INTERNATIONAL COURT OF JUSTICE

LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965

(Request for Advisory Opinion)

STATEMENT OF BELIZE

30 January 2018

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CHAPTER I
INTRODUCTION

1.1. On 22 June 2017, the United Nations General Assembly adopted resolution 71/292 entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", in which the General Assembly decided, pursuant to Article 96 of the Charter of the United Nations, to request the International Court of Justice to render an advisory opinion on the following questions:

> "(a) 'Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?';
>
> (b) 'What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?'"[1]

1.2. On 23 June 2017, the Secretary-General of the United Nations transmitted the Request to the Court.[2] On 14 July 2017, in accordance with Article 66,

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[1] General Assembly resolution 71/292, Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965, document A/RES/71/292, 22 June 2017 (***the Request***).

[2] Letter from the Secretary-General of the United Nations to the President of the International Court of Justice, 23 June 2017.

paragraph 2, of its Statute, the Court fixed time-limits within which Member States of the United Nations could furnish information on the questions to the Court.[3] On 18 July 2017, the Registrar of the Court informed each State entitled to appear before the Court that it may submit a written statement in the proceedings. Belize submits this Statement pursuant to that invitation.[4]

1.3. Belize seeks to assist the Court on three issues, appreciating that they are not exhaustive:

(a) Did colonized peoples have a legal right to self-determination under customary international law in 1965?

(b) If so, what was the content of that right?

(c) If the people of Mauritius held such a right, and if it was breached by the severance of the Chagos Archipelago from Mauritius in 1965, what would be the consequences arising under international law from the continued administration by the United Kingdom of the Chagos Archipelago?

1.4. The answers to those questions are in summary as follows. The right of colonized peoples to self-determination existed under customary international law by 1965, when the United Kingdom separated the Chagos Archipelago from Mauritius. The right inhered in the people of a single territorial unit not having attained a full measure of self-government. The preservation of the territorial integrity of that unit prior to the exercise of the right of self-determination was an inherent part of that right, and gave rise to a correlative obligation on the administering State not to take any measure that would prevent the people in

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[3] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Request for an Advisory Opinion)*, General List No. 169, International Court of Justice, Order of the Court, 14 July 2017.

[4] Letter from the Registrar of the Court to the Ambassador of Belize to the Kingdom of the Netherlands, 18 July 2017.

question from being able freely and genuinely to express and implement their will concerning their political future with respect to the entirety of the territorial unit.

1.5. In order for the process of decolonization of Mauritius to have been lawfully completed, it would have had to have occurred in a manner that respected the right of the Mauritian people to self-determination with respect to the entirety of the territory to which that right related. If by separating the Chagos Archipelago from Mauritius in 1965 the United Kingdom breached its obligation not to take any measure that would prevent the Mauritian people from freely exercising their right to self-determination with respect to the entirety of the territorial unit to which that right related, then the people of Mauritius still possess that right, including with respect to the Chagos Archipelago, and the United Kingdom remains under an obligation to enable the people of Mauritius effectively and fully to exercise that right. The United Kingdom would be responsible for a continuing breach of that obligation by maintaining the separation of the Chagos Archipelago from Mauritius, and would have an obligation to cease forthwith administration of the Chagos Archipelago and return it to Mauritius.

CHAPTER II
THE EXISTENCE OF THE RIGHT TO SELF-DETERMINATION UNDER CUSTOMARY INTERNATIONAL LAW IN 1965

2.1. The right to self-determination under customary international law is reflected in the Charter of the United Nations, in resolutions of the General Assembly of the United Nations, in other State practice, and in the jurisprudence of the Court. It is an *erga omnes* right[5] and a peremptory norm of international law from which no derogation is permitted.[6]

2.2. Self-determination began to be articulated as a legal right in the 1950s and its reaffirmation in numerous subsequent concordant General Assembly resolutions adopted by an overwhelming majority of States indicates that it reflected customary international law in 1965, when the United Kingdom separated the Chagos Archipelago from Mauritius.

2.3. The United Nations Charter, 1945, refers twice to self-determination.

(a) In Article 1(2), one of the purposes of the United Nations is stated to be to:

> "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace".

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5 *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 90 at p. 102, para. 29; *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3 at p. 32, paras. 33-34.

6 Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2), p. 85, para. 5 of commentary to Article 26 (Compliance with peremptory norms): "Those peremptory norms that are clearly accepted and recognized include … the right to self-determination"; M. Shaw, *Title to Territory in Africa* (1986), p. 91.

(b) Article 55 expresses the general aims of the United Nations in the fields of social and economic development and respect for human rights, and refers to the goal of creating the:

> "conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples".

The French language version of these provisions refers to self-determination as a *droit.*

2.4. The right to self-determination is also reflected, although not referred to in terms, in Articles 73(b) and 76(b) of the Charter, which are concerned with non-self-governing territories and trust territories.

2.5. The General Assembly subsequently reaffirmed the right to self-determination in multiple resolutions. In 1950, the General Assembly called on the Commission of Human Rights "to study ways and means which would ensure the right of peoples and nations to self-determination".[7] Two years later, in resolution 545 (VI), the General Assembly referred to the "right of peoples and nations to self-determination", which it noted had been recognized "as a fundamental human right".[8] The General Assembly equally directed the Commission of Human Rights, which was at the time considering the covenants

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7 General Assembly resolution 421 (V), Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights, document A/RES/421(V), 4 December 1950, para. 6.

8 General Assembly resolution 545 (VI), Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, document A/RES/545(VI), 5 February 1952, para. 1.

on human rights, to include an article which "shall be drafted in the following terms: 'All peoples shall have the right of self-determination'".[9]

2.6. At its next session, the General Assembly adopted a resolution on "the right of peoples and nations to self-determination", urging Member States to "recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories", a right which was stated to be a "prerequisite to the full enjoyment of all fundamental human rights".[10]

2.7. During the following two sessions (1953 and 1954), the General Assembly adopted resolutions in the same terms, and called on the Commission on Human Rights to give priority to preparing recommendations concerning international respect for this right.[11]

2.8. In a 1955 working paper concerning negotiation of the human rights covenants, the United Nations Secretariat noted that:

> "The General Assembly, the highest organ in the international community, had *already* recognized the right of peoples and nations to self-determination; the next step was to formulate an

[9] General Assembly resolution 545 (VI), Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, document A/RES/545(VI), 5 February 1952, para. 1.

