

UK Rejects International Court of Justice Opinion on the Chagos Islands

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In parliament, Alan Duncan for the government has just rejected yesterday's stunning result at the International Court of Justice, where British occupation of the Chagos Islands was found unlawful by a majority of 13 to 1, with all the judges from EU countries amongst those finding against the UK.

This represents a serious escalation in the UK's rejection of multilateralism and international law and a move towards joining the US model of exceptionalism, standing outside the rule of international law. As such, it is arguably the most significant foreign policy development for generations. In the Iraq war, while Britain launched war without UN Security Council authority, it did so on a tenuous argument that it had Security Council authority from earlier resolutions. The UK was therefore not outright rejecting the international system. On Chagos it is now simply denying the authority of the International Court of Justice; this is utterly unprecedented.

Duncan put forward two arguments. Firstly that the ICJ opinion was "only" advisory to the General Assembly. Secondly, he argued that the ICJ had no jurisdiction as the case was a bilateral dispute with Mauritius (and thus could only go before the ICJ with UK consent, which is not given).

But here Duncan is – against all British precedent and past policy – defying a ruling of the ICJ. The British government argued strenuously in the present case against ICJ jurisdiction, on just the grounds Duncan cited. The ICJ considered the UK's arguments, together with arguments from 32 other states and from the African Union. The ICJ ruled that it did have jurisdiction, because this was not a bilateral dispute but part of the UN ordained process of decolonisation.

The International Court of Justice's ruling on this point is given at length in paras 83 to 91 of its [Opinion](#). This is perhaps the key section:

88. The Court therefore concludes that the opinion has been requested on the matter of decolonization which is of particular concern to the United Nations. The issues raised by the request are located in the broader frame of reference of decolonization, including the General Assembly's role therein, from which those issues are inseparable (Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 26, para. 38; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 159, para. 50).

89. Moreover, the Court observes that there may be differences of views on legal questions in advisory proceedings (Legal Consequences for States of the

Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, p. 24, para. 34). However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute.

90. In these circumstances, the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State. The Court therefore cannot, in the exercise of its discretion, decline to give the opinion on that ground.

91. In light of the foregoing, the Court concludes that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

As stated at para 183, that the court did have jurisdiction was agreed unanimously, with even the US judge (the sole dissenter on the main question) in accord. For the British government to reject the ICJ's unanimous ruling on jurisdiction, and quote that in parliament as the reason for not following the ICJ Opinion, is an astonishing abrogation of international law by the UK. It really is unprecedented. The repudiation of the UN Working Group on Arbitrary Detention over Julian Assange pointed the direction the UK is drifting, but that body does not have the prestige of the International Court of Justice.

The International Court of Justice represents the absolute pinnacle of, and embodies the principle of, international law. In 176 decisions, such as Nigeria vs Cameroon or Malaysia vs Indonesia, potentially disastrous conflicts have been averted by the states' agreement to abide by the rule of law. The UK's current attack on the ICJ is a truly disastrous new development.

I have taken it for granted that you know that the reason the UK refuses to decolonise the Chagos Islands is to provide an airbase for the US military on Diego Garcia. If Brexit goes ahead, the Chagos Islands will also lead to a major foreign policy disagreement between the UK and US on one side, and the EU on the other. The EU will be truly shocked by British repudiation of the ICJ.

I have studied the entire and lengthy ICJ Opinion on the Chagos Islands, together with its associated papers, and I will write further on this shortly.

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