INTERNATIONAL COURT OF JUSTICE

LEGAL CONSEQUENCES OF
THE SEPARATION OF CHAGOS FROM MAURITIUS IN 1965

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT OF THE ARGENTINE REPUBLIC

1 MARCH 2018

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Introduction

1. The present written statement is filed pursuant to the Court's Order of 14 July 2017 upon the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 71/292 of 22 June 2017.

2. The terms of the request made by the General Assembly are as follows:

> (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?"

3. The Argentine Republic (hereinafter, "Argentina") is a co-sponsor of the draft resolution requesting this advisory opinion and hence voted in favour of this request. Likewise, Argentina voted in favour of all General Assembly resolutions mentioned in the above-mentioned questions. By endorsing this request for an advisory opinion, Argentina reaffirms its recognition of the high function of the International Court of Justice as the principal judicial organ of the United Nations, its respect for international law, its commitment to the duties and responsibilities of the General Assembly in the process of decolonization and its support for the completion of this process in all its aspects and in all pending cases. The present written statement (hereinafter WSA) constitutes Argentina's contribution to the Court in these advisory proceedings.

4. As the Court stated: "The jurisdiction of the Court under Article 96 of the Charter and Article 65 of the Statute, to give advisory opinions on legal questions, enables United Nations entities to seek guidance from the Court in order to conduct their

activities in accordance with law".[1] This is exactly what the General Assembly is looking for in this matter, which has lasted for more than half a century.

5. In the WSA, Argentina addresses some of the significant legal issues arising from the questions submitted to the Court, both with regard to its jurisdiction and propriety and to the merits. The WSA is divided into three parts. The first part ("A") refers to the competence of the General Assembly to request this advisory opinion and the reasons for the Court to exercise its jurisdiction in this regard. The second part ("B") addresses the substance of the request, dealing with some of the important legal questions that it raises. The last part ("C") concludes with the proposed content of the answers to the questions posed by Resolution 71/292.

A. The General Assembly has competence to request an advisory opinion and there are no compelling reasons not to respond to this request

6. The competence of the General Assembly to request an advisory opinion of the International Court of Justice is derived directly from Article 96 (1) of the UN Charter, which reads as follows: "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question."

7. Both the reference to the General Assembly as one of the two named principal organs of the United Nations and the phrase "any legal question" cast little doubt on the capacity of the General Assembly to request the present advisory opinion. "The questions submitted by the General Assembly have been framed in terms of law and raise problems of international law",[2] relating as they do to the *legality* of the separation of Chagos from Mauritius in 1965 and to the *legal consequences* of the maintenance of this situation until today.

8. The request currently under review is the seventeenth request made by the General Assembly out of a total of 27 requests for advisory opinions. Up to today, the Court

[1] *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, pp. 188-189, para. 131.
[2] *Western Sahara, Advisory Opinion,* I.C.J. Reports 1975, p. 18, para. 15.

has never declined to render an advisory opinion requested by the General Assembly.

9. Article 18 of the Charter of the United Nations does not stipulate that the decision to request an opinion from the International Court of Justice must be adopted by a two-third majority. Nor do the Rules of Procedure of the UN General Assembly.[3] To date, with the exception of the request regarding the *Reparation for Injuries Suffered in the Service of the United Nations*, which was adopted unanimously, all requests by the General Assembly for an advisory opinion have been adopted by a majority vote. The adoption of Resolution 71/292 was undoubtedly a legally valid decision, adopted by a clear majority vote of 94 to 15, with 65 abstentions. It can be recalled that according to Rule 86 of the General Assembly, "the phrase 'members present and voting' [of Article 18 of the Charter and the related General Assembly Rules] means members casting an affirmative or negative vote. Members which abstain from voting are considering as not voting". Hence, in all circumstances, even if a majority of two thirds were required, this majority would have been met.

10. This part will be divided into three sections: the first one will explain that the question under scrutiny is one of decolonization (1). The second section will address the specific competencies of the General Assembly in the field of decolonization (2). The third section will reaffirm the constant position of the Court that the consent of an interested State is not necessary for the exercise of its advisory jurisdiction and that the concomitant existence of a bilateral dispute is not a reason for the Court not to exercise its advisory jurisdiction (3).

(1) Chagos is a matter of decolonization

11. The question of the separation of Chagos Archipelago from Mauritius is a matter of decolonization. The separation occurred in 1965, at the time when Mauritius was a non-self-governing territory in the sense of Chapter XI of the Charter of the United Nations. It is not contested that before that separation, Chagos was part of Mauritius. It is not contested either that this separation was the result of an action of the United Kingdom, the administering Power. Mauritius achieved independence in 1968 but

[3] *See* Rules 83 to 86 of the *Rules of Procedure of the UN General Assembly*.

was impeded from the exercise of sovereignty over part of its territory, as it extended during the whole period in which it was considered to be a non-self-governing territory by the United Nations.