[10] General Assembly resolution 637 (VII), The right of peoples and nations to self-determination, document A/RES/637(VII), 16 December 1952, preambular para. 1 and para. 2.

[11] General Assembly resolution 738 (VIII), The right of peoples and nations to self-determination, document A/RES/738(VIII), 28 November 1953, preambular para. 1 and para. 1; General Assembly resolution 837 (IX), Recommendations concerning international respect for the right of peoples and nations to self-determination, document A/RES/837(IX), 14 December 1954, para. 1.

> appropriate article by which States would undertake a solemn obligation to promote and respect that right."[12]

2.9. That article, which had been adopted by the Commission on Human Rights in 1952,[13] was approved by the Third Committee of the General Assembly in November 1955.[14] The text of Article 1 of the two draft covenants as thus approved in 1955 was identical and recognized that "all peoples have the right of self-determination". This provision further required States Parties "including those having responsibility for the administration of Non-Self-Governing and Trust Territories" to "promote the realization of the right of self-determination, and … respect that right".

2.10. The General Assembly continued to adopt interpretative and declaratory resolutions referring to the right to self-determination.[15] Reporting on the twelfth (1957) and thirteenth (1958) sessions of the General Assembly, the Secretariat of the United Nations noted that a majority of Member States—

> "wished only to reaffirm the right of self-determination. They emphasized that the General Assembly had already recognized self-determination as a fundamental right in resolutions adopted at previous sessions and had defined it, when approving article 1 of

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[12] Annotations on the text of the draft International Covenants on Human Rights, document A/2929, 1 July 1955, Chapter IV, p. 14 (emphasis added).

[13] Commission on Human Rights, Text of the resolution adopted at the 260th and 261st meetings of the Commission on 21 April 1952, document E/CN.4/663, and later included in the Draft Covenants in 1954: Commission on Human Rights, *Report of the Tenth Session, 23 February-16 April 1954, United Nations Economic and Social Council, 18th Session, Supplement No. 7*, document E/CN.4/705, Annex I, pp. 62 and 65-66.

[14] General Assembly, *Report of the Third Committee*, Draft International Covenants on Human Rights, document A/3077, 8 December 1955, p. 28, para. 74.

[15] See, e.g., General Assembly resolution 1188 (XII), Recommendations concerning international respect for the right of peoples and nations to self-determination, document A/RES/1188(XII), 11 December 1957, para. 1(a), reaffirming that "Member States shall … give due respect to the right of self-determination".

> the draft international covenants on human rights, as the right of peoples and nations to determine their political status and pursue their economic, social and cultural development without foreign interference … By including an article on self-determination in the draft covenants on human rights, the General Assembly showed that it looked on this provision of the Charter as an obligation for Member States".[16]

2.11. In 1960, the General Assembly adopted the seminal Declaration on the granting of independence to colonial countries and peoples (resolution 1514 (XV)), in which it acknowledged the right to self-determination of all colonial peoples:

> "All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."[17]

2.12. In these resolutions, the General Assembly was proceeding on the basis that a right to self-determination already existed. The relevant resolutions were adopted by an overwhelming majority of States. Resolution 545 (VI) of 1952 was adopted by 42 votes in favour, seven against and five abstentions. Resolution 1514 (XV) of 1960, the content of which was drafted and submitted by 43 States, was adopted by 89 votes to none, with nine abstentions. The nine abstaining States had difficulty with the scope of the right to self-determination. None, however, contested the existence of the right, nor its application to non-self-governing territories.

2.13. Resolution 1514 (XV) was preceded and followed by State practice consistent with it. In the fifteen years between the adoption of the Charter of the United Nations in 1945 and resolution 1514 (XV) in 1960, nine States gained

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[16] United Nations Secretariat, *Repertory of practice of UN organs on Article 1(2) of the UN Charter (1955-1959), Supplement No. 2 (Volume I), Article 1(2)*, pp. 41-42, paras. 51-52.

[17] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, para. 2.

independence.[18] In the following five years between 1960 and 1965, a further 35 States gained independence through the process of decolonization in implementation of the right to self-determination recognized in resolution 1514 (XV).[19]

2.14. Immediately following the adoption of resolution 1514 (XV), States also consistently sought to promote, through their participation in the United Nations, the implementation of the right to self-determination. Thus, numerous resolutions called for full and faithful compliance with and implementation of resolution 1514 (XV)[20] and "condemn[ed]" or "deplore[d]" failures by administering powers to do so.[21] The principal organs of the United Nations, and its Member States through

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[18] Cambodia, Indonesia, Federation of Malaya (Malaysia), Gold Coast Colony and Togoland Trust Territory (Ghana), Guinea, Laos, Morocco, Tunisia and Viet Nam.

[19] Algeria, Burundi, Cameroon, Central African Republic, Chad, Congo (Brazzaville) (Republic of the Congo), Congo (Leopoldville) (Democratic Republic of the Congo), Cyprus, Dahomey (Benin), Gabon, Ivory Coast, Jamaica, Kenya, Kuwait, Malagasy Republic (Madagascar), Malawi, Maldives, Mali, Malta, Mauritania, Niger, Nigeria, Rwanda, Samoa, Senegal, Sierra Leone, Singapore, Somalia, The Gambia, Togo, Trinidad and Tobago, Uganda, United Republic of Tanganyika and Zanzibar (Tanzania), Upper Volta (Burkina Faso) and Zambia.

[20] See, e.g., General Assembly resolution 1654 (XVI), The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, document A/RES/1654(XVI), 27 November 1961, para. 2; General Assembly resolution 2066 (XX), Question of Mauritius, document A/RES/2066(XX), 16 December 1965, preambular para. 4 and para. 3; General Assembly resolution 2112 (XX), Question of the Trust Territory of New Guinea and the Territory of Papua, document A/RES/2112(XX), 21 December 1965, para. 3; General Assembly resolution 2151 (XXI), Question of Southern Rhodesia, document A/RES/2151(XXI), 17 November 1966, para. 8.

[21] See, e.g., General Assembly resolution 1810 (XVII), The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, document A/RES/1810(XVII), 17 December 1962, para. 4; Security Council resolution 180, Question relating to territories under Portuguese Administration, document S/5380, 31 July 1963, para. 3; General Assembly resolution 1956 (XVIII), The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, document A/RES/1956(XVIII), 11 December 1963, preambular para. 5 and paras. 5 and 7; General Assembly resolution 1979 (XVIII), Question of South

their votes, treated the right to self-determination as being part of customary international law and as giving rise to legally binding obligations on administering States.

