

## ICJ Advisory Opinion on Chagos Archipelago

### Why in news?

The International Court of Justice (ICJ) in The Hague has said that the UK should end its control of the Chagos Islands in the Indian Ocean.

### What is the dispute over Chagos Islands?

- The United Kingdom gained control of Mauritius, including the Chagos Archipelago, from France in 1814.
- **Separation** - Britain detached the Chagos Islands from Mauritius in 1965, 3 years before Mauritian independence.
- Under the 1965 agreement, Britain has maintained control of the islands in return for compensation to Mauritius and fishing rights.
- The leaders of Mauritian independence movement then agreed to the separation of the islands, fearful that if they did not do so, independence would not be granted.
- But Britain continued its administration despite Mauritius' later efforts to regain control and the UN resolutions requiring it to complete the decolonisation of Mauritius.



- **Military base** - From 1967 to 1973, some 1,500 Chagos islanders were

gradually forced to leave their homes.

- This was to lease Diego Garcia, the largest island in the Chagos Archipelago, to the US for a strategic military base.
- In 2016, after several judicial challenges, Britain extended Diego Garcia's lease until 2036.
- It also declared that the expelled islanders would not be allowed to go back.
- Today, Diego Garcia hosts a major US military base and is a strategic node in US bombing campaigns in Afghanistan and Iraq.
- On the other hand, for five decades since their removal, the islanders have been fighting for their right to return.



### How could the ICJ intervene in this?

- Under Article 96 of the UN Charter, the General Assembly can request that the ICJ give an advisory opinion on “any legal question”.
- In 2017, the UN General Assembly adopted a resolution, on Mauritius' petition, calling on the ICJ to deliver an advisory opinion.
- The ICJ was to decide if UK's continued administration of the Chagos Archipelago after the 1968 decolonisation process of Mauritius was lawful.
- But UK was opposed to ICJ's intervention, saying it would be inappropriate in a dispute between states that have not both consented to ICJ jurisdiction.
- Also, while ICJ advisory opinions are not binding, the ramifications of the opinion will be highly significant.
- This is because an opinion in favour of Mauritius may strengthen their position in any future negotiations.
- It might as well put significant international pressure on the UK over the status of the territory.

## What is ICJ's present opinion?

- The ICJ rejected the contention that the issue did not fall within its jurisdiction, as it was a bilateral matter for the two countries.
- ICJ concluded that the decolonisation of Mauritius was not lawfully completed due to Britain's continued administration of the island.
- It said that any detachment of part of a colony had to be based on the "freely expressed and genuine will" of the people.
- So the continued administration amounted to a "wrongful act" and inconsistent with the right to the people of "self determination."
- Moreover, the U.S. base's construction led to the displacement of some 1,500 people who have been unable to return to the islands.
- It was thus noted that the original agreement had not allowed for third party involvement in the territory.
- In all, Britain has to end its administration of the Chagos Archipelago and complete the process of decolonisation of Mauritius.

## What are the likely implications?

- **Mauritius** - It is a significant legal victory for Mauritius and other nations, including India that supported its case.
- **U.S.** - ICJ's advisory opinion is unlikely to impact the U.S. military base as Mauritius is committed to the continued operation of the base in Diego Garcia.
- It is prepared to enter into a long-term framework, in regards with the military base, with the parties concerned.
- **U.K.** - It said that it would examine the ICJ's advisory opinion, but stressed increasingly the security significance of the islands.
- UK maintains that the defence facilities on the island help to protect people in Britain and around the world from terrorist threats, organised crime and piracy.
- **Chagossians** - In an ideal world, Britain would be compelled to hand the islands to Mauritius, but ICJ's advisories are not always acted on.
- So the implications of the advisory opinion for the Chagossian people remains to be seen.
- Right to self determination and the respect that they deserve will have to be acknowledged through proper compensation.
- Any decisions on Chagos Islanders' future must be made by those who once inhabited them and their descendants.

## Why is the case a complex one?

- The case is seen as having far wider ramifications beyond the two parties

immediately concerned.

- It's because the dispute deals with issues of post-colonial sovereignty, legacy of colonialism and hence an imbalance of power is involved in the relationship.
- So the legitimacy of the agreements struck between colonial powers and their colonies in the final stages before independence is a debatable one.

**Source: The Hindu, Scroll**

## **Quick Facts**

### **International Court of Justice**

- The International Court of Justice (ICJ) was established in 1945 after half a century of international conflict in the form of two World Wars.
- The ICJ functions with its seat at The Hague, Netherlands.
- It has the jurisdiction to settle disputes between countries and examine cases pertaining to violation of human rights, according to the tenets of international law.
- ICJ is not to be confused with ICC (International Criminal Court) which is a permanent tribunal created to prosecute individuals for genocide, crimes against humanity, war crimes and the crime of aggression.
- While ICJ is the primary judicial arm of the UN, the ICC is legally and functionally independent from the United Nations.

### **ICJ Judgements and Advisory Opinions**

- Contrary to judgments, and except in rare cases where it is expressly provided that they shall have binding force, the advisory opinions are not binding.
- The requesting organ, agency or organization remains free to decide, as it sees fit, what effect to give to these opinions.
- Despite having no binding force, the Court's advisory opinions carry great legal weight and moral authority.