12. A crucial element for the understanding of the problems now under examination in this case is the legal status of territories under colonial regime. This legal aspect has been explicitly dealt with in the *Friendly Relations* Declaration:

> "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 right of self-determination in accordance with the Charter, and particularly its purposes and principles."[4]

13. The separation of the Chagos Archipelago from Mauritius could have not deprived the former of its status as part of a non-self-governing territory, hence under process of decolonization. Irrespective of the manner the question is understood, both the territory concerned and its separation from the rest of the then colony constitute a matter of decolonization. Mauritius was deprived of its national unity and territorial integrity in breach of the obligation set out in paragraph 6 of Resolution 1514 (XV) of the General Assembly. These questions are at the core of the advisory opinion requested by the General Assembly and will be examined in some detail below.

(2) The General Assembly has specific competences in the field of decolonization

14. Having determined that the questions referred to the Court by Resolution 71/292 fall within the realm of decolonization, the crucial role played by the General Assembly in this matter is explained in this part of the WSA. Indeed, this principal organ of the United Nations does not address this matter just in its general and broad competence. It has a specific competence in this field demonstrated by a practice dating back to the very beginning of the existence of the United Nations which continues until today.

[4] UN General Assembly Resolution 2625 (XXV) of 24 October 1970.

15. Article 73 of the Charter sets out a number of goals to be achieved for these territories and obligations for the colonial States (administering Powers) that have been extensively developed by the practice of the General Assembly. The Court has already recognized this in its 1971 and 1975 advisory opinions, focusing on the importance of Resolution 1514 (XV):

> "The Court had occasion to refer to this resolution in the above-mentioned Advisory Opinion of 21 June 1971. Speaking of the development of international law in regard to non-self-governing territories, the Court there stated:
> '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 al1 peoples and territories which 'have not yet attained independence'.' *(I.C.J. Reports 1971,* p. 31.)
> It went on to state:
> '… the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law' *(ibid.).*"[5]

16. Indeed, it is with the strong participation of the UN in general and the General Assembly in particular that many current members of the Organization achieved their independence. More than 80 former colonies comprising some 750 millions people gained independence since the creation of the United Nations.[6] As the Court stated in 1975 again:

> "General Assembly Resolution 1514 (XV) provided the basis for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations."[7]

17. As early as its first session, the General Assembly started requesting the administering Powers to present more precise reports concerning the political and constitutional developments of the colonies. Soon later, it established subsidiary organs in the form of committees in order to examine the situation of the non-self-governing territories, following the model of the Trusteeship Council. As mentioned above, a decisive moment for the establishment of a true law of decolonization was

[5] *Western Sahara, advisory opinion,* I.C.J. Reports 1975, p. 32, para. 56.
[6] http://www.un.org/en/decolonization
[7] *Ibid.*, p. 32, para. 57. *See* also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion,* I.C.J. Reports 2010, p. 436, para. 79 and p. 438, para. 82.

the adoption of Resolution 1514 (XV) of 14 December 1960. A huge mass of General Assembly resolutions were adopted in this field, of a general nature as well as addressing specifically each non-self-governing territory.

18. This law of decolonization developed not without resistance from some colonial powers. In some cases, they denied that particular territories fell within the classification of non-self-governing or colonial territory. The General Assembly considered that it was not for the administering Power to unilaterally determine whether the territories fall under Chapter XI. Rather, it was for the General Assembly itself to make this ascertainment. That was for instance the case of the colonies held by Portugal, since the Portuguese government of that time denied that they had such status, claiming they were mere overseas provinces.[8] Through the analysis of the situation in the colonies, the General Assembly also established the general rules for the administration of the territory during the transitional period as well as the modalities for the decolonization of different territories. The monitoring of the decolonization process has been ensured up till now through the work of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the "Decolonization Committee", created in 1961 as the subsidiary organ of the General Assembly exclusively devoted to the issue of decolonization.[9]

19. In this process, other General Assembly resolutions also played an important role in the development of the law of decolonization. Of particular importance are the following:

a) Resolution 1541 (XV) of 15 December 1960: *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*;
b) Resolution 2621 (XXV) of 12 October 1970: *Programme of action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, which states *inter alia* that "Members shall intensify

[8] *See* UN General Assembly Resolution 1542 (XV): *Transmission of information under Article 73 e) of the Charter*, para. 1, adopted also on 15 December 1960.
[9] UN General Assembly Resolution 1654 (XVI) of 27 November 1961: *The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples.*

their efforts to promote the implementation of the resolutions of the General Assembly and the Security Council relating to Territories under colonial domination", considered that "military activities and arrangements by colonial Powers in Territories under their administration (…) constitute an obstacle to the full implementation of Resolution 1514 (XV)" and determined that the Decolonization Committee "shall continue to examine the full compliance of all States with the Declaration and with other relevant resolutions on the question of decolonization" and "[w]here the Resolution 1514 (XV) has not been fully implemented with regard to a given Territory, the General Assembly shall continue to bear responsibility for that Territory until such time as the people concerned has had an opportunity to exercise freely its right to self-determination and independence in accordance with the Declaration";

c) Resolution 2625 (XXV) of 24 October 1970: *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, whose importance with regard to the separate and distinct status of colonial territories from the territories of the administering Powers has already been mentioned. It could be added that, according to this Declaration, "[e]very State has the duty (…) [t]o bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned";

d) Resolution 35/118 of 11 December 1980: *Plan of the Action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, adopted at the 20th anniversary of Resolution 1514 (XV) and being a development of Resolution 2621 (XXII). For the purposes of this case, the condemnation of measures of disruption of the demographic composition of the colonial territories and the request for the immediate and unconditional withdrawal from colonial territories of military bases and installations of colonial powers are specifically relevant;

e) Resolution 65/119 of 10 December 2010: *Third International Decade for the Eradication of Colonialism*, which declared the period 2011–2020 as the Third International Decade for the Eradication of Colonialism.

