

## The Chagos Archipelago: A Theatre of Opportunity and Challenge in the Indian Ocean

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**ABSTRACT** Located at the centre of the Indian Ocean, the Chagos Archipelago is a group of 55 tiny islands that, since 1965, has been administered by the United Kingdom as a British Indian Ocean Territory. Its biggest island, Diego Garcia, is host to a highly important US military air base. Sovereignty over the archipelago has recently emerged as an issue of contestation between Mauritius and the UK, and the presence of American military troops has only served to consolidate the strategic importance of Chagos for the US in the Indian Ocean. In light of the recent rejection by the Permanent Court of Arbitration of the UK's declaration of a marine protected area around the archipelago, this paper argues that even as Mauritius, US, and the UK occupy pivotal positions in the larger context of control over Chagos, the territory has the potential to serve as an important foreign policy regulator vis-a-vis India's strategic engagement in the Indian Ocean.

### INTRODUCTION: MAURITIUS VS. UK AT THE PCA

In December 2010, the Republic of Mauritius filed a legal challenge against the United Kingdom of Great Britain and Northern Ireland over the declaration of a Marine Protected Area (MPA) by the United Kingdom in April of the same year, in the waters surrounding the Chagos Archipelago. An Arbitral Tribunal was constituted under Annex VII of the United Nations Convention on the Law of the Sea by the Permanent Court of Arbitration (PCA) to conduct the arbitral proceedings on the matter.<sup>1</sup> On 18 March 2015, the Tribunal gave its award in favour of Mauritius with respect to the

UK's obligations under international law. It found that the UK had failed to meet its obligations under the Convention, which "requires the United Kingdom to have due regard for Mauritius' rights and to act in good faith with respect to its undertakings to Mauritius".<sup>2</sup> Specific observations were made by the Tribunal after a review of the events that took place between February 2009 and April 2010, and these proved critical to its final judgement. These observations include the following:

1. The Tribunal found that the consultations

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that took place prior to the declaration of the MPA were characterised by a “lack of full information” about the proposed area, and a consequent “absence of sufficiently reasoned exchanges between the Parties”.<sup>3</sup>

2. The Tribunal found that the United Kingdom “engaged far less”<sup>4</sup> with Mauritius, than it did with the United States concerning its strategic and economic interests in the Chagos Archipelago.
3. In the Tribunal's understanding, the lack of sufficient engagement “created reasonable expectations”<sup>5</sup> that Mauritius would have the chance to express its concerns before the final decision was taken. However, the declaration of the MPA precluded all such opportunities.
4. Although the Tribunal did find the United Kingdom in breach of its obligations, it declined to comment upon the “improper purpose”<sup>6</sup> in the declaration of the MPA itself.

With regard to its rights under the Convention on the Law of the Sea, Mauritius argued that the United Kingdom's undertakings in 1965 upon which Mauritian consent to the detachment of the Archipelago was obtained, were legally binding. The Tribunal found that such undertakings were binding on the United Kingdom with respect to: (a) fishing rights; (b) the eventual return of the Archipelago; and (c) the benefit of mineral and oil resources. The Tribunal also observed that based on the legal principle of *estoppel*, the fact that the United Kingdom had repeated its undertakings on numerous occasions after the independence of Mauritius, prevented them from now being non-binding.<sup>7</sup>

In its award, the Tribunal stated that it lacked the jurisdiction to consider the submissions made by Mauritius regarding the interpretation of the term 'coastal State' by both parties, and to comment upon the rights therein of Mauritius as the coastal State that prevent the United Kingdom from unilaterally declaring an MPA around the Chagos Archipelago. It stated that Mauritius did not run the risk of losing potential rights before

the Commission on the Limits of the Continental Shelf with regard to the claims it made against the United Kingdom.<sup>8</sup> Although the Tribunal ultimately decided that it did not have the jurisdiction to address issues related to the sovereignty dispute between the two countries, the arbitral proceedings and the subsequent judgement marked the first instance of an international court or tribunal condemning the conduct of the UK with respect to the Chagos Archipelago. The Prime Minister of Mauritius, Sir Anerood Jugnauth, called the Tribunal's ruling “historic”.<sup>9</sup> It is in this context that this paper looks at the importance of Chagos against the changing political and strategic realities in the Indian Ocean.

