:

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 referred to in section 1 of this briefing.

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 November 2016: UK Government again rejects 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 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 deep disappointment at the decision. The APPG on the Chagos Islands issued a [statement](#) following the announcement:

Three ministers of state from the FCO (Baroness Anelay), Defence (Earl Howe) and Department of International Development (Lord Bates) had several weeks earlier been invited for a discussion on the issues regarding resettlement. Members were shocked to discover that this discussion had been pre-empted by the written statement. The Government had been telling Parliament that a decision on resettlement would not be announced until the end of the year. The reason for announcing it on 16 November could only be to close off discussion of the issues. This looked like a fait accompli [...]

Members expressed much disappointment at this decision. They felt it had ignored the arguments put by the Group and experts over the years concerning viability, sustainability, cost, funding, defence and security, international human rights obligations and the views of the Courts which since 2000 had deplored the treatment of the Chagossians. They did not accept the

Government's premise that feasibility, defence and security interests and cost were sufficient grounds for not agreeing to a pilot resettlement, recommended by the KPMG feasibility study. The written statement lacked any reasoned argument as to why resettlement could not be implemented.

Members appealed to ministers to think again on the basis of other studies, the KPMG report and further discussions with the Group. They were well aware that the US was not opposed to resettlement and that any security concerns were easily manageable. Given that, with the agreement of the US, the KPMG consultants had visited Diego Garcia and that this island was their preferred option it was not logical to deploy defence and security as a reason against resettlement.

The APPG felt that the costs and style of resettlement had been significantly exaggerated and that in any case the Overseas Territories were a first call on the Aid Programme. The British tax payer would not fund the entire cost as the ministerial statement had implied. The US, who do not pay rent for the base would no doubt contribute [...]

The Group 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. They noted that the ministerial statement had not referred to the right of abode which should be restored whether or not resettlement was allowed. Some Chagossians would only wish to visit their homeland and should be able to do so whenever they wanted [...].

The Group also felt that the £40 million of project money that was being offered to the Chagossians would be better spent on funding resettlement. This was nearly twice the capital cost of resettlement estimated in 2008 by Dr John Howell, former Director of the Overseas Development Institute. But it was for Chagossians to decide. The Group would wait to hear their reactions before supporting anything less than a pilot resettlement.

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" (see also section 3).

## 1.5 Debate about support measures and restoring the right of abode

In the aftermath of the November 2016 decision, there was debate about how to spend the £40 million over a ten-year period announced to support improvements to the livelihoods of Chagossians in the communities where they were living.

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.”

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. They boycotted the visits. By March 2019, £313,000 of the £40 million package had been [spent](#). The government [said](#) that it was continuing to “work to identify areas for broader support package funding.” 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.

In August 2019, three UK MPs – all members of the APPG on the Chagos Islands – [went](#) to the BIOT on a UK government-funded visit.

## 1.6 February 2019: Judicial review upholds the November 2016 decision and refuses leave to appeal

The previous government's November 2016 decision has recently been subject to judicial review. The [hearing](#) 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.

According to a press release issued by the UK Chagos Support Association:

The case, brought by Chagos Refugees Group leader Olivier Bancoult and fellow native-born Chagossian Solange Horeau, challenged the legality of the government's decision on a number of grounds. In particular, the challenge was made to the lawfulness of the failure to permit resettlement, the decision to offer a £40m 'Support Package' to the Chagossian community and the "implicit decision" not to remove the ban on Chagossians living in their homeland.

Unfortunately, the court found against the Chagossians, for reasons outlined in full in the [judgement](#) and accompanying [press summary](#).

Mr Bancoult has stated it is "distressing" to hear the court's verdict while "Chagossian human rights are still being violated." But he added that nonetheless "even Chagossians are more determined to fight for their human rights" and highlighted that "we, the Chagossian community will never give up".

Ms Horeau also stated that this was a "devastating blow" but said that "we will fight on to try to hold the UK Government to account for their shameful actions."