20. In this regard, it can be said that resolutions of the General Assembly establishing which territories are subject to decolonization, as well as the determination of the manner in which these territories must be decolonized, and when the process has come to an end and consequently the territory ceased to be a "non-self-governing" one, are more than simple recommendations. Since the General Assembly has the competence to make these ascertainments, its resolutions are authoritative in this regard.[10]

21. In the exercise of those competencies, the General Assembly has adopted resolutions of a general or particular nature that are applicable to the separation of Chagos from Mauritius. These are the resolutions cited in the questions submitted to the Court.

22. The Court has abundantly recognized those roles of the General Assembly in the field of decolonization. The Court has even done so in a similar context to that of the present advisory proceedings. As discussed in the following part, it referred to the powers of the General Assembly in the field of decolonization while rejecting the position of some States that claimed that the matter was a bilateral dispute, thus confirming the exercise of its advisory jurisdiction.

(3) The existence of a bilateral dispute does not preclude the exercise of the General Assembly's decolonization duties and* a fortiori *that of the Court's advisory jurisdiction

23. Some States having voted against General Assembly Resolution 71/292, or abstained, raised the question of the existence of a bilateral dispute as a potential obstacle to the request for an advisory opinion or the exercise of the advisory jurisdiction. There is no doubt that a territorial dispute exists between Mauritius and the United Kingdom on matters directly related to the questions put by the General Assembly to the Court. However, as will be explained here, this is not an obstacle to the existence of the Court's advisory jurisdiction, nor to its exercise, precisely because the matter falls within the powers of the General Assembly in decolonization issues.

[10] *Cf.* Virally, Michel; "Droit international et décolonisation devant les Nations Unies", *Annuaire français de droit international*, 1963, vol. IX, pp. 508-541.

24. The Court has consistently explained when dealing with matters of propriety for the exercise of its advisory jurisdiction that "the reply of the Court, itself an organ of the United Nations, represents its participation in the activities of the Organization and, in principle, should not be refused. By lending its assistance in the solution of a problem confronting the General Assembly, the Court would discharge its functions as the principal judicial organ of the United Nations. The Court has further said that only 'compelling reasons' should lead it to refuse to give a requested advisory opinion".[11]

25. In the *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *Western Sahara* and *Wall* advisory procedures, some States invoked the fact of the existence of a dispute and the need of the consent of the parties for the exercise of jurisdiction. They expressly mentioned that they did not consent to the jurisdiction of the Court for dealing with the matters submitted by way of an advisory opinion,[12] In all these cases, the Court rejected that argument. In the closest advisory procedure to the present one, *Western Sahara*, the Court categorically asserted that the State that raised these objections, a member of the United Nations having accepted the provisions of the Charter and the Statute, "has not objected, and could not validly object, to the General Assembly's exercise of its powers to deal with the decolonization of a non-self-governing territory and to seek an opinion on questions relevant to the exercise of those powers".[13] This is the same exact situation present in these advisory proceedings: it refers to the exercise of the powers of the General Assembly in the field of decolonization, it concerns the decolonization of Mauritius –then a non-self-governing territory which could not complete its decolonization process due to the disruption of its territorial integrity–, and the questions raised are relevant to the work of the General Assembly for the exercise of those powers.

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[11] *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 21, para. 23. *Cf. Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, I.C.J. Reports 1950, p. 72*; Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, I.C.J. Reports 1956, p. 86; *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. 27; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (I), p. 156, para. 44; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 416, para. 30.

[12] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 71; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 24, para. 3; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, pp. 157-158, para. 47.

[13] *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 24, para. 30.

