

The Advisory Opinion of the International Court of Justice on Chagos: a critical overview

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ABSTRACT: This case discussion seeks to draw attention to the Advisory Opinion by the International Court of Justice on 25 February 2019 concerning the Chagos Archipelago (*Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*). It underlines the legal arguments on the issue of the right to self-determination and the decolonisation process. The ICJ has highlighted the importance of the right to self-determination in the post-colonial context and upheld the necessity for the decolonisation process of Mauritius to be completed. The strong legal stand by the ICJ taken against the UK, despite the latter being a powerful state, is noteworthy. This Advisory Opinion is decisive not only for the Chagossians and their fate, but also for other African jurisdictions grappling with the issue of self-determination and an incomplete decolonisation process. The Opinion re-calibrates the debate on these two important international law issues by serving as an essential judicial tool to be applied in other similar cases.

TITRE ET RÉSUMÉ EN FRANCAIS:

L'avis consultatif de la Cour internationale de Justice sur l'Archipel des Chagos: aperçu critique

RÉSUMÉ: Le présent commentaire d'arrêt vise à disséminer l'avis consultatif de la Cour internationale de justice (CIJ) sur l'Archipel des Chagos et met l'accent sur les arguments juridiques essentiels y énoncés au sujet du droit à l'autodétermination et du processus de décolonisation. La CIJ a souligné l'importance du droit à l'autodétermination dans le contexte postcolonial et a confirmé la nécessité de parachever le processus de décolonisation de l'île Maurice. Il convient de souligner la position juridique forte adoptée par la CIJ contre le Royaume-Uni, bien que ce dernier soit un État puissant. Cet avis consultatif est décisif non seulement pour les Chagossiens et leur destin, mais également pour les autres collectivités africaines en quête d'autodétermination et du parachèvement de leur processus de décolonisation. L'avis réajuste le débat sur ces deux importantes questions de droit international en servant d'instrument judiciaire important à appliquer dans des affaires similaires.

KEY WORDS: International Court of Justice, Chagos, Mauritius, United Kingdom, self-determination

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1 INTRODUCTION

The Chagos Archipelago, situated in the middle of the Indian Ocean, has since 1965 continuously captured international attention due to the legally questionable conduct by the two nuclear super power countries, the United States of America (US) and the United Kingdom of Great Britain and the Northern Ireland (UK), of detaching the Chagos Archipelago from the territory of Mauritius for military purposes. The story of the Chagos Archipelago raises a wide array of legal questions across the field of decolonisation and equal rights to self-determination of peoples, territorial integrity and state sovereignty. The last remaining colony of the British Empire, the British Indian Ocean Territory (BIOT), was established in 1965, forcefully depopulating a population which has been on the island for two centuries, the Chagossians, in the exercise of the power of the Commissioner of the BIOT for the sole purpose of establishing a highly strategic advanced US military base during the Cold War.¹

After 51 years, the Republic of Mauritius under the prejudice of an incomplete decolonisation, is still sparring over the exercise of its exclusive rights over the Chagos Archipelago and its inability to implement a programme of resettlement for its Mauritian nationals of Chagossians origin. The UK stated in 2011 that the Islands will be ceded to Mauritius when they are no longer required for defence purposes,

1 Section 4 of the Immigration Ordinance 1 of 1971.

without indicating exactly when.² The UK had been making similar statement for the last 50 years in the form of promises of ‘returning’ Chagos to Mauritius after meeting its defence objectives.

By the time the Chagos Archipelago was excised from Mauritius by the British administration, clear principles of international law had already emerged to govern the process of decolonisation, among them the principles of self-determination and protection of territorial integrity. These principles require that the people of a non-self-governing territory (NSGT) have a right to determine their own future freely without conditions. On 16 September 2018 at its 71st session, the UN General Assembly included on its agenda the request for an Advisory Opinion by the International Court of Justice (ICJ) on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The General Assembly asked the Court to provide its views on the lawfulness of the decolonisation process of Mauritius in the circumstance where the Chagos Archipelago was detached from the territory of Mauritius by an Order in Council of 8 November 1965, just over two years before Mauritius gained its independence on 12 March 1968.³

One of the main differences between the views of the UK and Mauritius rests in their competing interpretations of historical events as the basis of claims to sovereignty over the Chagos Archipelago. Before the granting of independence to the colony of Mauritius in 1968, the Chagos Archipelago was separated from Mauritius under section 3 of the Order in Council of 8 November 1965.⁴ In doing so, the UK violated a multitude of international law principles including GA Resolution 1514 (XV) which requires colonial powers to grant independence to their colonies as a whole territorial unit. Accordingly, Mauritius has unceasingly challenged the lawfulness of this detachment claiming that the Chagos Archipelago is a part of its territory as a matter of fact and law.

On 22 June 2017, the General Assembly adopted Resolution 71/292, which requested the ICJ to give the Advisory Opinion on Chagos by virtue of article 65 the Statute of the ICJ. A time limit was set for the submission of written statements by the United Nations and its Member States.⁵ On 17 January 2018, the Court adopted an order to extend the time limit for the filing of written statements to 1 March 2018. The ICJ subsequently held a hearing from 3 to 6 September 2018.

This case commentary critically assesses the Advisory Opinion given on the matter by the ICJ. For the purpose of a comprehensive

2 I Papanicolopulu ‘*Mauritius v United Kingdom*: submission of the dispute on the Marine Protected Area around the Chagos Archipelago to arbitration’ (2011) *EJIL: Talk!* <http://www.ejiltalk.org/mauritius-v-united-kingdom-submission-of-the-dispute-on-the-marine-protected-area-around-the-chagos-archipelago-to-arbitration/> (accessed 19 August 2019).

3 UN GA Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, 14 July 2016 UN Doc A/71/142.

4 Under the BIOT Order 1965 Statutory Instrument 1 of 1965.

5 In accordance with article 66(4) of its Statute.

background to the case, the first part of the commentary provides an overview of the cases decided on the Chagos matter in various judicial fora. This is followed by a brief outline of the legal framework of international law applicable to the matter. The Advisory Opinion is then critically analysed in substance with a particular focus on both the majority decision and the dissenting opinions.