## A BRIEF HISTORY OF THE CHAGOS ARCHIPELAGO

The Chagos Archipelago is a cluster of seven coral atolls, situated around 500 km south of the Maldives archipelago in the Indian Ocean. The archipelago comprises 55 individual tropical islands, and also contains The Great Chagos Bank, the world's largest coral atoll. It is considered “to have the most pristine tropical marine environment on the planet and to be by far the richest area of marine biodiversity of the United Kingdom and its Overseas Territories”.<sup>10</sup>



(Source: Chagos Conservation Trust, [www.chagos-trust.org](http://www.chagos-trust.org))

In 1810, the territory of Mauritius was captured by Britain and under the terms of the 1814 Peace Treaty of Paris, the archipelago was ceded to Britain by France, as part of the “lesser dependencies of Mauritius”.<sup>11</sup> Until 1965, the Chagos Archipelago was governed by the United Kingdom from Mauritius. However, in November 1965, the UK purchased the entire Chagos Archipelago from the self-governing colony of Mauritius, officially separating it from the latter and establishing territorial sovereignty over it as a British Indian Ocean Territory (BIOT).<sup>12</sup> Following negotiations between the US and the UK, in 1966 the latter concluded a bilateral exchange of notes with the former on the 'Availability for Defence Purposes of the British Indian Ocean Territory'.<sup>13</sup> The agreement permitted the US Armed Forces to use any island in Chagos for defence purposes for 50 years (upto December 2016), with an optional extension available for another 20 years. Subsequent agreements and exchanges took place in 1972, 1976, 1982, 1987, 1992, and 2001-2004. So far, however, only the island of Diego Garcia has been used by the US as a military base.

Until the 1970s, the Chagos Archipelago was inhabited by more than 1,500 Chagossians.<sup>14</sup> However, between 1967 and 1973 the UK gradually evicted the entire population and relocated the inhabitants to Mauritius and the Seychelles. It is widely believed that this was done to facilitate the process of converting Diego Garcia into a military facility. Today the only inhabitants of the Chagos islands are the military personnel and civilian contractors stationed in Diego Garcia, numbering around 3,000-5,000.<sup>15</sup> The eviction of the Chagossians has been the subject of protracted legal and political discourse in the UK, as well as in the US and Mauritius.

In 1968 Mauritius became an independent state,<sup>16</sup> and since then all post-independence governments in the country have claimed sovereignty over the Chagos Archipelago. Mauritius contends that the 1965 detachment of the islands was a violation of Decolonization Resolutions 1514 (XV) and 2066 (XX) adopted by the UN General Assembly, and the *uti possidetis*

rule in customary international law which allows newly formed sovereign states to retain territory based on previously defined administrative frontiers, unless otherwise provided for by a treaty.<sup>17</sup> Till date, the UK continues to represent Chagos internationally, although the British government announced its “intention to commission a feasibility study into the resettlement of BIOT”<sup>18</sup> in 2012. The study concluded in 2015 with the observation that certain fundamental uncertainties were found which required resolution before any further steps could be taken.<sup>19</sup>

Experts in international law have for long cited Chagos's central location (between Africa, the Near East, South Asia and Australia) as highly strategic, giving the archipelago's largest island, Diego Garcia, “a unique strategic importance”.<sup>20</sup> Over the years, Diego Garcia has become not only one of the largest military bases of the US abroad, but also the costliest and most secretive.<sup>21</sup> Moreover, in the broader context of power politics, it is unlikely that the UK would be willing to cede sovereignty over the Chagos Archipelago given the substantial strategic and economic advantage it enjoys as an administrative authority.

## STRATEGIC OPPORTUNITY AND CHALLENGE

It was not too long ago when the Indian Ocean was declared the 'centre stage' of global politics in the 21st century.<sup>22</sup> Any analysis on the strategic importance of the Chagos Archipelago thus needs to situate itself within the larger context of power politics in the Indian Ocean and keep in mind the curious interplay of geopolitical opportunities and challenges that shape the policy dynamic in the region. The island of Diego Garcia represents the most crucial element of strategic advantage for the United States, while continued access to territory in the Indian Ocean as well as access to maritime resources, including commercial fishing and deep-sea mining rights, are important for the United Kingdom. Meanwhile, although the issue of territorial sovereignty has been a point of contention between the UK and Mauritius, the

latter's interests seem to be more aligned towards gaining access to fishing rights in the area surrounding Chagos.