26. The Court explained that in some circumstances it could abstain from exercising its advisory jurisdiction if giving a reply would entail circumventing the principle of consent to its contentious jurisdiction. Again, what the Court affirmed in 1975 is applicable in these proceedings: "The situation existing in the present case is not, however, the one envisaged above. There is in this case a legal controversy, but one which arose during the proceedings of the General Assembly and in relation to matters with which it was dealing. It did not arise independently in bilateral relations". [14] The question that requires answers from the Court here arose during the proceedings of the General Assembly in the exercise of its powers in the field of decolonization. The separation of parts of the territory of Mauritius was explicitly mentioned by General Assembly Resolution 2066 (XX). Furthermore, as the Court explained in 1975 and is still relevant to this case, "[i]n any event, the terms of the request contain a proviso concerning the application of General Assembly Resolution 1514 (XV). Thus the legal questions of which the Court has been seized are located in a broader frame of reference than the settlement of a particular dispute and embrace other elements. These elements, moreover, are not confined to the past but are also directed to the present and the future".[15]

27. What the Court stated in *Western Sahara*'s advisory opinion applies once again to the present case:

> "The object of the General Assembly has not been to bring before the Court, by way of a request for advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an entirely different one: to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory."[16]

28. As in the request for an advisory opinion in *Western Sahara*, Resolution 2066 (XX) was "drawn up in the general context of the policies of the General Assembly regarding the decolonization of non-self-governing territories".[17]

[14] *Ibid.*, p. 25, para 34.
[15] *Ibid.*, p. 26, para. 38.
[16] *Ibid.*, pp. 26-27, para. 39.
[17] *Ibid.*, pp.30-31, para. 53.

29. To sum up, this is not a mere territorial sovereignty dispute, for which the Court has also played a very important role in the exercise of its contentious jurisdiction and for which the consent of the relevant States is required. The separation of Chagos from Mauritius in 1965 does not only reveal the existence of a territorial sovereignty dispute between Mauritius and the United Kingdom, but also that this dispute exists in a broader context, that of the process of decolonization, which constitutes a matter of international concern, since the international community through the United Nations set itself the goal "of bringing to a speedy and unconditional end to colonialism in all its forms and manifestations",[18] one of which is the situation that constitutes the object of these advisory proceedings.

30. Finally, it must be recalled that the Rules of the Court themselves envisage the possibility of the exercise of its advisory jurisdiction in situations in which the opinion requested relates to "a legal question actually pending between two or more states".[19]

B. The applicable law and its application to the separation of Chagos

31. The present section addresses the law applicable to the questions raised by the General Assembly, and examines the relevant principles and rules in the light of the situation created by the separation of Chagos from Mauritius, to wit: respect for the territorial integrity of Mauritius (1), the right of peoples to self-determination (2), the breach of the obligation for the administering Power not to adopt unilateral measures contrary to the decolonization process (3), respect for human rights (4), and the obligation to settle international disputes through peaceful means (5).

32. As has been established in the prior section, the rules and principles of the law of decolonization are at the core of the question regarding which the Court is requested to render an advisory opinion. The two main principles in this field are of relevance in this particular case: the right of peoples to self-determination and the obligation to respect territorial integrity. Given that in the present case the non-respect of territorial integrity leads to the breach of the right to self-determination, the analysis will start with the former and continue with the latter. Taking into account that this

[18] *Ibid.*, p. 31, para. 55.
[19] *Rules of the Court*, Article 102, paras. 2 and 3.

request for an advisory opinion concerns a matter of decolonization, the rule prohibiting administering Powers to adopt unilateral measures in matters within the competence of the General Assembly is also addressed. In addition, as arises from the second question, this case concerns the expulsion of the inhabitants of the Chagos Archipelago and the right of Mauritius to implement the resettlement of its nationals on that territory. As a result, human rights obligations are also at stake, as well as the sovereign right of the State whose nationals are concerned to ensure their respect and effective implementation in its territory. Also the obligations for the administering Power to pursue negotiations in good faith and to settle international disputes through peaceful means are at the core of this matter. Finally, since the second question requests the ascertainment of the legal consequences arising from the continued administration of the Chagos Archipelago by the United Kingdom, the rules relating to State responsibility must be taken into consideration.

(1) The separation of Chagos infringed the territorial integrity of Mauritius

33. Respect for territorial integrity is recognized in Article 2 paragraph 4 of the Charter of the United Nations, one of the fundamental provisions of the Charter. It was mentioned as an autonomous and customary principle in the *Nicaragua* judgment,[20] in which the Court stressed "the duty of every State to respect the territorial sovereignty of others".[21] The first judgment rendered by the Court had already mentioned the particular importance of the rule: "Between independent States, respect for territorial sovereignty is an essential foundation of international relations".[22]

34. The obligation to respect the territorial integrity of others is not confined to the idea of exercising State authority over the territory of another State or to avoid trespassing across borders, but to acknowledge and protect the territorial composition of other States. It includes a guarantee against dismemberment. This stems from the use of the noun "integrity": not only territorial sovereignty is protected, but also the

[20] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Jurisdiction and Admissibility, Judgment,* I.C.J. Reports 1984, p. 424, para. 73.
[21] *Ibid*., p. 111, para. 213 and p. 128, paras. 251-252.
[22] *Corfu Channel case, Judgment of April 9th, 1949,* I.C.J. Reports 1949, p. 35.

integrity of this territorial sovereignty.

35. In its *Kosovo* advisory opinion, the Court stressed the importance of the principle of respect for the territorial integrity in inter-State relations.[23] In international law, States have the obligation to respect the territorial integrity not only of other States, but also that of the countries of the peoples who have not been able to achieve statehood, i.e. who are under colonial rule or foreign occupation.