2 JURISPRUDENTIAL DEVELOPMENT IN THE MATTER OF CHAGOS ARCHIPELAGO

Two major categories of lawsuit have resulted from the detachment of Chagos Archipelago. The first is between the Chagos Islanders and the UK over the legality of the forceful displacement of the Chagossians from their native land and claims to establish their right to return. The second is between Mauritius and UK for unlawful detachment and sovereignty claim over the Chagos Archipelago.

2.1 The *Ventacassen* case 1975

The Chagossians initiated a series of lawsuit to seek redress against the violation of their rights to stay in their homeland. The first litigation was brought in 1975 by Michel Ventacassen in the High Court of London claiming moral damages for deprivation of liberty, intimidation and expulsion from his native land. However, the case was settled by way of agreement in 1982. A sum of £4 million was paid to around 1,344 Chagossians for renunciation of their right to return. Their consent was taken down in the English language, thus, probably without their informed knowledge, as most Chagossian at that time did not understand English.⁶

2.2 *R Bancoult v Secretary of State for Foreign and Commonwealth Affairs*

In 1998, the leader of Chagos Refugee Group, Louis Olivier Bancoult, initiated a process of judicial review in the British High Court to challenge the legality of the Immigration Ordinance of 1971 which authorised the expulsion of Chagossians and removed their right to return to their native land. Bancoult sought a writ of certiorari from the Divisional Court to quash the ordinance for irrationality.⁷ It was argued that a Britisher had a fundamental constitutional right to live within the territory of which he was a citizen of and that such a right could neither be abrogated by the BIOT Order nor by the action of the Commissioner

6 C Grandison, S Kadaba & A Woo 'Stealing the Islands of Chagos' (2013) 3 *Human Rights Brief* 20 at 38-39.

7 G Murray & T Frost 'The Chagossians' struggle and the last bastions of imperial constitutionalism' in S Allen & C Monaghan (eds) *Fifty years of the British Indian Ocean Territory* (2018) 147.

and the Queen had no power to curtail the liberty an individual.⁸ It was also argued that the legislation was repugnant to articles of the Magna Carta, and in violation of articles 3, 5 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

Lord Justice Laws and Gibbs observed that there had been an ‘abject legal failure’ in the removal of the islanders.⁹ Accordingly, the Ordinance was held *ultra vires*, as the power to legislate for peace, order and good governance did not include a power to expel an indigenous population. The Court quashed part of the 1971 Ordinance, granting the Chagossians the right to return to other islands of the Archipelago with exception to Diego Garcia because of the military facilities of the US there. However, in practice, many barriers remained. In response, the then Foreign Secretary, Mr Cook, stated in November 2000 that he would accept the ruling and that the government would not appeal against this decision and will carry a feasibility for potential resettlement of the Islanders.¹⁰ Hence the 1971 Ordinance was repealed, making way of the enactment of the Immigration Ordinance 2000.

2.3 *Bancoult v McNamara*

Meanwhile, in 2001, Olivier Bancoult filed another civil suit, this time in the US, for damages on the ground of forced relocation, racial discrimination, inhuman treatment, genocide, and destruction of real and personal property. He prayed for declaratory and injunctive relief. However, the case was dismissed by the District Court in 2004 for lack of jurisdiction over political decisions.¹¹ An appeal was made against this decision and it was upheld by the Court of Appeals of the District of Columbia in 2006 on the basis of being a non-justiciable political question.

2.4 *Chagos Islanders v The Attorney General*

Without success in Columbia, a group of Chagossians filed a suit in tort in the British High Court of Justice in April 2002. For the first time the Court was called to adjudicate for damages. In essence, the claimants

8 See *Entick v Carrington* [1765] EWHC KB J98

9 *R Bancoult v Secretary of State for Foreign and Commonwealth Affairs* (No 1) [2000] EWHC Admin 413. E MacAskill ‘Evicted islanders to go home’ *The Guardian* 4 November 2000 <https://www.theguardian.com/world/2000/nov/04/ewenmacaskill> (accessed 15 August 2019).

10 J Borger ‘Exiled islanders win 40-year battle to return home as judges accuse UK of abuse of power’ *The Guardian* 24 May 2007 <https://www.theguardian.com/world/2007/may/24/politics.topstories3> (accessed 15 August 2019).

11 *Bancoult v McNamara* 445 F. 3d 427 (DE Cir. 2006). Federal Courts ‘Political question doctrine – D.C Circuit holds claims of harms to native inhabitants of the British Indian Ocean Territory caused by the construction of a US military base non-justiciable’ (2007) 120 *Harvard Law Review* 860.

sought compensation and restoration of their property rights and unlawful deportation. Six wrongs were argued: misfeasance in public office, negligence, deceit, unlawful exile, breach of property rights and infringement of rights under the Mauritian Constitution. On the claims of misfeasance and deceit, no officers had been identified as having acted harmfully. The prejudice of wrongful exile was really an allegation of maladministration. The court also ruled that there was neither an arguable tort of unlawful exile, nor a duty of care to take reasonable steps for the well-being of the claimants. The claim was struck out for an abuse of process as it was time-barred.¹²

2.5 *Chagos Islanders v Attorney General and Another*

After a discouraging judgement in 2003, the claimants sought leave to appeal against the ruling that they had no cause of action and they were not entitled for damages due to the payment made in 1982 after the *Ventacassen* case 1975 for their expulsion from their islands. The Court held that Justice Ousley rightly decided that those who signed the renunciation forms compromised their claims for compensation. The Court of Appeal refused the claimant's application for leave to appeal by judgment dated 22 July 2004.¹³

2.6 *Louis Olivier Bancoult (Claimant) v The Secretary of State for Foreign and Commonwealth Affairs (Defendant)*

On 10 June 2004, Her Majesty in Council enacted the British Indian Ocean Territory (Constitution) Order 2004. Section 9 of the Order provides that 'no person has the right of abode in the territory' and 'no person is entitled to enter or be present in the territory except as authorised by or under this Order or any other law for the time being in force in the territory'. On the same date, the Immigration Order 2004 was promulgated, prohibiting entry without a permit in Chagos. This Order 2004 replaced the Ordinance of 2000. Olivier Bancoult again challenged the validity of the BIOT Order 2004 and lodged a new case.

