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

(REQUEST FOR ADVISORY OPINION)

ORDER OF 14 JULY 2017

ORDER OF 17 JANUARY 2018

WRITTEN COMMENTS OF THE AFRICAN UNION

ON OTHER WRITTEN STATEMENTS

(ARTICLE 66, PARAGRAPH 4, OF THE STATUTE)

15 May 2018

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PART I
PRELIMINARY REMARKS

I. Introduction

1. The African Union has the honour to submit to the Court, in accordance with Article 66, paragraph 4 of the Statute, and the Court's Orders of 14 July 2017 and 17 January 2018, its written comments on other written statements (the "Written Comments") in respect of the Questions submitted to the Court, seeking its Advisory Opinion *concerning the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, pursuant to Resolution A/RES/71/292 of the General Assembly of the United Nations.[1] That Resolution was adopted by a large majority of the Member States of the United Nations.

2. The Written Statement of the African Union of 1 March 2018, together with its present Written Comments, constitute the position of the African Union and of its Member States – *i.e.*, 55 African countries[2] – on the Questions.[3] The Union maintains, and incorporates herein by reference, its submissions completing and concluding its Written Statement.

3. The African Union notes that a large majority of the States who have presented written statements relating to the two Questions have adopted the same views as those of the Union. It is also noted that those States who have not addressed the merits have yet commended the General Assembly for its work on decolonization.

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[1] **Dossier No. 7**, 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, (A/RES/71/292 of 22 June 2017) (hereinafter "**Resolution 71/292**"). In these Written Comments, the terms 'separation', 'excision' and 'detachment' are used interchangeably.

[2] Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cabo Verde, Central African Republic, Chad, Comoros, Republic of Congo, Republic of Côte d'Ivoire, Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.

[3] Decision Assembly/AU/Dec.684 (XXX), Decision on Chagos Archipelago, January 2018.

4. Indeed, among the 31 States who have made submissions, 21 support the jurisdiction of the Court to give an advisory opinion in respect to the Questions posed by the General Assembly in its Request.[4] Together they represent more than two thirds of the States that have submitted written statements in the present Advisory Proceedings.

5. Against this strong majority, only a minority of States have argued against the jurisdiction of the Court to give an opinion on the Questions asked by the General Assembly.[5] Noteworthy is the fact that, even among those States, some did not address the issue of decolonization under international law altogether.[6] Only two of them, the United Kingdom and the United States, have denied the existence of the right to self-determination at the time of the excision of the Chagos Archipelago from Mauritius.[7]

6. A few States have invited the Court to be cautious in determining its jurisdiction in the present proceedings or that have doubts about the Court's jurisdiction to give the Opinion requested. Nevertheless, those States strongly support the right to self-determination and the need to achieve the complete decolonization of Mauritius.[8]

7. This case is one of many on decolonization under the Charter of the United Nations, which the Court has seen throughout its existence and to which it has made landmark contributions. It is expected at this last phase of decolonization, with very few instances left, that the Court makes a remarkable statement on the law in the present Request to uphold its historical achievements on the confirmation of international law on decolonization.

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[4] Argentina, Belize, Brazil, Cuba, Cyprus, Djibouti, Guatemala, India, Kingdom of Lesotho, Liechtenstein, Madagascar, Mauritius, Niger, Marshall Islands, Namibia, Netherlands, Nicaragua, Serbia, Seychelles, South Africa and Vietnam.

[5] Australia, France, Israel, Republic of Korea, United Kingdom and United States.

[6] Australia, Israel, France and Republic of Korea.

[7] Written Statement of the United Kingdom, paras. 8.31-8.33, 8.41, 8.46; and Written Statement of the United States, paras. 4.32, 4.42, 4.47, 4.49, 4.67.

[8] Chile, China, Germany and Russia.