In one notable part of the judgement, the Judges state "This is not a case where fundamental rights are affected... This is because this Court has to proceed on the basis that the legal rights which existed previously have been extinguished at least by the 2004 Orders."

## 1.7 July 2019: Refusal of leave to appeal the upholding of the November 2016 decision overturned

Lawyers for the Chagossians lodged an appeal against the Divisional Court's February 2019 decision to refuse them leave to appeal its upholding of the November 2016 decision. On 16 July 2019, the Court of Appeal [granted](#) leave to appeal.

Significantly, in doing so it referred to the Advisory Opinion given by the International Court of Justice on 25 February 2019, just over two weeks after the Divisional Court's decision upholding the November 2016 decision, holding that the arguments made in this Opinion should be heard during the appeal (see Section 3 below for further discussion of the Advisory Opinion).

## 1.8 2019 election: party manifestos and Chagossian resettlement

Two parties specifically mentioned the issue in their December 2019 election manifestos.

The Labour Party [pledged](#) to allow Chagossians the right to return.

In its manifesto, the Scottish National Party [called](#) on the UK to immediately withdraw from the Chagos Islands and return control of the BIOT to Mauritius.

Following the victory of the Conservative Party in the election, it is unlikely that UK government policy on resettlement will change in the short-term.

## 2. The status of the Marine Protected Area

### 2.1 March 2015: UN Tribunal rules the UK did not uphold the rights of Mauritius

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. The ruling is final and binding.

The 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. Mauritius 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”.

In June 2015, the previous UK Government said that it had [written on several occasions](#) to its Mauritian counterpart since March proposing consultations with it on the protection of the marine environment around the BIOT. However, the Mauritian Government did not take up the offer because it is unwilling to address the issue of the MPA in isolation from that of the sovereignty of the BIOT (see section 1.3 below).

### 2.2 The UK says that the MPA is still in effect

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 accepts that it found that the manner in which it was established was unlawful.

The UK’s [view](#) was that the MPA remained in effect. However, in January 2016, David Snoxell, the co-ordinator of the APPG on the Chagos Islands, claimed that the MPA “[remained in legal and practical limbo](#).” There is no evidence to suggest that anything has changed since then.

### 2.3 February 2018: UK Supreme Court says MPA is lawful

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

For a while, the Supreme Court was thought likely to render judgment on both applications at the same time. However, in its 29 June 2016 ruling on whether or not to set aside the 2008 Lords verdict on the lawfulness of the 2004 Orders abolishing the right to return, the Court said it would [hear this appeal separately](#) in 2017.

The Supreme Court heard the [appeal](#) on behalf of 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).<sup>1</sup>

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<sup>1</sup> "Statement by Chagos Refugees Group following the decision of the Supreme Court in the UK dated 8<sup>th</sup> February 2018. Copy available on request.

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

### 3.1 2015: UN Tribunal unwilling to consider sovereignty

While not directly about the issue, Mauritius's international legal challenge to the MPA inevitably included its longstanding claim to sovereignty over the BIOT.<sup>2</sup> 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 Mauritius warns it may refer the issue to the International Court of Justice

It has been suggested in the past that, even if sovereignty over the entire BIOT is unlikely to be on the agenda in the medium-term, there could be more room for flexibility on the outer islands, which are not required for defence purposes.

The APPG on the Chagos Islands has regularly [called](#) on the UK to hold talks with Mauritius on issues relating to BIOT. Two official-level meetings took place in 2009 but Mauritius withdrew from the dialogue after the MPA was established (see above). Meetings at official level resumed in November 2015 and May 2016 but [little progress](#) appeared to be made.

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:

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

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<sup>2</sup> 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'.

to Mauritius' interests in matters of marine conservation in the British Indian Ocean Territory.