2.15. Writing in 1963 and reflecting on "the practice of states as revealed by unanimous and consistent behavior", Rosalyn Higgins considered resolution 1514 "to represent the wishes and beliefs of the full membership of the United Nations" and noted that it confirmed the right of self-determination as "an international legal right" that was "enforceable here and now".[22] Other sources from the same period described self-determination as a peremptory norm of international law. In 1963, certain members of the International Law Commission referred to the right to self-determination as a settled rule of *jus cogens*.[23] The first edition of Brownlie's *Principles of Public International Law*, published in 1966, stated that "certain portions of *jus cogens* are the subject of general agreement, including … self-determination".[24] Members of the International Law Commission and

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West Africa, document A/RES/1979(XVIII), 17 December 1963, para. 1; General Assembly resolution 2023 (XX), Question of Aden, document A/RES/2023(XX), 5 November 1965, para. 3; General Assembly resolution 2105 (XX), Implementation of the Declaration on the granting of independence to colonial countries and peoples, document A/RES/2105(XX), 20 December 1965, preambular para. 5 and para. 4.

22 R. Higgins, *Development of International Law through the Political Organs of the United Nations* (1963), pp. 177 and 178. See also J. Crawford, *The Creation of States in International Law* (1st edn, 1979), p. 357 and J. Crawford, *The Creation of States in International Law* (2nd edn, 2006), p. 604 both referring to resolution 1514 (XV) as having achieved "a quasi-constitutional status"; A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), p. 70; J. Crawford, *Brownlie's Principles of Public International Law* (8th edn, 2012), p. 646; P. Daillier et A. Pellet, *Droit international public* (7th edn, 2002), pp. 519-520; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, I. C. J. Reports 2001*, Separate Opinion of Judge Franck, p. 655, paras. 9-11.

23 *Yearbook of the International Law Commission (1963), Volume I, Summary Records of the Fifteenth Session (6 May-12 July 1963)*, document A/CN.4/SER.A/1963, p. 155, para. 56.

24 I. Brownlie, *Principles of Public International Law* (1st edn, 1966), p. 418.

eminent scholars would not have been placing the right to self-determination in the elevated category of peremptory norms in the early to mid-1960s if it was not already a rule of customary international law by that time.

2.16. In 1965, the United Nations General Assembly adopted resolution 2131 (XX) without dissent, in which it declared that, "[a]ll States *shall respect* the right of self-determination and independence of peoples and nations, to be freely exercised without any foreign pressure, and with absolute respect for human rights and fundamental freedoms."[25]

2.17. In 1966, when the General Assembly revoked South Africa's mandate over South West Africa, it reaffirmed that—

> "the provisions of General Assembly Resolution 1514 (XV) are fully applicable to the people of the Mandated Territory of South West Africa and that, therefore, the people of South West Africa have the inalienable right to self-determination, freedom and independence in accordance with the Charter of the United Nations".[26]

2.18. In the same year, the two human rights Covenants, concerned with economic, social and cultural rights, on the one hand, and with civil and political rights, on the other, were adopted. Both recognized in common Article 1 that: "All peoples have the right of self-determination" by which "they freely determine their political status and freely pursue their economic, social and cultural development", reproducing verbatim the language of resolution 1514 (XV).

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[25] General Assembly resolution 2131 (XX), Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, document A/RES/20/2131(XX), 21 December 1965, para. 6 (emphasis added).

[26] General Assembly resolution 2145 (XXI), Question of South West Africa, document A/RES/2145(XXI), 27 October 1966, para. 1.

2.19. In 1970, the General Assembly unanimously adopted the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. The right of self-determination of peoples, which the Declaration noted every State had "the duty to respect" was afforded a prominent place, further confirming that self-determination was by then an established rule of international law.[27]

2.20. In its 1971 Advisory Opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa)*, the Court, after considering the Mandates system, stated that:

> "the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to all 'territories whose peoples have not attained a full measure of self-government' … Thus it clearly embraced territories under a colonial régime … A further important stage in this development was the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960), which embraces all peoples and territories which 'have not yet attained independence'."[28]

2.21. In its Advisory Opinion on *Western Sahara* in 1975, the Court treated resolution 1514 of 1960 as having "enunciated" a pre-existing "right":

> "The principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a

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[27] General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, document A/RES/2625(XXV), 24 October 1970.

[28] *The 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. 16 at p. 31, para. 52.

> speedy end, were enunciated in the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly Resolution 1514 (XV) …".[29]

2.22. The foregoing account demonstrates that by 1960, and certainly by 1965, the right of colonized peoples to self-determination was established as part of customary international law. By 1965 States had voted by overwhelming majorities for General Assembly and Security Council resolutions that repeatedly reaffirmed the inalienable *right* of colonial peoples to self-determination. Consistently with the existence of that right, through these resolutions States had supported the decolonization of scores of newly independent States. This extensive practice was accompanied by the *opinio juris* of States in continuing to support the adoption of resolutions of the General Assembly and Security Council that reaffirmed the applicability of resolution 1514 (XV) in all cases of non-self-governing territories and that treated compliance by the administering States with the duty to respect the right to self-determination as susceptible to enforcement through the organs of the United Nations.

[29] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 at p. 32, para. 55.

CHAPTER III
THE CONTENT OF THE RIGHT TO SELF-DETERMINATION

Section I. The right of peoples of non-self-governing territories to self-determination within a single territorial unit

3.1. The content of the customary international law right to self-determination in 1965 is derived from General Assembly resolutions prior to that year that were reflective of customary international law, and from other contemporaneous practice and *opinio juris* of States.

3.2. The customary international law right to self-determination includes the right of all peoples to "freely determine their political status and freely pursue their economic, social and cultural development".[30] It requires a free choice as to whether to become an independent State, freely to associate with a pre-existing independent State, or to integrate into a pre-existing State.[31]

3.3. The right inheres in the people of a territory that has not yet attained a full measure of self-government,[32] notably colonial territories.[33] That it inheres in the

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[30] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, para. 2.

[31] General Assembly resolution 1541 (XV), Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, document A/RES/1541(XV), 15 December 1960, Annex, Principle VI; General Assembly resolution 742 (VIII), Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, document A/RES/742(VIII), 27 November 1953, para. 6.

