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Cyprus Gains Legal Tool In ICJ Ruling On Chagos Islands

By **Constantinos Yiallourides** (March 15, 2019, 1:18 PM EDT)

The United Kingdom has been told by the International Court of Justice to end its administration of the Chagos Islands in the Indian Ocean and relinquish them back to Mauritius as soon as possible. This advisory opinion has implications for another former British colony where the U.K. retains control over part of its territory: Cyprus.



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The U.K. excised the Chagos Islands from the British colony of Mauritius in 1965, after reaching an agreement with the representatives of the Mauritian colonial government. The U.K. paid Mauritius £3 million in recognition of the detachment of the Chagos Islands and gave undertakings to cede the islands back to Mauritius when "no longer needed for defence purposes."^[1]

Fifty-five years later, the ICJ has delivered an advisory opinion on the matter. It held that the separation of the Chagos Islands was contrary to Mauritius's right to self-determination and that, accordingly, the decolonization of Mauritius was not completed in accordance with international law.^[2] As a consequence, the U.K.'s continuing administration of the Chagos Islands, which includes a fully fledged U.S. naval base on Diego Garcia Island, is a "continuing internationally wrongful act," which the U.K. is under an obligation to cease "as rapidly as possible."^[3]

Another former British colony is now looking closely at the ICJ's advisory opinion. Cyprus' attorney general stated that it is a "legal tool" the Cypriot government could use to renegotiate the status of the two British military bases on the Island.^[4] Indeed, while not perfectly analogous, the similarities between Cyprus and Mauritius are striking.^[5]

Cyprus became a British protectorate in 1914 and by 1925 it was a British crown colony. A devastating guerrilla conflict against the British colonial administration from 1955 to 1959 was followed by protracted negotiations between Cyprus' representatives and Britain during 1959 and 1960. Britain finally agreed to surrender sovereignty over the island on the condition that it maintained two large military bases — known as sovereign base areas — on the island.^[6] Article 1 of the 1960 Treaty of Establishment of the Republic of Cyprus provides that "[t]he territory of the Republic of Cyprus shall comprise the Island of Cyprus ... with the exception of the two areas defined in Annex A to this Treaty, which areas shall remain under the sovereignty of the United Kingdom."^[7]



The two areas defined in Annex A were the “Akrotiri Sovereign Base Area” and the “Dhekelia Sovereign Base Area” which together cover around 254 square kilometres, nearly three per cent of the whole island. Excising these areas from the colony of Cyprus[8] allowed the U.K. to hold onto a significant piece of land with important geostrategic value in the Eastern Mediterranean and the Middle East.[9] The U.K. agreed to pay an amount of financial aid to Cyprus for the use of the military facilities, sites and installations associated with the operation of the bases — but not for the bases themselves. This continued until 1965, with Britain paying £12 million. Since that time however, after bicomunal riots resulted in the division of the island, the U.K. has repeatedly refused to reassume payment of that aid.[10]

Chagos Advisory Opinion: A 'Legal Tool' for Cyprus?

In its Chagos opinion, the ICJ confirmed that resolution 1514 (XV), adopted by the U.N. General Assembly on Dec. 14, 1960, established a pre-existing customary rule of colonial self-determination.[11] The resolution incorporates the fundamental principle that administering powers are legally obliged to respect the territorial integrity of colonial territories.[12]

In subsequent resolutions, the General Assembly consistently and repeatedly emphasised that any attempt aimed at the “partial or total disruption of the national unity and the territorial integrity” of colonial territories, including the establishment of military bases and installations in these territories, is against the rules of international law on the right to self-determination.[13] The ICJ found that the right to self-determination in the Mauritian decolonization context had achieved the status of binding international law vis-a-vis the U.K. by the time the Chagos Islands were excised from Mauritius in 1965. Accordingly, excising the islands from Mauritius amounted to a violation of this right.

Cyprus was granted independence in August 1960, some four months before the adoption of resolution 1514 (XV). However, if we accept that the right of colonial self-determination was already a rule of customary law, then the U.K.’s conduct to excise the two British sovereign base areas from the colony of Cyprus may well be legally challenged.

