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 isalnd.
- 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.