36. Numerous United Nations resolutions, both those having a general nature and those referring to particular situations, insist upon respect for the territorial integrity in the context of decolonization, which includes that of the countries of the peoples entitled to self-determination.

37. Paragraph 4 of General Assembly Resolution 1514 (XV) declares that "All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected". Paragraph 6 of the same resolution reads as follows: "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".[24] Similarly, Resolution 2625 (XXV) proclaims: "Every State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of *any State or country*".[25]

38. The right interpretation of paragraph 6 of Resolution 1514 (XV), as confirmed by subsequent practice, shows that this paragraph not only protects the territorial integrity of States that are already independent, but also that of peoples still under process of decolonization, as in this case, where the process of decolonization has not been completed due to, precisely, a disruption of the territorial integrity of Mauritius.

[23] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, p. 437, para. 80.
[24] *Declaration on the Granting of Independence to Colonial Countries and Peoples*. Emphasis added.
[25] Emphasis added.

39. The ordinary meaning of the terms employed by paragraph 6 is clear: States must refrain from any kind of action whose purpose is the total or partial disruption of the national unity and the territorial integrity of any country.

40. In paragraph 6, the addition of the expression "or country" to complete the mention of "any State" is significant and must have a sense. It necessarily implies that the reference to States was not enough. The context demonstrates that what was at the core of Resolution 1514 (XV) was the end of colonialism in all its forms. In some cases, the victim of colonialism through the disruption of territorial integrity can be a State, but yet in many others they are "colonial countries and peoples". Indeed, the entire object and purpose of the resolution was to put an end to all grievances originated by the persistence of colonialism. The title of the resolution itself disposes of any pretence that "country" is employed in paragraph 6 as a synonym of "State": "Declaration on the Granting of Independence to Colonial *Countries* and Peoples". It is obvious that sovereign States need not to be granted independence.

41. Subsequent practice shows as well that the United Nations has also taken action to preserve the territorial integrity of different "countries and peoples" not having attained statehood. Some examples follow. General Assembly Resolution 2063 (XX) of 16 December 1965 "*[r]equests* the Special [Decolonization] Committee to consider, in cooperation with the Secretary-General, what measures are necessary for securing the territorial integrity and sovereignty of Basutoland, Bechuanaland and Swaziland". Security Council Resolution 389 (1976) of 22 April 1976 in its first operative paragraph "*[c]alls upon* all States to respect the territorial integrity of East Timor, as well as the inalienable right of its people to self-determination". Particularly, the General Assembly reaffirmed "the inalienable right of the peoples of Namibia and Zimbabwe, of the Palestinian people and of all peoples under alien and colonial domination to self-determination, national independence, territorial integrity, and national unity and sovereignty without external interference".[26] General Assembly

[26] UN General Assembly Resolution 33/24 of 29 November 1978: *Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights*, amongst other.

Resolution 52/67 of 10 December 1997 affirms "the need to preserve the territorial integrity of all the Occupied Palestinian Territory".[27]

42. Resolution 2066 (XX) of 16 December 1965 is absolutely clear. Its fourth operative paragraph reads: "[The General Assembly] [i]nvites the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".

43. This situation was also mentioned by Judges Kateka and Wolfrum in their dissenting and concurring opinion appended to the arbitral award in the *Chagos Marine Protected Area Arbitration*: "The 1965 excision of the Chagos Archipelago from Mauritius shows a complete disregard for the territorial integrity of Mauritius by the United Kingdom which was the colonial power."[28]

44. The position of Argentina with regard to the situation under consideration by the present request for an advisory opinion has been established since the very beginning. In 1965, when the draft that became Resolution 2066 (XX) was discussed, the Argentine representative at the General Assembly explained the vote in favour of that resolution putting particular emphasis on the fifth preambular paragraph that declared that the detachment of certain islands [those of Chagos Archipelago] "for the purpose of establishing a military base would be in contravention of the Declaration [contained in Resolution 1514 (XV)], and in particular of paragraph 6 thereof". This is the record of the intervention by Argentina:

> "Mr. GIMENEZ MELO (Argentina) congratulated the sponsors of draft resolution A/C.4/L.806/Rev. l and Add. 1, relating to Mauritius, on having demonstrated their concern to safeguard the rights of the people of the Territory. They had also taken into account the aspirations of the people to independence and the right of the inhabitants to preserve their territorial integrity, thereby recognizing a principle which had deep roots in the consciousness of the Latin American countries and was enshrined in paragraph 6 of the Declaration on the Granting of Independence to Colonial Countries and Peoples contained in General Assembly Resolution 1514 (XV). He had one objection to raise, in connection with the fifth preambular paragraph,

[27] *See* also UN General Assembly Resolutions 53/56 of 3 December 1998, 54/79 of 22 February 2000, 55/133 of 8 December 2000 and 56/62 of 14 February 2002 (*Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including Jerusalem*).

[28] *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom),* Dissenting and concurring opinion by Judge Kateka and Judge Wolfrum, para. 91. Available at: https://www.pcacases.com/web/sendAttach/1570.

