



British Institute of
International and
Comparative Law

The ICJ Advisory Opinion on the Chagos Islands

14th March 2019

On 18th March 2019, BIICL hosted an event on the Advisory Opinion delivered by the International Court of Justice (ICJ) on the [*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*](#) (25 February 2019). The panel, chaired by Jill Barret (Queen Mary University of London and Six Pump Court), included Dr Stephen Allen (Queen Mary University of London), Professor Philippe Sands QC (Matrix Chambers and University College London) and Nicola Peart (Three Crowns LLP).

Jill Barret introduced the topic by contextualizing the case. She summarised the content of the Advisory Opinion, whereby the ICJ ruled that the separation of the Chagos islands from the British colony of Mauritius was contrary to the right to self-determination and that the decolonization of Mauritius had thus not been completed in accordance with international law. As a result, Barret continued, the Court found that the UK's continuing administration of the Chagos islands, was a continuing internationally wrongful act, which must be brought to an end as rapidly as possible.

Dr Stephen Allen provided a historical background of the Advisory Opinion, addressing the series of *Bancoult* litigation before the Courts of the UK and the arbitration case commenced under UNCLOS. Dr Allen looked over the landmark events that led to the separation of the Chagos archipelago from Mauritius. He remarked that the archipelago became a pressing issue in Mauritius domestic politics throughout the 1970s. In 1982, following a change in government, an enquiry in the legislative assembly was conducted on the circumstances of the detachment of the Chagos. It was concluded that coercion was used by British government against Mauritius colonial government to agree on the detachment of the archipelago in breach of international law. Mauritius then started asserting its claim publicly and gaining international support. The British government maintained the position that the archipelago would be returned when it was no longer needed for security purposes.

Dr Allen concluded by noting that the key question that the Advisory Opinion addressed was when the right to self-determination had crystallised under customary international law. If it did so with [UN General Assembly Resolution 1514 \(XV\)](#), the separation of the Chagos from Mauritius in 1965 would have been conducted in breach of international law. If not, the UK would have still had authority to carve its territory to establish the BIOT. Moreover, he added, further questions arise regarding the normative significance of UN General Assembly resolutions, as well as when (and how) the duty to maintain the territorial integrity of a colonial unit emerges.

Professor Philippe Sands QC, who acted as counsel for Mauritius in the case, emphasised that the same subject matter could concern both a bilateral dispute over sovereignty and a matter related to

decolonisation. He claimed, as Mauritius did, that decolonisation trumped sovereignty, as once the decolonisation matter had been solved, the issue of sovereignty disappeared. Professor Sands remarked that the Court completely rejected the UK's argument, as even the dissenting judge did not express a view on the substance. Furthermore, four years ago, the arbitral tribunal under UNCLOS had also rejected the UK's views on the merits as it decided that the establishment of a Maritime Protected Area in the archipelago also violated international law. He stressed that the Advisory Opinion was crystal clear in determining that the right to self-determination and to territorial integrity formed part of customary international law in 1965. Professor Sands argued that such a conclusion meant that the UK never had sovereignty over the Chagos Archipelago since Mauritius gained independence in 1968. Hence, the UK's administration of the Chagos Archipelago as the 'British Indian Ocean Territory' had been unlawful from the outset, continues to be unlawful today, and must be brought to an end as rapidly as possible. Additionally, he remarked that the Court found that the UK's conduct violated customary international law, and noted that customary international law was automatically part of domestic law and directly applicable in the courts of England and Wales. Professor Sands concluded by remarking that this Advisory Opinion allowed the entire African continent to speak with a single voice in an international court for the first time in history.

Nicola Peart, who intervened for Vanuatu in the proceedings, addressed the importance of the case for this third State. She stressed that Vanuatu's colonial history and its position regarding the case of West Papua were the two main reasons why it decided to intervene in the oral phase of the proceedings. Vanuatu, as Peart explained, adopted a very similar position to Mauritius, claiming the crystallisation of the right to self-determination in customary international law by 1965.

Additionally, Peart addressed the test of heightened scrutiny that the Court set to examine the agreement between the representatives of the colonial unit and the government of the colonial power in the current case. She wondered if such a test could be applied to the history of expressions of consent in colonial contexts.

The interventions were followed by a vivid round of questions and discussion, which raised issues such as the Indigenous rights of Chagosians, the implications of the Advisory Opinion in the US military base in Diego Garcia, the normative significance of UN General Assembly Resolutions or the discretion of the ICJ to decline to give an Advisory Opinion.

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Note: the event was convened by Kristin Hausler (Dorset Senior Research Fellow in Public International Law, BIICL) and Marco Longobardo (University of Westminster).