[32] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, para. 5; *The 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. 16 at p. 31, para. 52.

[33] See, e.g., title and preambular paragraphs of General Assembly resolution 1514 (XV), Declaration on the granting of independence to *colonial* countries and peoples, document

people of a territory *as a single territorial unit* is crucial, as noted by Professor Shaw writing in 1986 and reflecting on practice since 1945: "The 'self' of self-determination is therefore to be understood in strict spatial terms so that the right accrues to a colonial people within the framework of the existing territorial unit as established by the colonial power."[34] This is reflected in one of the core aspects of the right to self-determination: territorial integrity. The right to territorial integrity operates to preserve the unity of a territory prior to the point in time at which the people of that territory exercise their right to self-determination. As Professor Shaw explains, "[a]s a rule, the need to maintain the colonial unit during the period leading up to independence is clearly a crucial element in the viability of the concept of self-determination".[35] The right to self-determination for the people *of a non-self-governing territory* includes the right for that people to choose *for that territory* to become independent.

3.4. The right to territorial integrity is reflected in paragraph 6 of the 1960 Declaration on the granting of independence to colonial countries and peoples, which paragraph was understood by States during the drafting of the Declaration as an important prohibition on the dismemberment of non-self-governing territories by the administering power prior to independence:[36]

A/RES/1514(XV), 14 December 1960 (emphasis added); General Assembly resolution 1541 (XV), Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter, document A/RES/1541(XV), 15 December 1960, Annex, Principle I.

34 M. Shaw, *Title to Territory in Africa* (1986), p. 140. See also A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), p. 72.

35 M. Shaw, *Title to Territory in Africa* (1986), p. 134.

36 See, e.g., the statements at United Nations, *Official Records of the General Assembly, Fifteenth Session* (925th - 947th meetings), documents A/PV.945 to A/PV.947 (1960) of Cyprus (A/PV.945, paras. 92-93), Indonesia (A/PV.936, para. 55 and A/PV.947, paras. 9-10), Iraq (A/PV.937, para. 134), Morocco (A/PV.945, para. 71 and A/PV.947, para. 158), Nepal (A/PV.935, para. 74), Panama (A/PV.938, paras. 71-72) and the United Arab Republic (now Egypt and Syria) (A/PV.929, para. 178).

> "Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[37]

3.5. The preamble to resolution 1514 (XV) also reaffirmed the General Assembly's conviction "that all peoples have *an inalienable right to ... the integrity of their national territory*" and paragraphs 4 and 7 confirmed that all States *shall* respect the integrity of a people's national territory.[38] This recognition that territorial integrity forms part of the full exercise of the right of the peoples of colonial territories to self-determination was repeated in subsequent General Assembly resolutions referring to an "inalienable right to … territorial integrity".[39]

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[37] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, para. 6. The reference to "country" in paragraph 6 is broader than "States" or "Member States" and mirrors the reference to "colonial countries" in the title of the Declaration on the granting of independence to colonial countries and peoples.

[38] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, preambular para. 11 (emphasis added) and paras. 4 and 7.

[39] See, e.g., the series of resolutions between 1975 and 1980 related to the people of Belize, in which the General Assembly also reaffirmed repeatedly that the inviolability and territorial integrity of Belize prior to its independence must be preserved and that it was the United Kingdom as the administering power that had a special responsibility to secure Belize's territorial integrity: General Assembly resolution 3432 (XXX), Question of Belize, document A/RES/3432(XXX), 8 December 1975, paras. 2-3; General Assembly resolution 31/50, Question of Belize, document A/RES/31/50, 1 December 1976, paras. 2-3; General Assembly resolution 32/32, Question of Belize, document A/RES/32/32, 28 November 1977, preambular para. 12 and paras. 2 and 5; General Assembly resolution 33/36, Question of Belize, document A/RES/33/36, 13 December 1978, preambular para. 10 and paras. 2, 3 and 7; General Assembly resolution 34/38, Question of Belize, document A/RES/34/38, 21 November 1979, preambular paras. 6, 8 and 9, and paras. 1, 2, 4 and 5; General Assembly resolution 35/20, Question of Belize, document A/RES/35/20, 11 November 1980, preambular paras. 6, 10 and 11, and paras. 1, 4, 6 and 7.

3.6. In calling for compliance with the customary international law rules enunciated in resolution 1514 (XV), the practice of the General Assembly has therefore been to promote the self-determination of the peoples of colonial territories within the whole of each of those territories. Following the adoption of resolution 1514 (XV) in December 1960, for example, the General Assembly recognized, in respect of Algeria, the need "to ensure the successful and just implementation of the right of self-determination on the basis of respect for the unity and territorial integrity of Algeria".[40] The following year, in 1961, the General Assembly expressed its deep concern in resolution 1654 (XVI) that, contrary to paragraph 6 of the Declaration on the granting of independence to colonial countries and peoples, "acts aimed at the partial or total disruption of national unity and territorial integrity" were being carried out in the process of decolonization.[41] In 1962 and 1963, the General Assembly warned South Africa against any attempt to encroach upon the territorial integrity of Basutoland, Bechuanaland or Swaziland in any way.[42] In 1965, the General Assembly considered that "any step taken by the administering Power to detach certain islands from the Territory of Mauritius … would be in contravention of the Declaration, and in particular paragraph 6 thereof" and invited the United Kingdom "to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".[43] Similarly, in 1965, the General Assembly considered, in respect of South West Africa, that "any attempt to partition the

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[40] General Assembly resolution 1573 (XV), Question of Algeria, document A/RES/1573(XV), 19 December 1960, para. 2. See also General Assembly resolution 1724 (XVI), Question of Algeria, document A/RES/1724(XVI), 20 December 1961, preambular para. 7.

[41] General Assembly resolution 1654 (XVI), The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, document A/RES/1654(XVI), 27 November 1961, preambular para. 6.

[42] General Assembly resolution 1817 (XVII), Question of Basutoland, Bechuanaland and Swaziland, document A/RES/1817(XVII), 18 December 1962, para. 6; General Assembly resolution 1954 (XVIII), Question of Basutoland, Bechuanaland and Swaziland, document A/RES/1954(XVIII), 11 December 1963, para. 4.

[43] General Assembly resolution 2066 (XX), Question of Mauritius, document A/RES/2066(XX), 16 December 1965, preambular para. 5 and para. 4.