> which seemed to imply that contravention of the Declaration, and in particular of paragraph 6, would result only from the establishment of the military base. In the opinion of the Argentine delegation, there could be a contravention of paragraph 6 whether military bases were involved or not; for example, it might be the result of the activities of an industrial corporation. His delegation would in any event vote in favour of the draft resolution."[29]

45. Argentina deems it important to emphasise once again, as it did in 1965, that the violation of the territorial integrity of Mauritius caused by the detachment of Chagos was in contravention of the Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 (XV), in particular its paragraph 6, regardless of what use was given to the detached territory.

46. In Resolutions 2232 (XXI) and 2357 (XXII) –which are explicitly mentioned in the request for an advisory opinion–, the General Assembly, dealing with a specific number of non-self-governing territories including Mauritius, expressed its deep concern for policies aiming "at the disruption of the territorial integrity of some of these Territories and the creation by administering Powers of military bases and installations in contravention of the relevant resolutions of the General Assembly", in a clear reference to the situation of Mauritius. Operative paragraph 4 of both resolutions "[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 and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly Resolution 1514 (XV)".[30]

47. The analysis above demonstrates that it is beyond question that States have the obligation to respect the territorial integrity not only of other States but also that of the non-self-governing territories in which peoples still have to exercise their right to self-determination. This is particularly true for those administering them. Mauritius, even though it had not yet achieved statehood and was still under colonial rule in 1965, was and still is entitled to respect for its territorial integrity. The administering Power did not have the right to retain part of the territory of one of its colonies at the time of granting it its independence.

[29] UN General Assembly, Twentieth Session, Official Records, Fourth Committee, 1570th Meeting, 26 November 1965, p. 317.
[30] UN General Assembly Resolutions 2232 (XXI) of 20 December 1966, and 2357 (XXII) of 19 December 1967.

(2) The separation of Chagos infringed the right of the Mauritian people to self-determination

48. The right of peoples to self-determination is also a fundamental principle of contemporary international law, embodied in the Charter of the United Nations at Articles 1 (2) and 55, Resolution 1514 (XV) and subsequent pertinent General Assembly resolutions relating to decolonization. Argentina has always recognized and supported it in its right interpretation, which led to the independence of many countries of Africa, Asia, the Caribbean and the Pacific. It is to a great extent thanks to the developments of the Court in the *Namibia* and *Western Sahara* advisory opinions that the legal status of self-determination is no longer questioned. The Court has certainly played a key role also in the determination of the content of this principle. In the above-mentioned advisory opinions, the Court affirmed the customary character of Resolution 1514 (XV) and the rules relating to decolonization, clarifying the role of the General Assembly in this field, and ruling out the possibility for administering Powers to unilaterally decide the fate of territories undergoing the process of decolonisation. The Court also emphasised that, in order to hold this right, it is necessary to be recognised as a "people", mentioning that in some cases the General Assembly has not granted this status to given populations.[31] The 1995 *East Timor* judgment, while upholding the inability of the Court to exercise its jurisdiction, underlined the *erga omnes* nature of the right of peoples to self-determination.[32]

49. The Mauritian people was indeed able to exercise its right to self-determination by deciding to become independent in 1968. However, this exercise was not permitted to be complete: part of its territory was separated in order to be kept under the control of the administering Power and the native population of the territory was deported to other areas. The breach of the territorial integrity of Mauritius led at the same time to a breach of the obligation to fully respect the right of peoples to self-determination. The exercise of this right contains a territorial dimension. The people concerned must be able to exercise its rights over the whole territory. The fact is that

[31] *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, pp. 31-32, paras. 52-53; *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, pp. 31-33, paras. 54-59. *See* also pp. 171-172, para. 88 and p.182, para. 118.
[32] *East Timor (Portugal v. Australia), Judgment*, I.C.J. Reports 1995, p. 102, para. 29.

the people of Mauritius were prevented from exercising their right to self-determination within the entirety of its territory. Furthermore, part of the Mauritian people, those of Chagossian origin (Ilois), were prevented from living in their own land and deported to other islands.

50. One of the elements of the law of decolonization is the prohibition for the colonial powers to change the demographic composition of the territories under their administration.[33] The deportation of the Mauritian population of Chagos is a blatant case of demographic change of the territory concerned. This change can result from both the installation of another population in it or from its depopulation.

51. To sum up, it can be ascertained that the separation of the Chagos Archipelago put the Mauritian people in the impossibility of exercising to its full extent its right to self-determination, by not allowing it to extend the exercise of sovereignty over the entirety of its territory and by preventing the Mauritian population of Chagos from living in its own territory. Consequently, the process of decolonization was not fully completed.