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

According to [David Snoxell](#), the coordinator of the APPG on the Chagos Islands:

These talks may offer a way forward. Mauritius could present the UK delegation with its ideas on how a gradual transition, with confidence-building measures, can be established towards eventual Mauritian sovereignty. That will require a staged timetable. The 1966 UK/US agreement, which is to continue until 2036, provides the obvious date for a transfer of sovereignty, although there is no reason why the outer islands (not Diego Garcia, where the US base is) should not be transferred to Mauritius long before then. In the meantime, there could be co-management of the islands and Mauritius could offer help and support for a Chagossian resettlement. A possible scenario is that the Chagossians, who are both British and Mauritian citizens, return under UK/Mauritius co-management.

There was another round of talks in November 2016.<sup>3</sup>

In its response to the previous UK Government's 16 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.

### 3.3 June 2017: UN General Assembly refers the issue to the ICJ

Mauritius and its allies, which included the African Union and some South American states, eventually triggered a debate and vote on a

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<sup>3</sup> 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.

resolution at the UN General Assembly on 22 June 2017.<sup>4</sup> 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?.

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.

David Snoxell [said](#):

This was a brilliant result for Mauritius and the Chagossians. Apart from the sovereignty issue [...] the resolution was a means of bringing to the attention of the UN General Assembly the travesty of the UK's treatment of the Chagossian people since 1965 [...]

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:

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<sup>4</sup> 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



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.

The Prime Minister of Mauritius, Pravind Kumar Jugnauth, attended the Commonwealth Summit in London in April 2018. During his visit he met with the APPG. At the meeting he [emphasized](#) that the enduring relationship between the UK and Mauritius would not be negatively affected by the ICJ proceedings and said that he supported a negotiated settlement with the UK over the future of BIOT.

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

### 3.4 The powers of the ICJ

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”.<sup>5</sup> The [Court’s Statute](#) confirms that the Court has discretion whether or not to give the advisory opinion requested.

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

By contrast, the ICJ’s judgments in contentious cases between States are binding, but cases can only go ahead if the States concerned have in some manner or other consented to the ICJ’s jurisdiction.

Following the referral, one legal commentator [argued](#) that the UK was likely to continue to object that the advisory opinion request is trying to circumvent the consent requirement for contentious ICJ jurisdiction, and is in effect asking the Court to litigate a bilateral dispute.

But the author also suggested that the drafting of the questions that the ICJ is being asked to address raises broader principles on decolonisation and the UK’s continued administration of the Chagos Archipelago that may not require the Court to deal directly with the issue of sovereignty.<sup>6</sup>

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<sup>5</sup> [Legality of the Threat or Use of Nuclear Weapons, Advisory opinion](#), ICJ GL No 95, [1996] ICJ Rep 226, ICGJ 205 (ICJ 1996), 8th July 1996, para. 15

<sup>6</sup> Marko Milanovic, “[ICJ Advisory Opinion Request on the Chagos Islands](#)”, EJIL: Talk! Blog, 24 June 2017. See also Dapo Akande and Antonios Tzanakopoulos, “[Can the International Court of Justice Decide on the Chagos Islands Advisory Proceedings without the UK’s Consent?](#)”, EJIL: Talk!, 27 June 2017

### 3.5 February 2019: the ICJ issues an Advisory Opinion

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 [found](#) unanimously (1) that it had jurisdiction to give the advisory opinion and by twelve votes to two decided (2) to comply with the request for an advisory opinion.

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 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 would be the case, the ICJ did not take a 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 (see also sections 2.1 and 3.1 of this briefing).

### 3.6 Initial reaction to the Opinion

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 enthusiastically welcomed by Chagossian representatives and supporters of their cause, including Jeremy Corbyn, the leader of the official opposition, the Labour Party. In the immediate aftermath, the Coordinator of the APPG on the Chagos Islands, David Snoxell, [urged](#) the UK Government

to seize this opportunity to engage in serious discussions with Mauritius for an overall settlement [...] Chagossians now have a far better chance of going back to Chagos under Mauritian rather than UK sovereignty.

Writing on the day of the Advisory Opinion, legal commentator Dr Marko Milanovic [asserted](#) that the UK had lost “badly”.