Territory or to take any unilateral action, directly or indirectly, preparatory thereto constitutes a violation of … resolution 1514 (XV)".[44] Again, in 1966, after expressing its deep concern about the continuation of policies aimed at the disruption of the territorial integrity of non-self-governing territories, the General Assembly—

> "*[r]eiterates* its *declaration* that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories … is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)."[45]

3.7. Resolution 1514 (XV), passed without dissent by the General Assembly of the United Nations in December 1960, and which reflected not only the right to self-determination under customary international law, but also recognized the right to territorial integrity as part of that right of self-determination, has been recognized by the United Kingdom as articulating a right of colonial peoples as at 1960. In 1967, the United Kingdom reaffirmed as a "basic principle" the "wholeness and indivisibility of Territories which had been administered as a single unit" as protected by the rule on territorial integrity in paragraph 6 of resolution 1514 (XV).[46] More recently, the United Kingdom has recognised this right before the Court. In the proceedings leading to an advisory opinion on the unilateral declaration of independence by the provisional institutions of self-government of Kosovo, the United Kingdom stated that: "The principle of self-

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[44] General Assembly resolution 2074 (XX), Question of South West Africa, document A/RES/2074(XX), 17 December 1965, para. 5 and see also para. 10.

[45] General Assembly resolution 2232 (XXI), Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands, document A/RES/2232(XXI), 20 December 1966, preambular para. 4 and para. 4 (emphasis added).

[46] United Nations, *Official Records of the General Assembly, Twenty-second Meeting*, Fourth Committee, 1741st meeting, document A/C.4/SR.1741, 7 December 1967, para. 31.

determination was articulated as a right of all colonial countries and peoples by General Assembly resolution 1514 (XV)."[47]

Section II. The correlative obligation of the administering power to enable the exercise of the right to self-determination with respect to the entire territory

3.8. The right to self-determination of the peoples of non-self-governing territories gives rise to a correlative obligation on the part of States administering such territories to enable the peoples of those territories to exercise fully their right of self-determination.[48] This requires ensuring that the people in question are in a position to be able freely to express their wishes. In this respect, the Court in its Advisory Opinion on *Western Sahara* stated that "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned" and that the "validity of the principle of self-determination"

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[47] Written Statement of the United Kingdom dated 17 April 2009, para. 5.21, in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403.

[48] General Assembly resolution 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, document A/RES/1514(XV), 14 December 1960, para. 5. See also, e.g., the many resolutions in which the General Assembly called upon administering powers to take all necessary measures "to enable" colonial peoples to exercise fully their right to self-determination: General Assembly resolution 2878 (XXVI), Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, document A/RES/2878(XXVI), 20 December 1971, para. 1; General Assembly resolution 2985 (XXVII), Question of the Seychelles, document A/RES/2985(XXVII), 14 December 1972, para. 1; General Assembly resolution 3115 (XXVIII), Question of Southern Rhodesia, document A/RES/3115(XXVIII), 12 December 1973, para. 4. See also *The 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. 16 at pp. 28-29, paras. 45-47 and p. 31, para. 52 referring to the development of international law relating to non-self-governing territories "as enshrined in" the Charter, and the attendant obligations imposed on administering powers.

could be "defined as the need to pay regard to the freely expressed will of peoples".[49]

3.9. This obligation prohibits the taking by the administering power of any measures prior to the exercise of the right to self-determination that would put the people in question in a position whereby they would not be able freely and genuinely to express their will as regards their political future. This includes measures that affect the territory with respect to which the right to self-determination is to be exercised, such as the severing of part of the territory of the colonial unit, as contemplated and prohibited by the rule reflected in paragraph 6 of resolution 1514 (XV).[50] Only where the continued territorial unity of the colony would be contrary to the freely expressed wishes of the people of that colony has partition been accepted by the United Nations.[51]

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[49] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 at p. 31, para. 55 and p. 33, para. 59.

[50] See, e.g., the resolutions in which the General Assembly referred to the "special responsibility" of the administering Power "to enable" the relevant people to exercise their right to self-determination with respect to "all of their territory". Two such examples concerning Belize are: General Assembly resolution 34/38, Question of Belize, document A/RES/34/38, 21 November 1979, preambular para. 8; General Assembly resolution 35/20, Question of Belize, document A/RES/35/20, 11 November 1980, preambular para. 11. See also, e.g., General Assembly resolution 2985 (XXVII), Question of the Seychelles, document A/RES/2985(XXVII), 14 December 1972, preambular para. 5 which reaffirmed that "the Seychelles should accede to independence without any prejudice to their territorial integrity".

[51] For example, Rwanda and Burundi constituted a single Belgian-administered Trust Territory of Ruanda-Urundi that was partitioned and granted independence as two separate States in 1962. This was a result of the free will of the people expressed through elections held on the basis of universal adult suffrage under the supervision of the United Nations. See General Assembly resolution 1746 (XVI), The future of Ruanda-Urundi, document A/RES/1746(XVI), 27 June 1962. Similarly, the Gilbert and Ellice Islands were separated and became two States on independence (Tuvalu and Kiribati) following a referendum organized and supervised by the United Nations at the request of the United Kingdom. See General Assembly resolution 3288 (XXIX), Question of the Gilbert and Ellice Islands, document A/RES/3288(XXIX), 13 December 1974 and Report of the Special Committee on the

3.10. In situations in which there has been a suggested or actual compromising of the territorial integrity of the non-self-governing unit that was not a reflection of the free and genuine will of the people holding the right to self-determination, the international community has indicated, typically through the United Nations, that such conduct violates the obligation to respect the territorial integrity of a colonial unit prior to the exercise by its people of their right to self-determination:

(a) The Malagasy Islands (Juan de Nova, Glorieuses, Europa and Bassas da India) were a dependency of Madagascar that was severed from Madagascar just prior to its independence on 26 June 1960.[52] On 1 April 1960, the day before initialing the agreement of 2 April 1960 transferring power to Madagascar, and a few weeks prior to complete independence, France issued a decree in which it placed the Malagasy Islands under the authority of the French Minister dealing with overseas *départements* and territories, following which it claimed complete sovereignty over the islands.[53] After a change in government in the early 1970s, Madagascar began to assert its claim to the islands, arguing that "[w]hen sovereignty is transferred to a newly independent State, the latter's territorial integrity and national unity must be respected" as required by paragraph 6 of resolution 1514 (XV).[54] The Organization for African Unity,[55] the Non-

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Situation With Regard to the Implementation of the Declaration on the granting of independence to colonial countries and peoples, Volume V, United Nations, *Official Records of the General Assembly, Twenty-Ninth Session, Supplement No. 23* (1976), document A/9623/Rev.1, paras. 135-191.