(3) The breach of the obligation for the administering Power not to adopt unilateral measures that are in contradiction with the decolonization process

52. As mentioned above, international practice shows that in the process of decolonization it is for the General Assembly to determine which territories fall within the realm of Chapter XI of the Charter and Resolution 1514 (XV), the manner in which the territory must be decolonized, the steps to be taken for the completion of the process and when a territory ceases to be included in the list of non-self-governing territories. As a corollary, administering Powers cannot unilaterally adopt measures that are incumbent upon the General Assembly in the process of decolonization. As the United Nations practice depicted above demonstrates, this prohibition against taking unilateral measures includes constitutional, economic and military measures. In other words, when it comes to matters of international concern and responsibility dealt with within the UN framework, administering Powers do not possess the capacity to unilaterally decide on these matters. This is also the

[33] UN General Assembly Resolution 35/118 of 11 December 1980, *Plan of the Action for the full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, para. 8.

consequence of the "different and separate status" of the territory under the process of decolonization and the territory of the State administering it, as the *Friendly Relations Declaration* cited above indicates.

53. The practice of the General Assembly shows that this organ has not accepted unilateral action, such as the organization of referenda by colonial powers without its participation and decision, the attempt at unilaterally delisting a territory from the category to which Chapter XI and Resolution 1514 (XV) applies, and it has condemned the use of natural resources in a manner unilaterally decided by the administering Power, or the establishment of military bases. A unilateral declaration of independence in a non-self-governing territory was also disregarded.[34] The exercise of the administering authority in this framework is confined to the purpose of putting an end to colonialism without conditions. Any other exercise is beyond the scope of the competencies of the administering Powers.

54. The separation by the administering Power of part of a non-self-governing territory under process of decolonization in order to keep it under its sovereignty is a unilateral measure incompatible with international law. Indeed, by definition, unilateral measures in this regard are inconsistent with the very idea of multilateralism and in particular with the role and attributions of the United Nations in this field through the General Assembly and its subsidiary relevant organ.

(4) The separation of Chagos entailed and continues to entails a breach of fundamental human rights

55. The obligation to respect human rights is a fundamental principle of international law for the characterization of which the Court also played an important role.[35] Both

[34] This was the case of the alleged declaration of independence of Southern Rhodesia. *See* UN General Assembly Resolution 2024 (XX) of 11 November 1965, and UN Security Council Resolution 216 (1965) of 12 November 1965.

[35] *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 32, para. 33; *United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment*, I.C.J. Reports 1980, p. 42, par. 91; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 240, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, pp. 177-181, paras. 104-113; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment*, I.C.J. Reports 2005, pp. 243-245, paras. 216-221, among other decisions.

Mauritius and the United Kingdom are parties to a number of conventions in this field and they are also bound by the obligations stemming from customary law.

56. The separation of Chagos from Mauritius, the deportation of its population and the impossibility for the Mauritian citizens, particularly those of Chagossian origin, to resettle in Chagos, affects in particular the rights embodied in Articles 1, 2 and 12 of the International Covenant on Civil and Political Rights and Articles 1, 2 and 6 of the International Covenant on Economic, Social and Cultural Rights.

57. The Committee on the Elimination of Racial Discrimination, in its analysis of the 21st to 23rd period reports of the United Kingdom asserted:

> "The Committee regrets that no progress has been made in implementing the Committee's previous recommendation to withdraw all discriminatory restrictions on Chagossians (Îlois) from entering Diego Garcia or other islands in the Chagos Archipelago (see CERD/C/GBR/CO/18-20, para. 12), that the State party continues to maintain its position that the Convention does not apply to the British Indian Ocean Territory on the grounds that it has no permanent population and that the State party has not yet extended the application of the Convention to the Territory (arts. 2, 5 and 6).
>
> Taking note of the decision, adopted on 18 March 2015, of the arbitral tribunal constituted under annex VII of the United Nations Convention on the Law of the Sea in the matter of the Chagos Marine Protected Area Arbitration, the Committee reiterates its previous recommendation (see CERD/C/GBR/CO/18-20, para. 12) that the State party has an obligation to ensure that the Convention is applicable in all territories under its control, including the British Indian Ocean Territory, and urges the State party to hold full and meaningful consultations with the Chagossians (Îlois) to facilitate their return to their islands and to provide them with an effective remedy, including compensation."[36]

58. The Universal Declaration of Human Rights establishes in Article 2 that "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty." Preventing Mauritians, particularly those from Chagossian origin (Ilois), from settling in, or even going to, the Chagos Archipelago is a breach of this provision.

[36] Doc. CERD/C/GBR/CO/21-23, 3 October 2016, paras. 40-41.

59. Of particular importance for the present case is the obligation for States to respect the rights declared by Article 13 of the Universal Declaration of Human Rights:

> "(1) Everyone has the right to freedom of movement and residence within the borders of each State.
> (2) Everyone has the right to leave any country, including his own, and to return to his country."

In this regard, the deportation of the Mauritian population from the Chagos Archipelago and the continued administration by the United Kingdom of this territory, preventing Mauritius from implementing a programme for the resettlement of its nationals, in particular those of Chagossian origin (Ilois), constitutes a breach of rights declared by both paragraphs of Article 13.

60. To sum up, the decisions and facts leading to the separation of the Chagos Archipelago from Mauritius, while deporting its inhabitants and preventing their return, also amounts to a breach of fundamental human rights of Mauritian nationals.