12 *Chagos Islanders v Attorney General and Her Majesty's British Indian Ocean Territory Commissioner*, First Instance, Claim for Compensation, Case No HQ02X01287, [2003] EWHC 2222, ILDC 257 (UK 2003), 9th October 2003, United Kingdom; England and Wales; High Court [EWHC]; Queen's Bench Division [QBD].

13 *Chagos Islanders v Attorney General and Another* [2004] EWCA Civ 997; see also I Afsah 'Diego Garcia (British Indian Ocean Territory)' in P Minnerop, R Wolfrum & F Lachenmann (eds) *International development law: the Max Planck encyclopedia of public international law* (2019) 366.

The Court in 2006 quashed section 9 of the BIOT order for irrationality and for being *ultra vires*.¹⁴

2.7 *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Bancoult (No 2)*

The Chagossian's cause took a serious blow in the appeal against the 2006 case. The judgment delivered on 22 October 2008 upheld the new Order in Council by a majority to 3-2, stating that it was valid. Although a judicial review could be envisaged against Orders in Council, national security and foreign relations barred them from doing so.¹⁵

2.8 *Chagos Islanders v the United Kingdom*

A case related to this matter was also submitted to the European Court of Human Rights. In 2012, the Court declared the *Chagos Islanders* case to be inadmissible. By a majority, the Court ruled that as the Chagossians had accepted compensation from the UK, they had legally renounced their 'right to return' and as such their case was inadmissible. The ruling ruined the Chagossians' hopes of returning and to block any further legal avenues through the European Court by concluding that individual Chagossians had no right of individual petition to the court in future.¹⁶

2.9 *The Queen (on the application of Hoareau and Bancoult) v Secretary of State for Foreign and Commonwealth Affairs*

The Court concluded by emphasising that these are claims for judicial review, not an appeal against governmental decisions on their merits. The wisdom of governmental policy is not a matter for the courts and,

14 *Louis Olivier Bancoult (Claimant) v The Secretary of State for Foreign and Commonwealth Affairs (Defendant)* [2006] EWHC 1038; see also C Nauvel 'A return from exile in sight? The Chagossians and their struggle' (2007) 5 *Northwestern Journal of International Human Rights* 103.

15 *R v Secretary of State for Foreign and Commonwealth Affairs, ex parte Bancoult (No 2)* 2008 UKHL 61, 4 All E.R 1055; see also P Sand 'R (On the Application of Bancoult) v Secretary of State for Foreign and Commonwealth Affairs' (2008) 103 *American Journal of International Law* 317.

16 *Chagos Islanders v the United Kingdom* – European Court of Human Rights (application no 35622/04) ECHR 460 2012; see also A Raouf 'Still dispossessed – the battle of the Chagos Islanders to return to their homeland' *Minority Rights Group International Briefing* (2012) 5 https://minorityrights.org/wp-content/uploads/2015/07/MRG_Brief_Chagosv2.pdf (accessed 13 August 2019).

in a democratic society, must be a matter for the elected government alone.¹⁷

2.10 Republic of Mauritius v United Kingdom of Great Britain and Northern Ireland 2015

In April 2010 the UK proclaimed the setting up of the Marine Protection Area (MPA) in the Chagos Archipelago. However, in December 2010, Mauritius brought claims against the UK pursuant to article 287 of the United Nations Convention on the Law of the Sea (UNCLOS) before the Arbitral Tribunal, challenging the creation of the MPA under article 2, 56 and 194. In March 2015, The Tribunal, appointed under Annex 7 of the UNCLOS, held that the creation of the MPA was illegal under UNCLOS and the fishing mineral and oil rights upon a subsequent its return of the territory to Mauritius was undermined.¹⁸

3 AN OVERVIEW OF THE APPLICABLE LEGAL FRAMEWORK IN THE CHAGOS MATTER

This section attempts to establish the legal framework on decolonisation and equal rights and self-determination of people with regards to the decolonisation of Mauritius in public international law in juxtaposition with the Charter and resolutions of the United Nation (UN) 1945 as well as the case law of the ICJ. The unlawful detachment of the Chagos Archipelago revolves mainly around two concepts, the principles of territorial integrity and self-determination.

3.1 The principle of *uti possidetis* and territorial integrity

The principle of *uti possidetis* originates from Roman Law,¹⁹ and with time it acquired the status of international customary law evolving from a private to an international rule applicable to the principle of territorial sovereignty, statehood, creation of states and territorial boundaries.²⁰

17 *The Queen (on the application of Hoareau and Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2019] EWHC; see also Landmark Chambers '*R (Hoareau and Bancoult) v Secretary of State for Foreign & Commonwealth Affairs* [2019] EWHC 221 (Admin) – Resettlement of the Chagos Islands' 8 February 2019 <https://www.landmarkchambers.co.uk/r-hoareau-and-bancoult-v-secretary-of-state-for-foreign-commonwealth-affairs-2019-ewhc-221-admin-resettlement-of-the-chagos-islands/> (accessed 13 August 2019).

18 See Minority Rights 'MRG applauds UN ruling on Chagos Marine Protected Area' 31 July 2015 <https://minorityrights.org/2015/07/31/mrg-applauds-un-ruling-on-chagos-marine-protected-area/> (accessed 13 August 2019).

19 F Heydte 'Discovery, symbolic annexation and virtual effectiveness in international law' (1935) 29 *American Journal of International Law* 452.

20 See J Dugard *International law: a South African perspective* (2006) 100.

As a general notion, *uti possidetis* may be explained as the inviolability of previous administrative borders within and outside the colonial context. However, in the matter of Chagos, the principle of *uti possidetis juris* may be applied, which consist of the principle of self-determination and non-intervention in domestic affairs of a country.²¹ Lone suggests that the principle of *uti possidetis* played an important role in the decolonisation process in Africa and she also argues that the purpose of this doctrine was to secure the territorial stability of newly created states, delimiting their maritime zones and boundaries.²² The ICJ expressed a similar understanding in the case of the *Frontier Dispute (Burkina Faso v Mali)* of 1986.²³

During the decolonisation process, while granting independence to Mauritius, the administering power should have preserved the sanctity of the territory as obtained in full rights and sovereignty, under the Treaty of Paris 1814. New state shall be declared from the totality of previous territory, therefore the dismemberment of the Mauritian territory in 1965 violates the principle of territorial integrity of Mauritius as a whole unit which extends to the Chagos Archipelago. Since then, Mauritius has continuously asked that the sanctity of its territorial integrity be restored. However, following the reports of the fourth Committee 2066 on the Questions of Mauritius, the General Assembly adopted resolution 2066 (XX), recalling GA Res. 1514 (XV) invited the administering power 'to take no action which would dismember the Territory of Mauritius and violate its territorial integrity'. This right was further strengthened to preserve its territorial integrity through the adoption of GA Res. 2232 (XXI) and 2357 (XXII).