52 It became independent as the Malagasy Republic and later changed its name to Madagascar.

53 Since 1960, they have been administered under the authority of a *préfet*: see Request for the Inclusion of an Additional item in the Agenda of the Thirty-Fourth Session: Question of the Islands of Glorieuses, Juan de Nova, Europa and Bassas da India, document A/34/245, 12 November 1979, Annex: Explanatory Memorandum, para. 2; M. Shaw, *Title to Territory in Africa* (1986), p. 133.

54 See Request for the Inclusion of an Additional item in the Agenda of the Thirty-Fourth Session: Question of the Islands of Glorieuses, Juan de Nova, Europa and Bassas da India, document A/34/245, 12 November 1979, Annex: Explanatory Memorandum, para. 6(d).

Aligned Movement[56] and the United Nations General Assembly all called for the return of the Malagasy Islands to Madagascar. The General Assembly reaffirmed "the necessity of scrupulously respecting the national unity and territorial integrity of a colonial territory at the time of its accession to independence", called on France to "repeal the measures which infringe the sovereignty and territorial integrity of Madagascar" and invited France and Madagascar to "initiate negotiations without further

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Madagascar and France had agreed to pursue efforts to arrive at a negotiated solution in the 1970s and it was when those efforts proved unsuccessful that Madagascar approached the United Nations.

55 Organization of African Union, Resolution on the Islands of Glorieuses, Juan de Nova, Europa and Bassas da India, CM/Res.732 (XXXIII) Rev.1, adopted by the Thirty-Third Ordinary Session of the Council of Ministers, 6-20 July 1979, "Recalling that these islands during the colonial era formed a single political and administrative entity within the territory then known as 'Madagascar and Dependencies'; Considering the fact that the former colonial power arbitrarily separated these islands from Madagascar by an official decree of 1 April 1960 when Madagascar was about to achieve independence on 26 June 1[9]60: 1. Declare that the Islands … are integral parts of the national territory of the Democratic Republic of Madagascar; 2. Calls upon the French Government to return the Island[s] in question to the Democratic Republic of Madagascar …; 3. Requests the French Government to make the necessary arrangements to repeal the measures taken by the French authorities, measures which impair the sovereignty of the Democratic Republic of Madagascar". See also Organization of African Unity, Resolution on the Glorieuses, Juan de Nova, Europa and Bass[a]s-da-India Islands, CM/Res.784 (XXXV), adopted by the Thirty-Fifth Ordinary Session of the Council of Ministers, 18-28 June 1980, paras. 1 and 2, which reaffirmed that the islands constitute an integral part of Madagascar and urged France to begin negotiations as soon as possible for the re-integration of the islands into Madagascar.

56 Political Declaration of the Sixth Conference of Heads of State or Government of Non-Aligned Countries, document A/34/542, 11 October 1979, p. 37, para. 100: "In relation to the situation of the Glorieuses, Juan de Nova, Europa and Bassa d[a] India Islands, which geographically and historically belong to Madagascar, the Conference called for the reintegration of these islands into the Democratic Republic of Madagascar, from which they were arbitrarily separated in 1960 by decree of the former metropolis."

delay … for the reintegration of the above-mentioned islands, which were arbitrarily separated from Madagascar".[57]

(b) In the lead up to the independence of the Comoro Archipelago, the United Nations General Assembly stressed the importance of the territorial integrity of the Comoro Archipelago as a single territorial unit.[58] In December 1974, France held a referendum on independence for the Comoro Archipelago, in which three of the four main islands (Anjouan, Grande Comore and Moheli) voted for independence and the fourth (Mayotte) voted to remain under French control.[59] In June 1975, the French parliament considered a bill providing for Mayotte to remain linked with France after the independence of the remainder of the Comoros. This prompted the Comoros parliament unilaterally to declare independence on 6 July 1975 in respect of the entirety of the Comoro Archipelago, including Mayotte. France only accepted the declaration of independence for the islands of Anjouan, Grande Comore and Moheli, reserving its position in respect of Mayotte. The United Nations, while reaffirming "the necessity of respecting the unity and territorial integrity of the Comoro Archipelago, composed of the islands of Anjouan, Grande-

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[57] General Assembly resolution 34/91, Question of the Islands of Juan de Nova, Glorieuses, Europa and Bassas da India, document A/RES/34/91, 12 December 1979, paras. 1, 3 and 4. See also General Assembly resolution 35/123, Question of the Islands of Juan de Nova, Glorieuses, Europa and Bassas da India, document A/RES/35/123, 11 December 1980, para. 3 of which reaffirmed Resolution 34/91. Negotiations between France and Madagascar, which began in 1980, continue to the present day. The matter has remained on the General Assembly's provisional agenda since 1980.

[58] General Assembly resolution 3161 (XXVIII), Question of the Comoro Archipelago, document A/RES/3161(XXVIII), 14 December 1973, paras. 4 and 5; General Assembly resolution 3291 (XXIX), Question of the Comoro Archipelago, document A/RES/3291(XXIX), 13 December 1974, paras. 3 and 5.

[59] The combined total of votes from the four islands of the Comoros islands was 95 per cent in favour of independence but on Mayotte, a majority rejected independence and voted for continued ties with France. See M. Shaw, *Title to Territory in Africa* (1986), pp. 115-116.

Comore, Mayotte and Moheli", admitted the Comoro Archipelago as a Member on 12 November 1975.[60] In December 1975, the French parliament passed a law confirming that Mayotte's status would be as a *collectivité territoriale* under French control, and in 1976 France held special referenda for the people of Mayotte, who voted to remain under French control.[61] The General Assembly, voting 102 to 1 (France) with 28 abstentions, considered that the referenda imposed on Mayotte constituted "a violation of the sovereignty of the Comorian State and of its territorial integrity" and declared them null and void. It also considered that the attitude of France "constitutes a violation of the principles of the relevant resolutions of the United Nations, in particular of General Assembly resolution 1514 (XV) of 14 December 1960 concerning the granting of independence to colonial countries and peoples, which guarantees the national unity and territorial integrity of such countries".[62] The United Nations General Assembly has repeatedly reaffirmed the sovereignty of the Comoros over Mayotte and called for France to respect the outcome of the 1974 referendum by "ensuring the effective return of the island of Mayotte to the Comoros as soon as possible".[63] The Organization for

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60 General Assembly Resolution 3385 (XXX), Admission of the Comoros to membership in the United Nations, document A/RES/3385(XXX), 12 November 1975.