(5) The refusal of the administering Power to negotiate with Mauritius for the full implementation of its obligation to decolonize the entire territory also constitutes a breach of the obligation to settle international disputes through peaceful means

61. The obligation of States to settle their disputes by peaceful means is a fundamental principle of contemporary international law set out in Article 2 paragraph 3 of the United Nations Charter. The Court has underlined its nature as an obligation of performance, rather than a principle of abstention: it "has however also to recall a further principle of international law, one which is complementary to the principles of a prohibitive nature examined above, and respect for which is essential in the world of today: the principle that the parties to any dispute, particularly any dispute the continuance of which is likely to endanger the maintenance of international peace and security, should seek a solution by peaceful means".[37] The obligation to negotiate, according to the Court, "constitutes a special application of a principle which underlies all international relations, and which is moreover recognized in Article 33 of the Charter of the United Nations as one of the methods for the

[37] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment*, I.C.J. Reports 1986, p. 145, para. 290.

peaceful settlement of international disputes. There is no need to insist upon the fundamental character of this method of settlement".[38]

62. In the *Pulp Mills* case, "[t]he Court has also had occasion to draw attention to the characteristics of the obligation to negotiate and to the conduct which this imposes on the States concerned: "[the Parties] are under an obligation so to conduct themselves that the negotiations are meaningful" (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 47, para. 85)."[39]

63. Finally, the obligation to negotiate must be performed in good faith, as explicitly required in Article 26 of the Vienna Convention on the Law of Treaties and largely referred to by the Court.[40]

64. In the context of decolonization, this obligation is reinforced by "the duty (…) [t]o bring a speedy end to colonialism", as established by the Declarations contained in Resolutions 1514 (XV), 2625 (XXV) of the General Assembly and stressed by the Court in its 1975 Advisory Opinion.[41]

65. The administering Power recognizes the existence of a dispute with Mauritius about the Chagos Archipelago. This dispute is framed in the context of decolonization. The administering Power has the obligation to pursue in good faith negotiations with Mauritius in order to settle this dispute taking into account the ascertainments made by the General Assembly in the exercise of its powers in the field of decolonization. It cannot impose any condition to pursue these negotiations and has to take into account that there is an obligation to put an immediate end to colonial situations, one of which is the unfinished decolonization of Mauritius because of the situation examined in this WSA.

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[38] *North Sea Continental Shelf, Judgment,* I.C.J. Reports 1969, p. 47, para. 86

[39] *Pulp Mills in the River Uruguay (Argentina v. Uruguay), Judgment,* I.C.J. Reports 2010, p. 67, para. 146.

[40] *See Application of the interim accord of 13 September 1995 (The Former Yugoslav Republic of Macedonia v. Greece), Judgment,* I.C.J. Reports 2011, p. 684, para. 131; *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America), Judgment,* I.C.J. Reports 1984, p. 292, para. 87*; Fisheries Jurisdiction (United Kingdom v. Iceland), Judgment,* I.C.J. Reports 1974, pp. 33-34, paras. 78-79*; Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), Merits, Judgment,* I.C.J. Reports 1974, p. 202, para. 69*; Nuclear Tests (Australia v. France), Judgment,* I.C.J. Reports 1974, p. 268, para. 46*; Nuclear Tests (New Zealand v. France), Judgment,* I.C.J. Reports 1974, p. 473, para. 49*; North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment*, I.C.J. Reports 1969, pp. 46-47, para. 85.

[41] *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 31, para. 55.

C. How the Court might address the questions raised by the request for an advisory opinion

66. In the light of the analysis made above, Argentina respectfully submits that the following elements should be part of the answers of the Court to the questions raised by the General Assembly in its request for an advisory opinion contained in Resolution 71/292:

(1) Question a)

67. The process of decolonization of Mauritius was not lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius, since this separation and the measures taken for its implementation breached the territorial integrity of Mauritius, and due to this breach, the right of the Mauritian people to self-determination could not be entirely exercised over the whole of its territory. The expulsion of the inhabitants of the Chagos Archipelago and the prevention of their resettlement and of that of their descendants also constitute a breach to fundamental human rights of the Mauritian nationals, particularly those of Chagossian origin (Ilois). The separation of the Chagos Archipelago was also accomplished in disregard of the powers and competencies of the United Nations General Assembly in the field of decolonization.

(2) Question b)

68. The consequences under international law arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago are the following:

(a) The administering Power has the obligation to put an immediate end to the illegal situation created by the separation of the Chagos Archipelago from Mauritius;

(b) The administering Power has the obligation to pursue negotiations in good faith and without conditions with Mauritius in order to render effective the termination of the illegal situation without delay, including the possibility for Mauritius to implement a programme for the resettlement on the Chagos

Archipelago of its nationals, in particular those of Chagossian origin (Ilois);

(c) All States are under the obligation not to recognize the illegal situation resulting from the separation of the Chagos Archipelago from Mauritius and not to render aid or assistance in maintaining the situation created by such separation;

(d) The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the separation of the Chagos Archipelago from Mauritius, taking into account the advisory opinion of the Court.

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