3.2 A right to self-determination with regards to Chagos

The right to self-determination is the inalienable right of a colony to freely pursue political, economic, social and cultural development.²⁴ At the very outset, in relation to our case, we emphasise on the external aspect of self-determination which concerns the right of peoples to freely determine their political will as an independent state²⁵ rather than its internal aspect which consists the rights of people to aspire economic, social and cultural development within the domestic political and legal structure.²⁶ Prior to the excision of the Chagos Archipelago the General Assembly adopted Resolution 1514 (XV) with the purpose to dismantling colonialism in whatsoever manner.

21 C Parodi *Politics of South American boundaries* (2002).

22 F Lone *Uti possidetis juris* (2012).

23 See M Leigh 'Case concerning the Frontier Dispute (*Burkina Faso v Mali*)' (1987) 81 *American Journal of International Law* 411.

24 R Hingorani *Modern international law* (1979) 243.

25 H Hannum 'Rethinking self-determination, self-determination in international law' (1993) 34 *Virginia Journal of International Law* 973.

26 R McCorquodale 'Self-determination in international law' (1993) 34 *Virginia Journal of International Law* 1.

The principle of equal rights and self-determination of people has acquired a dynamic jurisprudential legacy in the wake of decolonisation even though it was viewed only as political aspiration as described by Higgins.²⁷ The doctrine progressed significantly since its inception in the UN Charter under article 1(2), which is to 'develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples'. The UN also provides the right to self-determination as a core objective under article 55 and 56 of the UN Charter as confirmed by the ICJ in the Western Sahara Advisory Opinion 1975 with a direct impact on the NSGT.

The principle is also codified in article 1 of both the International Covenant on Civil and Political Rights GA Res. 2200 A (XXI) and International Covenant on Economic, Social and Cultural Rights GA Res. 2200 (XXI) meanwhile the right became crystallised as a fundamental human right within the corpus of the ICJ since the advisory opinion on the legal consequences for states of the continued presence of South Africa in Namibia 1971. However, in the case of the *Republic of Mauritius v United Kingdom of Great Britain and Northern Ireland* 2015, the Arbitral Tribunal in an *obiter dictum* held that perhaps this right developed earlier between 1945-1965. Nevertheless, when the Mauritian territory was disrupted there was already an established rule which governed the process of decolonisation as provided by article 73 of the UN Charter and GA Res. 1514 (XV) which was based on free will of the people.

3.2.1 GA Res. 1514 (XV) Declaration on the Granting of Independence to Colonial Countries and Peoples

Adopted on 16 of December 1960, GA Res. 1514 (XV) is believed to have laid the foundation for decolonisation process, Advisory Opinion Western Sahara 1975. The GA Res. 1514 (XV) is of normative character, as it provides for 'all peoples having the right to self-determination'. The objective was to bring an end to colonialism in 'all its forms and manifestation' without further delay whereby the 'alien subjugation, domination and exploitation constitutes a denial of fundamental human rights and is contrary to the Charter of the United Nations'. In addition, the resolution further provides for immediate action concerning NSGT and to all such territories which have not acquired independence, giving all powers to those territories without any conditions, complying with their 'freely expressed will and desire'.

In order to safeguard the integrity of NSGT, paragraph 6 of GA Res. 1514 (XV) condemns all 'attempt aimed at the partial or total disruption of the national unity or territorial integrity of a country' by stating its incompatibility with the purpose of the UN charter. Within the meaning of operative paragraph 6, an attempt leading to independence 1965 violates the purpose of GA Res. 1514 (XV). Even if the Council of

27 R Higgins 'The International Court of Justice and human rights, in international law: theory and practice' in K Wellens (ed) *Essays in honour of Eric Suy* (1998) 694.

Ministers gave their consent for the detachment, it can be noted that consent was not given as a sovereign state but rather Mauritius was still under the colonial authority of the UK which amounts to consent obtained by duress as argued by Lynch (1984).

3.2.2 Peremptory nature of self-determination in international law

The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among states, GA Res. 2625 (XXV) of 1970, reiterates the characteristics of self-determination thereby acquiring a *jus cogens* status of *erga omnes* character, that is a prima facie obligation towards all without derogation, South West Africa 1950. In the case of *East Timor (Portugal v Australia)* 1991 the ICJ recognised the right to self-determination having an *erga omnes* character essential to contemporary international law as claimed by Portugal.²⁸ More so, the character of *erga omnes* is further ascertained in the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* 2004.

3.3 The decolonisation of Mauritius within the UN framework as a non-self-governing territory

In the endless effort to eradicating colonialism, the General Assembly Resolution on Third International Decade for the Eradication of Colonialism, GA Res. 65/119 invites members of the UN to intensify their collaboration with the Special Committee for a sustained implementation of GA Res. 1514 (XV) dismantling the remnants of colonialism completely. Being a remnant of decolonisation, Mauritania is still sparring upon the legality of its decolonisation procedure since 12 March 1968.

Garner defines decolonisation as a process by which a colony under a colonial power is granted independence from colonial masters divesting itself of sovereignty.²⁹ In this view, the law governing decolonisation predates the UN and finds its source in the League of Nations Mandate where colonies deprived from their sovereignty due to a result of war were placed under the Sacred Trust of Civilisation as provided by article 22 of the Covenant of the League of Nations 1919 (CLN). The Mandate was based on the premise that colonies should be independent. After the Second World War, the Sacred Trust of Civilisation evolved into the International Trusteeship established by the UN Charter affirming the continuity of the principle of self-determination and interest of inhabitants within the spirit of article 22 of the CLN. Later on, the ICJ confirmed it in the *South West Africa Advisory Opinion 1950* concerning the determination of the legal status of the Territory by stating that the Sacred Trust of Civilisation

²⁸ *East Timor (Portugal v Australia)* Judgment of 30 June 1995.