In terms of geopolitical exigencies, control over the island of Diego Garcia is part of American power projection in the Indian Ocean. Specific to American involvement in the region, other analysts have argued in favour of a 'Neo-Nixon Doctrine' that does not require significant American peacetime military presence in the Indian Ocean littoral region. However, if a particular situation demands direct American intervention, then the United States needs to preserve the capability to surge forces into the region.<sup>23</sup> For such purpose, power projection is important and Diego Garcia is recognised as a particularly important military base. The island is said to facilitate "US power projection through the repositioning of army and marine corps brigade sets, long-range bomber operations, the replenishment of naval surface combatants, and the strike and special operations capabilities of guided-missile submarines that can call at the atoll's wharf".<sup>24</sup> Such power projection is particularly relevant if one factors in the rapid growth of Chinese naval power in the last decade.

It is evident that the island of Diego Garcia is a military asset for the US, a strategic opportunity for it to provide a renewed regional counter-balance in the Indian Ocean. The existence of the military base has been justified on the grounds of the joint defence and security needs of the US and the UK since its establishment in the 1960s.<sup>25</sup> Indeed, the military facility was used as a hub for transportation and offensive airstrikes on targets in West Asia during the Persian Gulf War (1990-91), the US-led attacks on Afghanistan (2001), and during the initial phase of the Iraq War (2003).<sup>26</sup> However, the global security situation has vastly transformed since, with the end of the Cold War also marking a shift in maritime security and threat perception in the region. Today, a rising China perhaps represents the most direct threat to the US in the region, and Diego Garcia is its powerful posturing tool.

Over the past five decades, the Pentagon's strategic requirements have driven the manner in

which Chagos is organised and governed by the United Kingdom. For policy-makers in Britain, control over Chagos is now justified in the name of environmental conservation, or 'green' credentials.<sup>27</sup> The declaration of the MPA is a case in point, with two important strategic consequences: it weakens the demand for return made by the Chagossians on grounds that human habitation will interfere with conservation activities, and in turn also establishes an economic monopoly over the use of the vast marine resources in the area. The latter consequence has particularly affected Mauritius, for whom the economic advantage is a more important incentive than any strategic, geopolitical posturing against rivals.

The current challenges faced by the UK are twofold: increased international human rights pressure demanding the Chagossians' right to return, and the recent ruling of the Arbitral Tribunal, both of which attack the legitimacy of British presence in the region. Although the Tribunal's award is an opportunity for Mauritius to push forward its position on the issue, the British government's policy remains largely unchanged after its most recent feasibility study on the resettlement of the British Indian Ocean Territory found that "there was not a clear indication of likely demand for resettlement, and costs and liabilities to the UK taxpayer were uncertain and potentially significant".<sup>28</sup>

### **The Mauritian Position**

The government of Mauritius considered the Tribunal's ruling as a decision in its favour, and a Committee on the Chagos Archipelago was set up in March 2015 following the delivery of the award in order to discuss the way forward for Mauritius. The Committee held its first meeting in April 2015, and was chaired by Prime Minister Sir Anerood Jugnauth. The meeting incorporated a diversity of voices, including the Leader of Opposition, a representative of each political party represented in the Mauritius National Assembly (MNA), as well as representatives of Mauritian citizens of Chagossian origin.<sup>29</sup> A



communique released by the Prime Minister's Office after the Committee's meeting on 4 September 2015 also stated that Mauritius maintains that it has complete sovereignty over Chagos, and that it does not recognise the British Indian Ocean Territory status given to it by the British government. It also stated that the Committee "strongly condemned and rejected" the consultation exercise initiated by the British government regarding the resettlement of the Chagos Archipelago.<sup>30</sup>

Mauritius has approached the United States in the past to discuss the Chagos Archipelago, especially the future of the Diego Garcia military base. Moreover, the political narrative surrounding the issue within Mauritius indicates that the country is keen to be a part of the consultations due to take place between the US and the UK after December 2016. However, it remains to be seen how welcoming the US, in particular, would be of the same. Even if Mauritius is able to find its place at the negotiating table, it is unlikely that a comprehensive agreement, similar to the one reached on the co-management of French-territory Tromelin Island,<sup>31</sup> will be reached any time soon between Mauritius, the United States, and the United Kingdom.