The key question is: At what point in time exactly did the rule actually crystallize?[14] Given that Resolution 1514 (XV) has a declaratory character with regard to the right to self-determination as a customary norm, by implication, a customary right of self-determination must surely predate Resolution 1514 (XV).



The principle of self-determination prohibits an administering power from detaching parts of colonial territory for the purpose of establishing military bases and installations, “unless such detachment is based on the freely expressed and genuine will of the people of the territory concerned.”[15] In the case of the Chagos Islands, the ICJ considered that “it is not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter.”[16]

In the ICJ’s view, “heightened scrutiny” should be given in situations whereby the administering power detaches parts of the territory of its colony for the purpose of maintaining them under its colonial rule post-independence.[17] The ICJ, thus, implicitly suggested that only pre-independence processes such as referenda or plebiscites could have constituted a free expression of the will of the people.[18]

The ICJ also noted that the circumstances in which the representatives of Mauritius agreed to the detachment of Chagos, indicated that it “was not based on the free and genuine expression of the will of the people concerned.”[19] Mauritius had argued in its written submission that the decision on the detachment of Chagos from Mauritius was obtained under conditions of intimidation and duress:

The detachment of the Chagos Archipelago had long been pre-determined by two great Powers [U.K. and U.S.], acting in secrecy and without regard to the wishes of the Mauritian Government and its citizens. British officials and politicians at the highest levels have acknowledged – before, during and since the event – that independence was offered to Mauritius only as part of a “package deal”, and that the British Government threatened that Mauritius would not be granted independence if its Ministers did not “agree” to the detachment of the Chagos Archipelago.[20]

Judge Sebutinde referred to the U.K.’s conduct as a “de facto annexation that subverted the right of the people of Mauritius to self-determination by denying them any opportunity to express their will as to the fate of the Chagos Archipelago.”[21]

In the Cypriot decolonization context, it is not hard to spot the analogies between the two cases. Cyprus could equally argue that the conditions that prevailed during the time it acceded to independence were far removed from what could be considered as an “exercise in free will” of its people.

Cyprus’ own written submission to the ICJ regarding the Chagos case says that: “[A]ny consent in those circumstances, where one entity’s independence is essentially, if implicitly, conditioned upon its simultaneous consent to whatever requirements the administering power establishes, is unlikely to be ‘free’.”[22] The rationale prevalent in the Cyprus-British pre-independence negotiations was that Britain would agree to surrender sovereignty over the island “only if its military demands were met.”[23]

In its Chagos advisory opinion, the principal judicial organ of the U.N. sent a clear message to all states: The right of self-determination, for decolonization, against dismemberment, for territorial

integrity, has crystallised sufficiently in international law. It is a right erga omnes; it should be respected by all.

There cannot possibly be a valid international agreement when one party to that agreement, which cedes parts of its territory to the other party — the administering power — is under the authority of the latter. “[N]o country wishes to be a colony,” Professor Philippe Sands QC, representing Mauritius, said before the ICJ. “The mere possibility engenders strong feelings.”[24]

A common thread in the cases of Mauritius and Cyprus is that, before the two countries attained their independence, parts of their territory were separated by their administering power, the U.K., to be retained as a colony under the latter’s sovereign control, post-independence. In the case of Mauritius, the ICJ said that this action was unlawful and, hence, the Chagos Islands should be returned to Mauritius for the decolonization of Mauritius to be completed. The same should hold true for the British military bases in Cyprus.

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[1] Constantinos Yiallourides, *Islands, Sovereignty and the Right to Return: An Analysis of the Chagos Islands*, ICJ Advisory Opinion Request (2018), *Journal of Territorial and Maritime Studies* 1-3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3143922.

[2] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (ICJ Advisory Opinion of Feb. 25, 2019), <https://www.icj-cij.org/files/case-related/169/169-20190225-01-00-EN.pdf> [hereafter Chagos Advisory Opinion].