²⁹ B Garner *Black's Law Dictionary* 2014.

was still under obligation to submit report about its administration to the UN qualifying article 22 of the CLN as evolutionary in terms of customary law rather than static. Mauritius was originally listed as a NSGT in 1946 under GA Res. 66 (I).

The process of decolonisation has fundamentally been dependent upon the proper application of the principle of self-determination. In this endeavour, the General Assembly has been anchoring various decolonisation processes in the exercise of its powers and functions relating to NSGT. Although dismantling colonial legacies was not the primary objective of the UN, the Charter provides the legal framework to be followed in the matter of decolonisation relating to Trust and NSGT in Chapter XI, XII and XIII. Article 73 of the UN Charter on NSGT provides the guidelines, binding upon members administering such territories whose peoples had not yet reached a full capacity of self-government. The UK as an administering power had an obligation under article 73(b) to help Mauritius to develop a self-government considering their political aspiration and to transmit to the Secretary General all information pertaining to the social, economic and educational conditions of Mauritius under GA Res. 66 (I) in compliance with article 73(e) but the UK did not fulfil their obligations in good faith.

3.4 Human rights implications

Article 73(e) of the UN Charter requires that the UK had to transmit information about a permanent population on the Chagos and ensure their economic and cultural development including the right to remain in their homeland. In exercise of the power under Immigration Ordinance No.1 of 1971, the Chagossians were evicted from their land termed as transient labourers, thereby infringing article 9 of the Universal Declaration 1948 which provides that no one shall be subject to arbitrary exile. However, the Human Rights Committee in a Concluding Observation under paragraph 22 of its periodic report 2008 recommended that the Islanders must be able to exercise their right to return. After their eviction, the Chagossians suffered gross human rights violations and were subject to various forms of inhuman treatment without food and clothing and even without a decent house.³⁰ Therefore, this would violate the right to liberty and security of person under article 3 and protection against inhuman treatment under article 5 of the Universal Declaration. However, the Chagossians were also subject to arbitrary deprivation of their personal property, occasioning a violation of thereby violating article 17(2) of the Universal Declaration and eventually their quality of life under article 11(1) of the European Convention.

In the light of the discussion above, the NSGT had an inalienable right to self-determination and to genuinely and freely determine their

30 R Mahadew & D Raumnauth 'Assessing the responsibilities of the United Kingdom and Mauritius towards the Chagossians under international law' (2016) 29 *Afrika Focus* 39-57.

future. Independence should have been granted without any condition or reservation imposed on Mauritius against its desire. The Jurisprudence of the ICJ confirms the customary character of the right to territorial integrity of a NSGT as a consequence of the right to self-determination. The continued administration of the UK over Chagos Archipelago also breaches the principle of state sovereignty as Mauritius is not in exclusive control of its territory. Detachment without a freely expressed will of the people violates the essence of Resolution 1514 (XV) and 2066 (XX). Therefore, we can say that the decolonisation process of Mauritius is inconsistent with principle of international law.

4 CRITICAL EVALUATION OF THE ADVISORY OPINION OF THE ICJ IN THE SEPARATION OF CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965

In order to make a comprehensive and coherent evaluation of the Advisory Opinion of 25 February 2019, an analysis of both its legal and political context is undertaken. It is of paramount importance to link the dynamics of the ICJ in its advisory capacity within the scope of public international law and the jurisprudential evolution of the ICJ.

4.1 The context

The Advisory Opinion of the ICJ rendered on 25 February 2019, upon the request of the GA Res. 71/292 of 22 June 2017 adopted by 94 countries against 15 with 65 abstention, supported by the African Union and 6 South American States, was a culmination of almost 51 years of struggle by the Government of Mauritius and the Chagossian community. The adoption by 94 member states was a blow to the UK and a decisive moment for both Mauritius and the Chagossian community sending a clear message that the UN expects the UK to bring an end to this relic of the Cold War. The arguments of both sides are set out in the UK statement by Matthew Rycroft and explanatory memorandum by Mauritius of July 2016 by Sir Anerood Jugnauth and in its *aide memoire* of May 2017.

4.2 The overarching questions behind GA Resolution 71/292

The General Assembly of the UN requested its main judicial organ, the ICJ, established under article 92 of the UN Charter for an advisory opinion in compliance of article 96 of the Charter. The speech request reads as follows: 'The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion

on any legal question', within the meaning of article 65 of the Statute of the ICJ, to give an advisory opinion on the following questions:

- (a) Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?
- (b) What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?

The questions submitted to the Court have been drafted in a very clear and precise way, broadening its scope within international law thereby allowing the ICJ to exercise its jurisdiction and competence in a 'broader frame of reference', as to the interpretation of various issues arising under question (a) in relation to decolonisation. It is noted that question (a) does not in any way refer to the claim of sovereignty over BIOT but rather in disguised asks the ICJ whether the decolonisation of Mauritius has been conducted lawfully, recalling the detachment of the Chagos Archipelago prior to the independence of Mauritius in 1968 in the presence of the Lancaster Agreement 1965.

By excluding the concept of state sovereignty, the General Assembly secured the ICJ's ability to give a decision by circumventing the limitation of competency of the Court's discretionary power under article 65 of the Statute, in a territorial dispute of bilateral nature as submitted by the Israel and Australia on 28 February 2018. Hence, under paragraph 86 of the Advisory Opinion, the ICJ recognised that the question relates to the law of decolonisation directing the Court towards the violation of the right to self-determination of people. The gist of question (b) allows the Court to reflect upon numerous issues arising from a 'continued administration' that do not necessarily relate to decolonisation or sovereignty but also to the fundamental human rights, the right to return of the Chagossians and resettlement programme.

A request for reformulation of the questions in the oral submissions of several countries (paragraph 133) was noted, but the ICJ refused to do so seeing no reason for a restrictive interpretation. Nevertheless, Judge Donoghue in her separate dissenting opinion under paragraph 22, stated that the court could have reformulated the question and regretted that the Court did not adopt such an approach.