II. The Limited Relevance of Facts in the Present Proceedings

8. The historical background made available in these proceedings, especially in the Dossier, and by Mauritius and the United Kingdom (being the two countries that have witnessed most the colonial history of the Chagos Archipelago), is useful in so far as it indicates that, like the French before them, the British administered the Chagos Archipelago as a dependency of Mauritius, with the Archipelago treated as an integral part of Mauritius without interruption throughout the entire period of colonial rule. The United Kingdom acknowledged this all the way by declaring that the Chagos Archipelago would be returned to Mauritius if no longer needed for defence purposes.[9]

9. Thus, the Chagos Archipelago was connected to and administered in law as part of Mauritius until it was detached by Order in Council on 8 November 1965.[10]

10. However, the detailed factual accounts of Mauritius and of the United Kingdom serves the purpose of putting the case before the Court in a historical context, identifying and determining the critical date, at which the legal situation has to be assessed, and confirming that the Archipelago was in fact *separated* from Mauritius in 1965 *before* independence was granted to it in 1968. All the other factual and historical arguments have relative relevance to the subject-matter of the present Advisory Proceedings.

11. For the avoidance of doubt, it is emphasized here that the Court is not concerned to establish a "critical date" in the sense given to this term in territorial disputes; for the Questions do not ask the Court to adjudicate between conflicting legal titles to the Chagos Archipelago, as is suggested by some States in their written statements. It is here concerned *only* to identify the *period of the historical context* in which the Request places the Questions referred to the Court and the answers to be given to those questions, as the Court has observed in earlier advisory activities.[11]

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[9] E.g. Written Statement of the United Kingdom, para. 3.14.

[10] Written Statement of Mauritius, para. 2.15 *et passim*.

[11] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 (hereinafter "***Western Sahara Advisory Opinion***"), p. 38, para. 76.

12. The African Union holds the view that only one main fact – which is undeniable and undisputed – matters for the Court to give its Opinion in the present proceedings: *the separation of the Chagos Archipelago from Mauritius.*

13. The Request is very precise in that respect and any other interpretation would be incompatible with its clear terms. Indeed, Question (a) reads, in relevant part, as follows: "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*". (emphasis added) The word "following" in its ordinary meaning shows that the focus of the present advisory proceedings should be the "separation of the Chagos Archipelago from Mauritius". Nothing more, nothing less.

14. What the Court is *first* invited to determine is whether that "separation", *before* Mauritius was granted independence, was in accordance with international law. *Then*, the Court is invited to determine the legal consequences of the continued presence of the United Kingdom in Chagos, *because* of the said "separation". The Court should not burden itself with analyzing facts that have occurred *ex post facto* – that is *after* the separation of the Chagos Archipelago – and that have little significance for the clarification of the legal issues at stake. This is evident as the Court's advisory mandate involves the giving of *legal advice* on *legal questions* requested by the General Assembly.[12]

15. This does not mean, of course, that any other factual information, regarding the legal status at other times before or after the period from 1965 to 1968, is wholly without relevance for the purposes of the present proceedings. It does, however, mean that such factual information has relevance *only* in so far as it is part of the "same factual complex"[13] than the issue/fact of the separation of Chagos from Mauritius in 1965.

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[12] The Court has stated that "questions 'framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law'" (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010; and *Western Sahara Advisory Opinion*, para. 15).

[13] The African Union borrows this expression from the law as developed by the Court. *Cf., Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Counter-claims, Order of 17 December 1997, I.C.J. Reports 1997*, p. 243; *Oil Platforms (Islamic Republic of Iran v. United*

16. In other words, the Court should only be concerned with those facts that inextricably, intrinsically and extrinsically relate to the "*separation* of the Chagos Archipelago from Mauritius" in 1965.

17. The African Union does not subscribe to the view of certain States that an analogy may be drawn between the present Advisory Proceedings and the fact-intense issues raised in the *Western Sahara Advisory Opinion*.[14] In the latter, the questions put to the Court called for a thorough factual examination.

18. A quick look at the Questions put to the Court in General Assembly Resolution 3292 (XXIX) in the *Western Sahara Advisory Opinion* instantly reveals a profound and inevitable need for a full-fledged factual and historical examination. The questions read as follows:

> "I. Was Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonization by Spain a territory belonging to no one *(terra nullius)*?
>
> If the answer to the first question is in the negative,
>
> II. What were the legal ties between this territory and the Kingdom of Morocco and the Mauritanian entity?"[15]

As such, they raised fact-intense problems of public international law, such as, *inter alia*, whether the territory – subject of the advisory opinion – was *terra nullius* at the time of its colonization and what legal ties were between that territory and Morocco and Mauritania.