61 See, M. Shaw, *Title to Territory in Africa* (1986), pp. 115-116. In 2010, the French parliament passed a law pursuant to which Mayotte was integrated into France as a *département d'outre mer*: see Law No. 2010-1486 of 7 December 2010 regarding the *département* of Mayotte.

62 General Assembly resolution 31/4, Question of the Comorian island of Mayotte, document A/RES/31/4, 21 October 1976, preambular paras. 2 and 4, and para. 1. A draft resolution of the Security Council called on France not to jeopardize the independence, unity and territorial integrity of the Comoros, but it was vetoed by France: Draft Security Council resolution S/11967, document S/11967, 5 February 1976.

63 See, e.g., General Assembly resolution 36/105, Question of the Comorian island of Mayotte, document A/RES/36/105, 10 December 1981, paras. 1-3. See, to the same effect, the annual resolutions on the "Question of the Comorian island of Mayotte": General Assembly resolution 34/69, document A/RES/34/69, 6 December 1979, para. 1 and see also preambular paras. 3 and 4; General Assembly resolution 35/43, document A/RES/35/43, 28 November

African Unity[64] and the Non-Aligned Movement[65] have also supported the reintegration of Mayotte into the Comoros.

(c) The prohibition on disruption of territorial integrity prior to the exercise of the right of self-determination includes any encroachment by non-administering States. When South Africa threatened in the early 1960s to annex Basutoland, Bechuanaland and Swaziland, all then administered by

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1980, para. 1 and see also preambular paras. 3 and 5; General Assembly resolution 37/65, document A/RES/37/65, 3 December 1982, paras. 1, 2 and 4 and see also preambular paras. 3 and 5; and the following annual resolutions in identical terms to General Assembly resolution 37/65: General Assembly resolution 38/13, document A/RES/38/13, 21 November 1983; General Assembly resolution 39/48, document A/RES/39/48, 11 December 1984; General Assembly resolution 40/62, document A/RES/40/62, 9 December 1985; General Assembly resolution 41/30, document A/RES/41/30, 3 November 1986; General Assembly resolution 42/17, document A/RES/42/17, 11 November 1987; General Assembly resolution 43/14, document A/RES/43/14, 26 October 1988; General Assembly resolution 44/9, document A/RES/44/9, 18 October 1989; General Assembly resolution 45/11, document A/RES/45/11, 1 November 1990; General Assembly resolution 46/9, document A/RES/46/9, 16 October 1991; General Assembly resolution 47/9, document A/RES/47/9, 27 October 1992; General Assembly resolution 48/56, document A/RES/48/56, 13 December 1993; General Assembly resolution 49/18, document A/RES/49/18, 28 November 1994.

64 Organization of African Unity, Resolution on the Comorian Island of Mayotte, CM/Res.678 (XXXI), adopted by the Thirty-First Ordinary Session of the Council of Ministers, 7-18 July 1978: "Recalling that the people of the Republic of the Comoros expressed by an overwhelming majority their will in a referendum held on 21 December 1974, to acce[d]e to independence in unity and territorial integrity, … 1. Condemns the so-called referendum staged in Mayotte on the 8 June 1976 and the 11 April 1976 which it considers null and void and rejects … any other French initiative aiming at conferring a legitimate character to French colonialist presence in Mayotte in any form … 2. Strongly condemns the illegal French occupation of the Comorian Island of Mayotte, which constitutes an aggression aiming at undermining the national unity, territorial integrity and sovereignty of the Republic of the Comoros … 4. Demand[s] the immediate and unconditional withdrawal of France from the Comorian Island of Mayotte, which is an integral part of the Republic of the Comoros".

65 Political Declaration of the Sixth Conference of Heads of State or Government of Non-Aligned Countries, document A/34/542, 11 October 1979, p. 37, para. 99.

the United Kingdom, the General Assembly repeatedly condemned "any attempt to jeopardize the right of the peoples of these Territories to establish their own independent States" and declared "that any attempt to annex Basutoland, Bechuanaland or Swaziland, or to encroach upon their territorial integrity in any way, will be regarded by the United Nations as an act of aggression violating the Charter of the United Nations".[66] Similarly, when Indonesia invaded and purported to annex East Timor in 1975 on the eve of the exercise by its people of their right to self-determination, the Security Council and General Assembly condemned the invasion, reaffirmed the inalienable right of the people of East Timor to self-determination in accordance with resolution 1514 (XV), and called on all States "to respect the territorial integrity of East Timor".[67]

(d) In the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the Court found that the route taken by the wall caused the departure of Palestinian populations from certain areas and risked "further alterations to the demographic composition of the Occupied Palestinian Territory". The Court found that the construction of the wall "severely impedes the exercise by the

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[66] General Assembly resolution 1817 (XVII), Question of Basutoland, Bechuanaland and Swaziland, document A/RES/1817(XVII), 18 December 1962, preambular para. 7 and para. 6; General Assembly resolution 1954 (XVIII), Question of Basutoland, Bechuanaland and Swaziland, document A/RES/1954(XVIII), 11 December 1963, preambular para. 5 and para. 4. Although this involved the threat of the use of force by a non-administering power (South Africa) against dependencies of the administering power (the United Kingdom), the language of the resolutions was not such as to denounce the threat of use of force by one Member State against another: the focus of the General Assembly resolutions was very much on the implementation of Resolution 1514 (XV) and the respect for the territorial integrity *of the non-self-governing territories*.

[67] Security Council resolution 384, East Timor, document S/RES/384, 22 December 1975, para. 1 (adopted unanimously); General Assembly resolution 3485 (XXX), Question of Timor, document A/RES/3485(XXX), 12 December 1975, paras. 5-7.