In the weeks following the ICJ decision, there was further reaction. Writing on the UK Human Rights Blog on 4 March, 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. The UK Government has not yet confirmed whether it will adopt the ICJ’s advisory opinion and hand the Chagos Archipelago to Mauritius.<sup>7</sup>

During April 2019 there were contacts on the issue between the UK and Mauritius Governments, but there were no indications that either had altered their respective positions.

On 30 April, 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 Jugnauth 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.

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<sup>7</sup> The UK Government must decide whether to accept the resolution, rather than “adopt” it.

### 3.7 May 2019: UN General Assembly endorses the 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.

In an article published in *Mauritius Weekly* on 14 March, David Snoxell proposed an initial meeting at prime ministerial level to make a "joint declaration" setting out a "framework for discussions". He also called on the two countries to put a joint resolution to the General Assembly.<sup>8</sup>

Mauritius and supporting countries put a resolution to the General Assembly on 22 May 2019. The resolution [welcomed](#) the Advisory Opinion and called on the UK to end its administration of the BIOT within six months. It also called on the UK to work with 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.

Pravind Jugnauth, the Prime Minister of Mauritius, 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.

David Snoxell [argued](#) that this was an unprecedented action and that it represented "a decline in British diplomacy".

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<sup>8</sup> "Further reflections on the ICJ Advisory Opinion". Copy of this article is available on request.

### 3.8 November 2019: General Assembly deadline passes without UK acknowledgement

On 5 November 2019, with the 22 November deadline set by the General Assembly for the UK to end its administration of the BIOT drawing near, 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.

The 22 November deadline 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 said:

The UK is isolated on this issue; now that it is on the UN general assembly agenda it will continue to dog British diplomacy [...] We cannot preach to other governments what we are unwilling to do ourselves.

The new Conservative majority government elected on 12 December will presumably now begin considering what its next steps on the issue should be.

## 4. The US military base on Diego Garcia is extended until 2036

### 4.1 1966: The base is established

Under the 1966 Exchange of Notes between the UK and the US, a decision on whether to extend the arrangement for a further 20 years must be made by the end of December 2016.

Discussions between the two countries reportedly [began](#) in December 2014. However, the previous UK Government said in March 2016 that discussions had [not yet started](#).

### 4.2 Position of Mauritius

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

The APPG's [position](#) has been:

that any renewal next year of the 1966 UK/US Agreement on the use of BIOT for defence purposes should be conditional on a commitment by both parties to facilitate and support [Chagossian] resettlement.

During President Barack Obama's visit to the UK in April 2016, the then Prime Minister David Cameron and the Leader of the Official Opposition, Jeremy Corbyn, reportedly raised the issue of Chagossian resettlement with him. The APPG [does not believe](#) that the US has any fundamental objections to Chagossian resettlement or views it as incompatible with the continuance of its military base.

### 4.3 Decision to extend announced in November 2016

On 16 November 2016, at the same time as she announced the UK Government's decision not to permit Chagossian resettlement of the BIOT, Baroness Anelay of St Johns also [confirmed](#) that the US military base would continue for a further 20 years:

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.

## 5. Citizenship concerns and other developments

### 5.1 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 recently 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 been taking 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.

The Bill had still not had its second reading when Parliament was dissolved in November 2019 ahead of the 12 December general election.

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.

### 5.2 Other developments

In the course of an inquiry on the UK's influence at the UN that ran between late-2017 and early-2018, the Foreign Affairs Committee [addressed](#) the wider foreign policy implications of the UN General Assembly's vote to refer the issue of sovereignty over the BIOT to the ICJ for an Advisory Opinion.<sup>9</sup> The Committee did not respond publicly after the ICJ issued its Advisory Opinion in February 2019.

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<sup>9</sup> See in particular the oral evidence sessions of [19 December 2017](#) and [7 February 2018](#).

In late-July 2019, over 100 Chagossians took part in a four-day "[occupation](#)" of Trafalgar Square, London, to raise public awareness about their cause.



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