States of America), Counter-Claim, Order of 10 March 1998, *I.C.J. Reports 1998*, p. 190; and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Order of 29 November 2001, I.C.J. Reports 2001*, p. 660.

[14] E.g., Written Statement of Israel, paras. 3.1 and 3.21 ff; and Written Statement of Australia, paras. 55 ff.

[15] *Western Sahara Advisory Opinion*, para. 75.

19. It is surely injudicious to try to draw an analogy between the questions raised in both cases, as the difference is obvious to the naked eye. In the present case, the Questions are so defined in legal and almost fact-free terms, as has already been explained in the Written Statement of the African Union and in the above paragraphs.

20. Therefore, the Court is invited *not* to dwell at length into the factual and historical considerations more than they deserve for moving it to the next step; the legal consideration of the legal questions raised in the Request. After all, the Court has stated that it may

> "be requested to give its opinion on questions of law which do not call for any pronouncement ... [on existing rights and obligations, or on their coming into existence, modification or termination, or on the powers of international organs], though they may have their place within a wider problem the solution of which could involve such matters."[16]

III. Evidence Confirms that the Decolonization Process of Mauritius Was Considered as Unlawful and Incomplete under Customary International Law

21. The Written Statement of the African Union has emphasized that, in practice, the decolonization process of Mauritius has always been considered incomplete and unlawful under customary international law.

22. Resolutions adopted by the General Assembly between 1965 and 1967 are a first evidence of practice condemning the unlawful and incomplete process of decolonization of Mauritius under customary international law:

[16] *Ibid.*, para. 19.

i) General Assembly Resolution 2066 (XX), 16 December 1965: "*Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".[17]

ii) General Assembly Resolution 2232 (XXI), 20 December 1966: "*Reiterates* 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)"[18]

23. As the Court has underlined in the *North Sea Continental Shelf Cases*, the practice that is essential to look at when dealing with an issue of international law is the practice of the "concerned states".[19] There is no doubt that those who are the concerned States in the present proceeding are, first and foremost, the African States and then those States that have been victims of colonialism (most of whom are part of the Non-Aligned Movement).

24. The Court should take into account the strong body of practice, which has been developed by African States, as Members of the Organization of African Unity (OAU) and later of the African Union, as well as by the Non-Aligned Movement. The Resolution containing the Request takes note, in relevant part, that:

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[17] [17] **Dossier No. 146**, General Assembly Resolution 2066(XX), Question of the Mauritius, 16 December 1965, para. 4.

[18] **Dossier No. 171**, 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, 20 December 1966, (hereinafter "**Resolution 2232 (XXI)**") para. 4. *See also* **Dossier No. 198**, 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, 19 December 1967 (hereinafter "**Resolution 2357**"), para. 4.

[19] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands)*, ICJ Reports 1969, p. 3, p. 42, para. 73.

"the resolutions on the Chagos Archipelago adopted by the Organization of African Unity and the African Union since 1980, most recently at the Twenty- Eighth Ordinary Session of the Assembly of the Union, held in Addis Ababa on 30 and 31 January 2017, and the resolutions on the Chagos Archipelago adopted by the Movement of Non-Aligned Countries since 1983, most recently at the Seventeenth Conference of Heads of State or Government of Non-Aligned Countries, held on Margarita Island, Bolivarian Republic of Venezuela, from 13 to 18 September 2016, and in particular the deep concern expressed therein at the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago".[20]

25. The African Union has continuously deplored "the continued unlawful occupation by the United Kingdom of the Chagos Archipelago, thereby denying the Republic of Mauritius the exercise of its sovereignty over the Archipelago and *making the decolonization of Africa incomplete*".[21] (emphasis added) There is an abundance of evidence on the constant practice, at the level of the two Pan African Organizations, regarding the unlawful and incomplete decolonization process of Mauritius.