Palestinian people of its right to self-determination, and is therefore a breach of Israel's obligation to respect that right."[68]

3.11. That the administering State is prohibited from severing part of the territory of a colony prior to independence when such severance is not a reflection of the free and genuine will of the people holding the right to self-determination is also supported by learned publicists. Professor Crawford has explained that: "Administering States are not at liberty to divide up or dismember those territories in violation of self-determination. Territories formed by such dismemberment are not self-determination units, but are subject to the principle of territorial integrity".[69]

3.12. If a territory is dismembered prior to independence in breach of the right to self-determination of the people of that territory, the right to self-determination of the people of the entire territorial unit, within that entire territorial unit, continues to exist until such time as it is exercised. This is supported by the 1970 Declaration on Friendly Relations, which reaffirms that:

> "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter *shall exist until the people* of the colony or Non-Self-Governing Territory *have exercised their*

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[68] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 at p. 184, para. 122.

[69] J. Crawford, *The Creation of States in International Law* (2nd edn, 2006), p. 645. See also J. Crawford, *The Creation of States in International Law* (1st edn, 1979), pp. 381-382; Shaw, referred to above in para. 3.3; S. K. N. Blay, "Self-Determination Versus Territorial Integrity in Decolonization" (1986) 18 *NYU Journal of International Law and Politics* 441, pp. 445-448 and 449.

right of self-determination in accordance with the Charter, and particularly its purposes and principles."[70]

3.13. That the right to self-determination continues to exist where it is prevented from being fully exercised is supported by the above examples of States, through their participation in the United Nations, supporting the reintegration of territory severed from non-self-governing territories prior to their independence.

[70] General Assembly resolution 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, document A/RES/2625(XXV), 24 October 1970, Annex, fifth principle (titled "The principle of equal rights and self-determination of peoples"), sixth para.

CHAPTER IV
THE SEVERANCE OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS AND THE RIGHT TO SELF-DETERMINATION OF THE PEOPLE OF MAURITIUS

Section I. Evaluating whether the process of decolonization of Mauritius was lawfully completed

4.1. For the process of decolonization of Mauritius to have been lawfully completed,[71] it would need to have been done in a manner that respected the right of the Mauritian people to self-determination. As explained in the preceding Chapter, for that right to be capable of being fully exercised, the territorial integrity of the non-self-governing unit must be preserved prior to independence so that the people within all of that territory can freely determine their political future within the territorial unit as a whole. This right of the Mauritian people to the territorial integrity of Mauritius has been expressly recognized by the General Assembly in a number of resolutions. In resolution 2066 (XXX), for example, the General Assembly expressed its deep concern that "any step taken by [the United Kingdom] to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular paragraph 6 thereof".[72] The obligation to maintain the territorial integrity of Mauritius was repeated in resolutions 2232 (XXI) and 2357 (XXII).[73]

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[71] See General Assembly resolution 742 (VIII), Factors which should be taken into account in deciding whether a Territory is or is not a Territory whose people have not yet attained a full measure of self-government, document A/RES/742(VIII), 27 November 1953, Annex: List of Factors – Factors indicative of the attainment of independence or of other separate systems of self-government.

[72] General Assembly resolution 2066 (XX), Question of Mauritius, document A/RES/2066(XX), 16 December 1965, preambular para. 5. See also para. 4: "*Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".

[73] General Assembly resolution 2232 (XXI), Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St.

4.2. Mauritius attained independence on 12 March 1968 and was admitted to the United Nations as a Member State on 24 April 1968. Three years earlier, in 1965, at the time of the separation of the Chagos Archipelago from it, the people of Mauritius had a right to self-determination that included the right freely to determine the political status of the entirety of the territory of Mauritius. The right to territorial integrity could only be waived by the free and genuine consent of the people holding that right. If that right was not so waived, then by separating the Chagos Archipelago from Mauritius the United Kingdom would have breached its obligation not to take any measure prior to the exercise of the right to self-determination that would prevent the people of Mauritius from freely determining the political future of Mauritius as an entire territorial unit. In such circumstances the process of decolonization of Mauritius would not have been lawfully completed.

Section II. Analyzing consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago

4.3. If by separating the Chagos Archipelago from Mauritius in 1965 the United Kingdom failed to enable the Mauritian people effectively to exercise their right to self-determination in respect of the entirety of the territorial unit to which their right of self-determination related, then the Mauritian people still possess that right, including with respect to the Chagos Archipelago. The obligation on the United Kingdom to enable the exercise of that right would not have been fully discharged upon the independence of Mauritius in 1968. The United Kingdom

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Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands, document A/RES/2232(XXI), 20 December 1966, preambular para. 4 and para. 4; General Assembly resolution 2357 (XXII), Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Swaziland, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands, document A/RES/2357(XXII), 19 December 1967, preambular para. 6 and para. 4 to the same effect.

would, therefore, remain under an obligation to enable the self-determination of the Mauritian people, including those of Chagossian origin displaced as a result of the 1965 separation, with respect to all of the territory of Mauritius as it was prior to the breach of obligation by the United Kingdom in 1965.[74] The United Kingdom would be responsible for a continuing breach of that obligation by maintaining the separation of the Chagos Archipelago from Mauritius. The United Kingdom would therefore have an obligation to cease forthwith that internationally wrongful conduct.[75]

4.4. Furthermore, if the separation in 1965 was an internationally wrongful act, contrary to the right of the Mauritian people to self-determination with territorial integrity, then the United Kingdom is under an obligation to, "as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed."[76] That would require the re-establishment of the territorial integrity of Mauritius. Restitution can take the form of a return of territory,[77] and that would be required here as a remedy for the wrongful separation.

4.5. The consequences arising under international law from the continued administration by the United Kingdom of the Chagos Archipelago would

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74 See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 at p. 197, para. 149.

75 See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 at pp 197-198, paras 150-151; *Rainbow Warrior Arbitration*, 30 April 1990, XX RIAA p. 215 at p. 270, para. 114.

76 *Factory at Chorzów, Jurisdiction, Judgment, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17*, p. 47.

77 Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, *Yearbook of the ILC (2001), Volume II, Part II, Report of the Commission to the General Assembly on the Work of its Fifty-Third Session*, document A/CN.4/SER.A/2001/Add.1 (Part 2), p. 97, para. 5 of commentary to Article 35 (Restitution): "Restitution may take the form of material restitution or return of territory".

therefore be that the United Kingdom would be under an obligation to cease forthwith its administration of the Chagos Archipelago and return it to Mauritius.

H.E. Ambassador Alexis Roberto Rosado

Representative of Belize

30 January 2018