

Chagos freed, sun finally sets on the British Empire

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The historic political agreement between the United Kingdom (UK) and Mauritius on exercising sovereignty over the Chagos Archipelago, a group of islands in the Indian Ocean, which Britain considers strategically important, is a significant development. The UK has agreed to return the Chagos Islands, Britain's last colony in Africa, to Mauritius, thus completing the decolonisation of Mauritius.



This image released by the U.S. Navy shows an aerial view of Diego Garcia. (U.S. Navy via AP) (AP)

But this diplomatic breakthrough did not come along suddenly. It is critical to recall that in 1964, to serve security interests, the UK and the United States (US) decided that Diego Garcia, the largest island of the Chagos Archipelago, would be an ideal site to establish an American military base. To effectuate this, the UK in 1965 forcibly detached Chagos from Mauritius by signing the Lancaster House Agreement. The detachment of Chagos was linked to granting independence to Mauritius. Mauritius gained independence in 1968, but the Chagos Islands, an inseparable part of Mauritius, became a part of what came to be known as the British Indian Ocean Territory (BIOT), a new English colony. The UK leased Diego Garcia to the US in 1966 in return for some military benefits. The UK used international law to further its imperial project. This is unsurprising as several critical international lawyers document the inextricable link between international law and imperialism.

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Since then, Mauritius has been waging a relentless international campaign to assert its sovereignty over the Chagos Islands, including through international courts. In 2015, Mauritius instituted an unsuccessful claim under the UN Convention of the Law of the Sea

to assert its sovereignty over the Chagos Islands in response to the UK declaring a Marine Protected Area around the archipelago. However, the sovereignty plea of Mauritius gained momentum due to an advisory opinion of the International Court of Justice (ICJ) in 2019 based on a referral by the UN General Assembly (UNGA).

ICJ did not directly decide on whether Mauritius has sovereignty over the Chagos Islands because the UNGA framed the question as one about decolonisation. Nonetheless, a direct implication of the World Court's ruling was that Mauritius could exercise sovereign control over the archipelago. ICJ in this advisory opinion held that the unlawful separation of the Chagos Islands from Mauritius and its merging as part of BIOT meant that the decolonisation of Mauritius was incomplete. This decolonisation was incomplete because it was not in accordance with the customary international law of the right to self-determination — the right of people to freely determine their political status.



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ICJ held that the UK's continued administration of the Chagos Islands was a continuing wrongful act triggering international responsibility. As a logical step to this, ICJ held that the UK is under an obligation to end its administration of the Chagos Islands as rapidly as possible. However, the modalities of this were left to the UNGA. Although the UK resisted the ICJ advisory opinion, calling it non-binding (which is technically true), it was attested by the World Court that the UK was in unlawful occupation of the Chagos Islands.

A few months after the ICJ ruling, UNGA by a vote of 116 countries in favour, six against, and 56 abstentions, adopted a resolution welcoming the World Court's ruling. UNGA urged the UK to work with Mauritius to "facilitate the resettlement of Mauritian nationals, including those of Chagossian origin, in the Chagos Archipelago". While the UK initially resisted this, it ultimately entered into negotiations with Mauritius in 2022. These negotiations finally fructified in the decision taken a few days ago on the return of the Chagos Islands to Mauritius. However, an important condition of this return is that the US military base could continue operating there for the next 99 years.

A noteworthy aspect of this case is that Mauritius is now free to resettle the people of Chagos, who in the 1960s and 1970s were exiled to Mauritius, Seychelles, and the UK, in the islands barring Diego Garcia. However, the right to self-determination of the Chagossians remains unfulfilled. Moreover, the Chagossians were not included in the negotiations between London and Port Louis.

US President Joe Biden welcomed this agreement stating that it demonstrates countries can overcome long-standing historical challenges through diplomacy and partnership. While diplomacy is critical, the UK's decision to hand over the sovereignty to Mauritius over the Chagos Islands couldn't have come through without the ICJ decision and the use of international law by Mauritius. This has important lessons for several countries faced with such long-standing and unresolved disputes.

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