26. As early as 1980, it was resolved by the OAU that Diego Garcia "has always been an integral part of Mauritius" and that it should "be unconditionally returned to Mauritius."[22] Also, in 1980, it denounced the "militarization of Diego Garcia" and recognized that "Diego Garcia was not ceded to Britain".[23] The OAU continued to express its concern "that the Chagos Archipelago was unilaterally and illegally excised ... in violation of UN Resolution 1514."[24] Subsequently, the African Union constantly emphasized the fact that the excision of the Chagos Archipelago from Mauritius in 1965 was contrary to international law and relevant resolutions

[20] **Dossier No. 7**, Resolution 71/292, Preambular para. 6.

[21] Resolution on Chagos Archipelago, Assembly/AU/Res.1(XXV), June 2015 (hereinafter "**Resolution on Chagos Archipelago, June 2015**"), preamble para. 3 (emphasis added).

[22] Resolution on the Diego Garcia, AHG/Res.99 (XVII), July 1980 (hereinafter "**Resolution on Diego Garcia**"), Preambular para. 1 and Operative para. 3.

[23] Resolution on the Diego Garcia, Preambular paras. 2, 4 and 5.

[24] Decision on Chagos Archipelago, AHG/Dec.159 (XXXVI), July 2000, para. 1.

of the General Assembly, including Resolution 1514, while also making references to UN Resolutions 2232 (XXI) and 2357 (XXII).[25] It called upon the United Kingdom "to expeditiously put an end to its continued unlawful occupation of the Chagos Archipelago with a view to enabling Mauritius to *effectively exercise its sovereignty* over the Archipelago"[26] (emphasis added) and declared that "the decolonization of the Republic of Mauritius *will not be complete until it is able to exercise its full sovereignty* over the Chagos Archipelago".[27] Further, the Malabo Africa-South America Summit Declaration noted "with grave concern that despite the strong opposition of the Republic of Mauritius, the United Kingdom purported to establish a 'marine protected area' around the Chagos Archipelago which contravenes international law and further impedes the exercise by the Republic of Mauritius of its sovereignty over the Archipelago and of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom".[28] At the last Summit, in January 2018, the Assembly recalled that the situation of the Archipelago would have to be assessed in light of Resolutions 2232 (XXI) and 2357 (XXII), which have reiterated "that any attempt aimed at the partial or total disruption of... the territorial integrity of colonial Territories in the decolonization process... is incompatible with the purposes and principles to the Charter of the United Nations."[29]

27. Following the same trend as than the two Pan African Organizations, there is an equally abundant body of evidence at the level of other organizations and groups of States. For example, the Non-Aligned Movement confirmed that the Chagos Archipelago was unlawfully excised from Mauritius and expressed grave concerns regarding "the exercise of the right of return of Mauritian citizens who were

[25] Decision Assembly/AU/Dec.331 (XV), Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago, July 2010, para. 1; Resolution Assembly/AU/Res.1 (XVI), Resolution on Chagos Archipelago, January 2011, Preambular para. 1; Resolution on Chagos Archipelago June 2015, preamble para. 1; and Decision on the Chagos Archipelago January 2018, Preambular para. 2.

[26] Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago, para. 1.

[27] Assembly/AU/Res.1(XXVIII), Resolution on Chagos Archipelago, January 2017, Preambular para. 3.

[28] Third Africa-South America Summit, Malabo Declaration, February 2013, para. 28.

[29] **Dossier No. 171**, Resolution 2232 (XXI), para. 4; **Dossier No. 198**, Resolution 2357 (XXII), para. 4.

forcibly removed from the Archipelago by the United Kingdom".[30] Likewise, the Group of 77 and China stated in several declarations that the excision of Chagos constituted a violation of international law and that "failure to resolve decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries".[31]

28. To the best knowledge of the African Union, the United Kingdom never reacted to those condemnations from the African Union, the Non-Aligned Movement or the Group of 77 and China.

29. It is all these considerations that confirm the position of the African Union, according to which both the detachment of the Chagos Archipelago from Mauritius in 1965 and the continued administration by the United Kingdom of Chagos are contrary to international law.