4.3 Advisory jurisdiction of the ICJ in giving an opinion on the legal consequences of the separation of Chagos

Among the 31 participating countries and the African Union, the UK, US, Israel, Australia and Chile raised a jurisdictional challenge on the competence of the Court. Article 65(1) of the Statute and article 96(a) of

the Charter provides the legal basis for requesting an advisory opinion on a legal question by an authorised body. The jurisprudence of the ICJ suggests that when the Court is requested for an advisory opinion, it will first scrutinise whether the request fall within its purview as in the Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons 1996, both in terms of *ratione personae* and *ratione materiae*.

4.3.1 The issue of *ratione personae* and *materiae*

The ICJ had to ascertain the *locus standi* of the requesting organ putting forward a question of legal character and whether the question is one arising within the scope of the activities of the requesting organ. Besides, the court recognised the unequivocal role of the requesting organ in assisting several colonies in their decolonisation process through GA Res. 1514 (XV) and the consistency of the General Assembly in calling upon colonial power to respect the territorial integrity of the NSGT under paragraph 168 of the Advisory Opinion on Chagos. Therefore, the Opinion would assist the functioning of the requesting organ to complete the decolonisation of Mauritius in a lawful manner.

In the *Western Sahara Advisory Opinion 1975*, the ICJ observed that a question framed raising an issue of law shall be given a reply based on law.³¹ In the present case, the Court applies the legality test of the article 96(b) upon the questions asked and rules that the question relates to international law, therefore it satisfies the criteria of legal character considering the Advisory Opinion on the legal consequences of the construction of a wall in the occupied Palestinian Territory 2004 and affirms the competency of the General Assembly under paragraph 56 of the Opinion on Chagos.

4.3.2 Discretionary power, compelling reasons and the principle of state consent

The ICJ may decline to give an opinion although having ascertained jurisdiction as stated in the *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory 2004* and *Advisory Opinion Certain Expenses of the United Nations* (Article 17(2), of the Charter) 1962. In giving an opinion, the Court cannot disregard its main objective which is to assist the General Assembly in its activity.³² The discretionary power to give or refrain from rendering an opinion exist to protect the integrity of the Court in its role to assist the requesting organ meantime preserving its autonomy.³³ However, in the light of ICJ's jurisprudence, the court

31 ICJ *Western Sahara Advisory Opinion 16 October 1975* <https://www.icj-cij.org/files/case-related/61/061-19751016-ADV-01-00-EN.pdf> (accessed 25 May 2019).

32 PCIJ *Status of Eastern Carelia 23 July 1923* para 20 http://www.worldcourts.com/pcij/eng/decisions/1923.07.23_eastern_carelia.htm (accessed 20 May 2019).

33 ICJ *Declaration of independence in respect of Kosovo Advisory Opinion 22 July 2010* para 29 <https://www.icj-cij.org/files/case-related/141/141-20100722-ADV-01-00-EN.pdf> (accessed 20 May 2019).

may refuse a request under its discretionary power if there are 'compelling reasons'.

Korea, in its written submission on 28 February 2018, explains the essence of compelling reasons as an abstract nature of the question, a lack of purpose, lack of factual evidence and possibility to undermine or complicate the relevant political process. In addition, the Court also addressed the issue of *res judicata* of the Arbitral Award on Marine Protection Area 2015 raised by some countries. Moreover, Israel along with Australia in its written submission of 28 February 2018 argues as objection the principle of state consent to submit itself to the jurisdiction of the ICJ in a bilateral dispute for judicial settlement without consent.

Australia further argued that to give a reply would have the circumventing effect of the Principle of State Consent under international law considering *Western Sahara Advisory Reports 1975*. The vice President of the Court, Judge Xue, in her separate declaration highlights the issue of the principle of non-circumvention and acknowledges an intense debate on whether the court should have used its discretionary power to decline to give reply.

4.4 Submissions of states

Mauritius has always shared a good healthy relationship with all members state of the UN. Unflinching support was noted from countries such as India, Belize, Germany, Liechtenstein, Serbia, Guatemala, Cyprus, Argentina and Nicaragua have opposed the UK's claim of sovereignty of Chagos. However, some states such as Korea and France were neutral in their positions. In addition to this, the United States, Australia, Israel, Chile and UK fiercely opposed the claim of Mauritius. Altogether 31 states of the UN along with the regional support of the African Union Commission, filed written statements to the ICJ. In reply to this, the African Union and ten UN member states responded with written comments on the written statements. Twenty-one states and the African Union participated in the oral proceedings from 3 to 6 September 2018.

4.5 Critical reflection on the Advisory Opinion

The Advisory Opinion, delivered on 25 February 2019, was a major development under international law to the extent that it revisited the principle of decolonisation in the way it is perceived today and confirmed the right to self-determination as a crystallised one, strengthening its basis for future cases. The President of the Court, Abdulgawi Ahmed Yusuf, held that the detachment of the Chagos Archipelago did not comply with the 'free and genuine expression of the

people concerned',³⁴ and that the British administration of the UK constitutes 'a wrongful act'³⁵ of a continuing character. On this basis, it expressed the view that the UK had an obligation to relinquish control of the Islands to Mauritius as rapidly as possible and also declared the detachment of Chagos from Mauritius to be unlawful.

The Opinion confirmed a prima facie breach of the right to self-determination of people, territorial integrity and violation of human rights. Two lines of thought emerged from the Opinion. The first view is that the Court's Opinion confirming the detachment as unlawful implies that the UK cannot exercise sovereignty over Chagos post-independence. It followed therefore that sovereignty could not have been excised from Mauritius by the creation of a new colony. The UK was therefore called upon to transfer administration of BIOT to Mauritius, and not sovereignty. Second, the Court found that the unlawfulness was by reference to customary international law which of course by default would be part of English law. Therefore, automatically the existence of the BIOT, its Orders, Ordinances and Proclamations were deemed unlawful under international law.