[3] *Ibid*; for a commentary, see Marko Milanovic, *ICJ Delivers Chagos Advisory Opinion, UK Loses Badly* (EJIL-Talk!, 25 February 2019), <https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/>.

[4] ‘The Latest: Mauritius Ruling a “Tool” for Cyprus on UK Bases’ (The New York Times, Feb. 25, 2019), <https://www.nytimes.com/aonline/2019/02/25/world/europe/ap-eu-world-court-chagos-islands-the-latest.html>.

[5] Jamie Trinidad, *Self-Determination and Territorial Integrity in the Chagos Advisory Proceedings: Potential Broader Ramifications*, (2018) 55 QIL, Zoom-out 61-69.

[6] Hubert Faustmann, *Divide and Quit? British Colonial Policy in Cyprus 1878 – 1960 - Including a Special Survey of the Transitional Period: February 1959 - August 1960*, (Mannheim Mateo 1999).

[7] *Treaty Concerning the Establishment of the Republic of Cyprus* (Aug. 16, 1960) 382 UN Treaty Series (1960) 5476.

[8] On the legal status of the British Sovereign Base Areas, see Andreas Stergiou, *The Exceptional Case of the British Military Bases on Cyprus*, (2015) 51(2) *Middle Eastern Studies* 285-300, <https://doi.org/10.1080/00263206.2014.947283>.

[9] Klaus Dodds, Rikke Bjerg Jensen and Costas M. Constantinou, *Signposts: Cyprus, UK and the Future of the SBAs*, (2015) 160(5) *The RUSI Journal* 36-45; Andreas Constandinos, ‘Britain, America and the Sovereign Base Areas from 1960-1978’ (2009) 21(2) *The Cyprus Review* 13-36 file:///Users/constantinos_yiall/Desktop/235-Research%20Instrument-275-1-10-20180118.pdf.

[10] *Ibid*.

[11] Chagos Advisory Opinion, paras 150-153.

[12] See, for instance, UNGA Res 637 (VII) of 16 December 1952; UNGA Res 738 (VIII) of Nov.

28,1953; UNGA Res 1188 (XII) of Dec. 11, 1957).

[13] UNGA Res 2232 (XXI) and 2357 (XXII).

[14] Marko Milanovic, 'ICJ Delivers Chagos Advisory Opinion, UK Loses Badly' (EJIL-Talk!, 25 February 2019), <https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/>.

[15] Written Submission of the Republic of Cyprus (May 15, 2018), <https://www.icj-cij.org/files/case-related/169/169-20180511-WRI-01-00-EN.pdf> para 24; Assembly of the African Union Decision 331(XV), 25-27 July 2010.

[16] Ibid.

[17] Ibid.

[18] Marko Milanovic, 'ICJ Delivers Chagos Advisory Opinion, UK Loses Badly' (EJIL-Talk!, 25 February 2019), <https://www.ejiltalk.org/icj-delivers-chagos-advisory-opinion-uk-loses-badly/>.

[19] Chagos Advisory Opinion, para 172.

[20] Written Statement of the Republic of Mauritius (March 1, 2018), <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-00-EN.pdf> para 3.111.

[21] Chagos Advisory Opinion (Separate Opinion of Judge Sebutinde), <https://www.icj-cij.org/files/case-related/169/169-20190225-ADV-01-08-EN.pdf> para 44.

[22] Written Submission of the Republic of Cyprus (May 15, 2018), <https://www.icj-cij.org/files/case-related/169/169-20180511-WRI-01-00-EN.pdf> para 6.

[23] Hubert Faustmann, 'Independence Postponed. The Transitional Period in Cyprus 1959-1960' (2002) 14(2) The Cyprus Review 99-119
<http://cyprusreview.org/index.php/cr/article/view/410/366>.

[24] Chagos Advisory Opinion (Public sitting held on Monday, Sept. 3, 2018) CR 2018/20, <https://www.icj-cij.org/files/case-related/169/169-20180903-ORA-01-00-BI.pdf> 71.