30. In the present Written Comments, the African Union will first show that the Court is competent to give the Advisory Opinion requested and that there are no compelling reasons for it not to do so (**Part II**). The African Union will, then, explain that the two Questions posed by the General Assembly in the Request are clear and interlinked and that they should be both fully answered (**Part III**). The African Union highlights that the illegal separation of Chagos from Mauritius is a violation of both the right to self-determination and the territorial integrity of Mauritius and, as consequence, the Court should adopt a broad perspective to the legal consequences

[30] *Cf.*, Non-Aligned Movement, 17th Mid-Term Ministerial Meeting of the Non-Aligned Movement, Final Document: Chagos Archipelago (26-29 May 2014), paras. 307- 309; Non-Aligned Movement, 17th Summit of Heads of State and Government of the Non-Aligned Movement, Final Document: Chagos Archipelago (17-18 Sept. 2016), paras. 336-337; Chair of the Coordinating Bureau of the Non-Aligned Movement Political Declaration of New York (20 Sept.2017), para. 17.

[31] *Cf.*, **Dossier No. 466**, U.N. Conference on Trade and Development, 13th Session, Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIII (extract) (23 Apr. 2012); Ministers for Foreign Affairs of the Member States of the Group of 77, Ministerial Declarations adopted at the Thirty-Sixth and Thirty-Seventh Annual Meetings of Ministers for Foreign Affairs of the Member States of the Group of 77 (28 Sept. 2012 and 26 Sept. 2013); Group of 77 and China, Summit of Heads of State and Government of the Group of 77, Declaration: For a New World Order for Living Well (14-15 June 2014); Group of 77 and China, 38th Annual Meeting of Ministers for Foreign Affairs, Ministerial Declaration (26 Sept. 2014); **Dossier No. 471**, Group of 77 and China, 14th Session, Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIV, TD/507 (17-22 July 2016); Group of 77 and China, 40th Annual Meeting of Ministers for Foreign Affairs, Ministerial Declaration (23 Sept. 2016); and Group of 77 and China, 41st Annual Meeting of Ministers for Foreign Affairs, Ministerial Declaration (22 Sept. 2017).

deriving from the illegal separation and continued administration of the Chagos Archipelago (**Part IV**).

PART II

THE COURT HAS JURISDICTION TO GIVE THE REQUESTED ADVISORY OPINION

I. Introduction

31. Some States have opposed the Court's jurisdiction to entertain the Request. For them, the Request does not comply with the requirements of Article 65 of the Statute of the Court, since the Questions do not contain an *exact* statement of the legal questions upon which the opinion of the Court is sought; but rather, a proxy for those questions,[32] and that the General Assembly either acted *ultra vires* or acted without competence outright.[33]

32. Those, and other States, have also maintained that, even if the Court were to conclude that it had jurisdiction, the question would arise as to whether *it should exercise its discretion* to decline to give the Advisory Opinion sought in this case on the basis of "judicial propriety", as the "circumstances of the present case are of such a character as to lead the Court to exercise its discretionary power under Article 65 of its Statute and decline to give the requested advisory opinion".[34] They invite the Court not to give the Advisory Opinion, because there were several "compelling reasons" for it not to do so, e.g., that "the request before the Court presents *fundamental challenges to the integrity of the Court's advisory proceedings* ... a decision to render an opinion on the merits would undermine the Court's advisory function and circumvent the right of States to determine for themselves the means by which to peacefully settle their disputes".[35] (emphasis added)

33. The reasons given by the proponents of this negative attitude can be grouped and formulated as follows:

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[32] E.g., Written Statement of Australia, para. 4.

[33] E.g., Written Statement of the Russian Federation, para. 29.

[34] Written Statement of Israel, para. 1.4.

[35] Written Statement of the United States, para. 5.1.

i) The General Assembly has no right to establish the legal status of territories;

ii) The requested Opinion would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted for judicial settlement without its consent;

iii) The Request concerns a dispute that has arisen independently in bilateral relations;

iv) The advisory procedure is ill-equipped for the determination of complex and disputed issues of fact, given the lack of adversarial procedures and protections available in contentious proceedings;

v) The Opinion will not assist the General Assembly in the performance of its functions, because the Assembly is not performing any substantive functions with respect to the Chagos Archipelago; and accordingly,

vi) The Court should exercise its discretion, so as not to give an advisory opinion.