The implications were to question the legal validity of BIOT and all its laws. However, it can be noted that the Court went further to stir a form of judicial activism despite the fact that Judge Cançado Trindade considered that the Court disregarded relevant points that deserved more attention and that it failed to consider some issues at all.³⁶ Finally, although being non-prescriptive as far as it could, the Court noted that all member states must cooperate to complete the decolonisation of Mauritius since self-determination is an obligation of an *erga omnes* character.³⁷ Every state – including UK and the US – has the duty to assist the General Assembly to promote through joint and separate action the completion of the Decolonisation of Mauritius and protection of human rights of Chagossians in accordance with the provisions of the Charter.

4.5.1 Discussing the separate opinions

A review of the opinions of the Judges enhances the understanding of the reasoning of the Court's application of the available international law to establish a normative judgment considering a comprehensive and rational jurisprudential evolution. By a majority of 13 to 1, the Court found that the decolonisation of Mauritius had not been lawfully completed, with a single dissenting opinion coming from American

34 ICJ Advisory Opinion *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* 25 February 2019 General List No 169 p 4 (*Chagos case*).

35 *Chagos case* (n 34) para 177.

36 See Separate Opinion of Judge Cancado Trindade para 1 <https://jusmundi.com/en/document/pdf/Opinion/ICJ-169-20190225-01-04/en/en-legal-consequences-of-the-separation-of-the-chagos-archipelago-from-mauritius-in-1965-request-for-advisory-opinion-separate-opinion-of-judge-cancado-trindade-monday-25th-february-2019> (accessed 30 September 2019).

37 *Chagos case* (n 34) para 180.

Judge Donoghue. All the fourteen Judges appended separate opinions and declaration to the ICJ ruling. In other words, they confined their remarks to the materials and arguments presented before the Court applying the relevant law to the factual evidence.

The 14 Judges unanimously found that the Court has jurisdiction to hear and determine the case of Chagos. Nevertheless, only 12 out of 14 Judges decided to comply with the request to pronounce themselves on the two substantive questions posed. While being instructive within the complexity of judicial argument, Judge Tomka was against complying with the request. In response to question (a), Judge Tomka agreed that the decolonisation of Mauritius was not lawfully completed and that the British Administration should bring an end to their activities on Chagos, but he disagreed with the reasoning of the Court in reaching this decision.³⁸ On the other hand, Judge Abraham contended that once the element constituting the offence of question (a) was found, the Court went beyond its scope in holding the UK to bring an end to its administration.³⁹

Both Judges considered that in an attempt to answer the questions the Court went beyond the scope of necessity to assist the General Assembly in its function while adjudicating on a bilateral dispute in disguise. Protecting the essence of an advisory opinion, Judge Tomka stressed that an advisory opinion may take the form of a contentious dispute due to its origin of bilateral nature. Therefore, he advocated that the Court must exercise caution not to exceed its scope further than required.⁴⁰ For Judge Tomka, it was not necessary for the Court to hold that decolonisation remained to be completed in answering question (b). Ruling as this matter dealt with the conduct of the UK and by doing so the Court embarked on the principle of state responsibility.⁴¹

4.5.2 Dissenting Opinion of Judge Joan Donoghue

In her dissenting opinion, Judge Donoghue agreed that the ICJ had jurisdiction to give an opinion but she also stressed the principle of judicial propriety and the need to provide compelling reason. According to her, the Court should have declined to give an Opinion in exercise of its discretionary power. She argued that the request was in

38 See Declaration of Judge Tomka para 9 <https://jusmundi.com/en/document/pdf/Opinion/ICJ-169-20190225-01-02/en/en-legal-consequences-of-the-separation-of-the-chagos-archipelago-from-mauritius-in-1965-request-for-advisory-opinion-declaration-of-judge-tomka-monday-25th-february-2019> (accessed 30 September 2019).

39 See Declaration of Judge Abraham p. <https://jusmundi.com/en/document/pdf/Opinion/ICJ-169-20190225-01-03/fr/fr-effets-juridiques-de-la-separation-de-larchipel-des-chagos-de-maurice-en-1965-requete-pour-avis-consultatif-declaration-de-m-le-juge-abraham-monday-25th-february-2019> (accessed 30 September 2019).

40 *Chagos* case (n 34) para 6.

41 *Chagos* case (n 34) para 9.

fact a bilateral dispute over sovereignty of Chagos Archipelago,⁴² best suited to be resolved through negotiation. Giving an Opinion could damage the credibility and undermine the integrity of the ICJ's consistent jurisprudence and could have the effect of circumventing the absence of UK's consent.⁴³

4.6 Legal effect of the Advisory Opinion and enforcement

The Advisory Opinion provided arguments which integrate customary law. Under public international law, the enforcement of decisions by the ICJ – whether a contentious case or an advisory opinion – is a complex matter. However, what should be considered here is whether the General Assembly can defer from the Advisory Opinion in the matter of Chagos. The answer to this question would probably lie within the provisions of the UN Charter in the absence of a binding mechanism similar to article 94 of the UN Charter which applies to contentious cases. Consequently, the General Assembly is not obliged to follow the opinion of the ICJ which is non-binding in nature. However, an advisory opinion is also not devoid of any politically probative force. Emanating from the highest jurisdiction of the international judicial system, an advisory opinion should be recognised as having a certain degree of authority.

The legitimacy of this particular Advisory Opinion has been enhanced with the General Assembly adopting Resolution 73/295, welcoming the opinion on 22 May 2019. By a recorded vote of 116 in favour to 6 against and with 56 abstentions, the Assembly reiterated that Mauritius will now be enabled to complete the decolonisation of its territory as soon as possible.⁴⁴ In his address to the Assembly, the Mauritian Prime Ministry highlighted the way forward as follows:⁴⁵

Stressing that the United Kingdom is obliged to end its administration and enable Mauritius to complete the decolonization of its territory, he said the Assembly must pronounce on the modalities required for such and that all Member States must cooperate with the United Nations to put those modalities into effect. It must also address the issue of resettlement, a question of human rights protection.

However, the worrying stand of the United Kingdom is worth highlighting:⁴⁶

42 See Dissenting Opinion of Judge Donoghue para 1 <https://jusmundi.com/en/document/pdf/Opinion/ICJ-169-20190225-01-06/en/en-legal-consequences-of-the-separation-of-the-chagos-archipelago-from-mauritius-in-1965-request-for-advisory-opinion-dissenting-opinion-of-judge-donoghue-monday-25th-february-2019> (accessed 30 September 2019).