## POTENTIAL FOR INDIAN ENGAGEMENT

As a key rising power in the region, India has always tried to assert itself strongly in the Indian Ocean. However, perceptions of the Indian Ocean as India's backyard have been viewed as problematic, particularly by China.<sup>32</sup> The issue of the Chagos Archipelago has drawn a limited diplomatic response from Indian leadership in New Delhi, and India's warm bilateral relations with the United States as well as the United Kingdom are pivotal in this regard. India's bilateral relations with the US have grown stronger in the past decade, bringing about a significant change in diplomatic perceptions and priorities on both sides. The difficult colonial legacy notwithstanding, Britain also maintains that India is a special partner and Prime Minister Narendra Modi's most recent visit to the UK saw

both countries reiterating their shared interests in the stability and prosperity across Asia and the Indian Ocean.<sup>33</sup>

Thus the potential for Indian engagement in Chagos can be viewed from two separate vantage points: the viability of direct engagement, and the advantage of encouraging an indirect engagement.


Direct engagement with the Chagos issue by India, as already pointed out, has been limited. Following independence in 1947, India did express its displeasure when Britain gave the US permission to convert Diego Garcia into a military base.<sup>34</sup> In recent times, India has on multiple occasions expressed its support of the sovereignty of Mauritius over the Chagos Archipelago, although it has preferred to do so through purely diplomatic channels.<sup>35</sup> More specifically, India has chosen to carefully balance its relations with the US, along with its own strategic interests in the Indian Ocean. One could also argue that the two are not mutually exclusive, with American presence in the Indian Ocean serving to reinforce India's efforts to counterbalance the Chinese threat. In recent years, China has begun to maintain a "near continuous presence in the western Indian Ocean" due to its anti-piracy controls in the Gulf of Aden, which provides another window of opportunity for India to continue collaboration with the US in the Indian Ocean.<sup>36</sup> However, there has been no official declaration of a Chinese position on the Chagos Archipelago that expressly clarifies any of its strategic concerns.

Statements made by Prime Minister Modi during his visit to Mauritius and the Seychelles in March 2015 highlighted New Delhi's policy focus on strengthening the country's security presence in the region.<sup>37</sup> The viability of direct engagement on the Chagos issue thus appears to be promising for India given its strong relations with Mauritius and growing security ties with the US. A clear signal is yet to come from New Delhi, however. Moreover, Mauritius has not sought India's help in the advancement of its interests in the region, and therefore any overt movement on behalf of India is unlikely.

On the other hand, encouraging India's indirect engagement can perhaps work to the advantage of the US, to further its power projection in the Indian Ocean through control of Diego Garcia. It has been pointed out by scholars that the Indian Ocean, in fact, "links the land and maritime theatres that most concern American thinkers".<sup>38</sup> In order to prevent the rise of a hostile regional power, and to ensure stability in the Indian Ocean, the US must now define a more explicit policy that views the regional events more holistically instead of using narrowly defined command structures.<sup>39</sup> Achieving this goal requires greater, albeit indirect, engagement of India. "India emerges as the fulcrum of the Neo-Nixon Doctrine"<sup>40</sup> with potential to play an important stabilising role in regions surrounding the Indian Ocean, such as South Asia, Southeast Asia, the Horn of Africa, and the Persian Gulf. It is essential for the US to keep India engaged regionally, and indeed to build upon its existing indigenous naval capabilities. To the extent that it bolsters Indian posturing in the region, such engagement will be welcomed by New Delhi, although it might alarm other smaller states in the region.

With regard to the dispute over sovereignty between UK and Mauritius, Indian support to the

latter's claim has not affected its contemporary relations with the former. In fact, India's defence and security concerns in the Indian Ocean have thus far not featured Chagos. This points to the reality that direct engagement on the issue is not a strategic imperative for India, although New Delhi might choose to adopt a more forward-looking policy on Diego Garcia depending on the evolution of the country's strategic priorities in the Indian Ocean.

Beyond maritime strategy, however, India's silence on the displacement of the Chagossian population, as well as its decision to reserve comment on the UK's conduct in the declaration of an MPA around Chagos, could emerge as potential challenges for India in its relations with Mauritius. If India wishes to project itself further in the Indian Ocean, it must then seek to balance its existing strategic interests and bilateral relations with the human rights and international legal imperatives that the Chagos dispute raises on the regional stage. Perhaps the first step towards achieving such a balance lies in bridging differences between Mauritius, the United Kingdom, and the United States by taking the lead in the consultations due to take place on the future of the Diego Garcia military base beyond 2016. 

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