43 As above.

44 United Nations 'General Assembly Welcomes International Court of Justice Opinion on Chagos Archipelago, Adopts Text Calling for Mauritius' Complete Decolonization' Plenary Seventy-third Session GA/12146 <https://www.un.org/press/en/2019/ga12146.doc.htm> (accessed 30 September 2019).

45 As above

46 n 32.

The United Kingdom is not in doubt about our sovereignty over the British Indian Ocean Territory', she said, which has been under its sovereignty since 1814. It has never been part of Mauritius. In 1965, Mauritius freely entered into an agreement that offered fishing rights and marine resource. The accord also included a United Kingdom commitment to cede the territory when it is no longer needed for defence purposes. The UK stands by its commitments made in the 1965 agreement, which Mauritius reaffirmed on many occasions since its 1968 independence, including through its own laws and Constitution.

The UN described the UK's position on the Advisory Opinion as being 'disrespectful of the Court and the United Nation'.⁴⁷ UK had up to 22 November 2019 to leave the Chagos without conditions as required by the Advisory Opinion. This has not been respected. Taking a position on the matter, South Africa has stated as follows during the UN General Assembly meeting:⁴⁸

'South Africa stands by the African Union's position that their right to self-determination and independence for Western-Sahara is non-negotiable. The complete decolonisation of Mauritius must be undertaken in accordance with the General Assembly resolution on the issues adopted earlier in 2019. That action sent a strong signal from the international community that control of the Chagos Islands archipelago should return to Mauritius'.

Christopher Pincher, State Minister at the Foreign and Commonwealth Office, replied to a parliamentary question in the UK House of Commons, stating the following:⁴⁹

'This is an inappropriate use of the ICJ Advisory Opinion mechanism and sets a dangerous precedent for other bilateral disputes. However, an Advisory Opinion is not a legally binding judgment, it is advice provided to the UN General Assembly at its request. And while the British Government respects the ICJ and has considered the content of the Advisory Opinion, it does not share the Court's Approach. No international tribunal has ever found UK sovereignty to be in doubt. We stand by our long-standing commitment to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes, but strongly refute Mauritius' claim that BIOT is part of Mauritius'.

5 CONCLUSION

Beneath the legal structure of the *Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* lies two straightforward political issues, sovereignty over Chagos and resettlement of the Chagossians. The Advisory Opinion of 25 February 2019 is a breakthrough for Mauritius, as it forces the UK to engage in diplomatic talks with Mauritius in reaching a settlement. However, neither litigation nor politics alone can solve this issue.

The fundamental question now is how the General Assembly will take forward the decolonisation process of Mauritius including the resettlement of its Mauritian nationals of Chagossian origin and the restoration of their human rights to abode after adopting the Opinion.

47 'Chagos – Territorial sovereignty' *Week End* 20 October 2019.

48 As above.

49 See UK Parliament 'British Indian Ocean Territory: Sovereignty: Written question – 117' <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2019-10-14/117/> (accessed 25 October 2019).

The Advisory Opinion will serve as basis to convince and garner support from all countries that abstained from voting on GA Res. 71/292. Nevertheless, there are decades of distrust to be washed away. It has long been known that the Outer Islands are not required for defence purposes. Therefore, as a first step, the other islands namely Peros Banhos, Salomon Islands, Nelsons Island, Three Brothers, Eagle, Egmont and Danger Islands can be restituted in full rights to Mauritius until the completion of its decolonisation, to introduce a pilot resettlement programme for Chagossians, thereby restoring their right to abode, jointly administered and financed by the UK and Mauritius as part of a bilateral accord. To achieve this, setting out a framework for diplomatic discussions would be the starting point. Diplomatic discussions between the two sovereign states are paramount to come up with a jointly and freely agreed settlement in form of a bilateral treaty.

Jean Claude de l'Estrac former Minister of Foreign Affairs of Mauritius, notes that it is unlikely that the UK will relinquish control over Chagos.⁵⁰ However, the Britain's Foreign Office has stated to the press that it will look 'carefully' at the ruling, while stressing that the Court's view is 'an advisory opinion, not a judgment and the defence facilities on Diego Garcia helps to protect people here in Britain and around the world from terrorist threats, organised argument to resettlement, especially after the terrorist attacks on New York on 11 September 2001 and the co-ordinated US military operation in Iraq in 2003'.⁵¹ In addition to this, with the emergence of the Asia-Pacific and China as a global economic force and strategic centre for trade in the region, the American military presence is important in the Indian Ocean as a safeguard to peace and security.⁵² Nevertheless, Mauritius has continuously reassured the UK and the US about the continuity of the military base. Diplomatic negotiation on the strategic and future use of Diego Garcia for Military and defence purposes to maintain international peace and security will be envisaged in the form of separate agreement or treaty between Mauritius, the UK and the US, with Mauritius having exclusive sovereignty.

From an international law point of view, it has to be said that it was re-assuring to see Judges of the ICJ upholding the sacrosanct principle of the right to self-determination in the decolonisation context against one of the most powerful countries of the world. The onus now lies with the UK to decide on a matter of human rights and fundamental freedoms of the Chagossians against matters related to defence.

50 J De L'Estrac 'Restitution des Chagos' *DefiMedia* 3 March 2019 <https://defimedia.info/restitution-des-chagos-par-les-britanniques-la-voie-diplomatique-serait-la-seule-planche-de-salut> (accessed 12 August 2019).

51 'UN court rejects UK's claim of sovereignty over Chagos Islands' *The Guardian* 25 February 2019 <https://www.theguardian.com/world/2019/feb/25/un-court-rejects-uk-claim-to-sovereignty-over-chagos-islands> (accessed 30 September 2019).

52 See Erickson A, Ludwig W & Mikolay J 'Just out in time for the geopolitical issue of the day: the Diego Garcia Bookshelf' <http://www.andrewerickson.com/2019/02/just-out-in-time-for-the-geopolitical-issue-of-the-day-the-diego-garcia-book-shelf/> (accessed 25 August 2019).