34. These unfitting arguments are examined and refuted in turn.

35. For the avoidance of doubt, however, it is not submitted by the African Union that the Court's prerogatives are fettered or impaired, even if there was no question over its competences or the propriety to give the Opinion requested. The Court has unambiguously stated that,

> "*although no question has been raised* in the statements and comments submitted to the Court in the present proceedings either as to the competence of the Court to give the opinion or as to the propriety of its

doing so, the Court *will examine these* two questions in turn."[36] (emphasis added)

II. No Compelling Reasons Prevent the Court from Giving the Requested Advisory Opinion

36. It has been claimed that "compelling reasons" bar the Court from giving the Advisory Opinion requested for various reasons refuted below.[37]

37. But, it is submitted, however, the Court cannot arbitrarily refuse to give an opinion; it can only do so if "the circumstances of the case are of such a character as should lead it to decline to answer the Request".[38]

A. The General Assembly is not seeking to establish territorial rights

38. It has been claimed that there is a longstanding dispute between the United Kingdom and Mauritius over the Chagos Archipelago, with respect to sovereignty,[39] and that the General Assembly acted *ultra vires* in requesting the Advisory Opinion of the Court, as it had no right to establish the legal status of territories, as the case before the Court involved a territorial dispute.[40] Therefore, the Court lacked jurisdiction to respond to such a request.[41] But, this is not correct for reasons that will be discussed below.

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[36] *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 166 (hereinafter "***Review of Judgement No. 158 Advisory Opinion***"), p. 171, para. 13.

[37] Written Statement of the United Kingdom, paras. 7.12-7.21.

[38] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, (First Phase)*, Advisory Opinion, I.C.J. Reports 1950, p.65 (hereinafter "**Interpretation of Peace Treaties (First Phase) Advisory Opinion**"), p. 72.

[39] Written Statement of the United Kingdom, paras. 5.3 – 5.18.

[40] Written Statement of the Russian Federation, para. 29; Written Statement of France, para. 6; and Written Statement of the Republic of Korea, para. 21.

[41] Written Statement of the Russian Federation, para. 29. *Cf.*, also Written Statement of France, para.15; Written Statement of the Republic of Chile, para. 4; and Written Statement of the Republic of Korea, para. 21.

39. True, it is among the primary objectives of the African Union to "defend the sovereignty, territorial integrity and independence of its Member States"[42]; just as did the Organization of African Unity before it. And, true, it is in this capacity and intent that the Union is participating in these proceedings. But, it is a different proposition altogether to say *why* and *over what* the General Assembly is making its Request.

40. The African Union, thus, submits that the question of the separation of the Chagos Archipelago from Mauritius is a matter of *decolonization*.[43] As such, the present proceedings are neither about a sovereignty claim nor a territorial dispute, as it will be also shown in Part IV of the present Written Comments. Many States have confirmed this.[44] Even among those few written statements that raise the issue of a bilateral dispute between Mauritius and the United Kingdom, as a reason for the Court not to give its opinion, some of them have been cautious not to characterize the dispute as one of *sovereignty*.[45]

41. Therefore, the characterisation that the Request seeks to establish the legal status of territories and to settle a sovereignty dispute, is misleading, as the questions of the Request do not ask the Court to adjudicate between conflicting legal titles to the Chagos Archipelago.

42. First of all, the reason behind the Request is 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 a territory.

43. The Questions, as formulated in the Request, do not relate to a territorial dispute between the interested States in the proper sense of the term, as they do not call for adjudication upon existing territorial rights or sovereignty over territory, and they do not convey any such implication. They confirm that the General Assembly

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[42] Constitutive Act of the African Union dated 11 July 2001, Article 3 (b).

[43] *Cf.*, Written Statement of Argentina, para. 11; and Written Statement of Brazil, para. 11.

[44] *Cf.* Written Statement of Argentina, para. 11; Written Statement of Djibouti, para. 22; Written Statement of Guatemala, para. 24; Written Statement of the Marshall Islands, para. 16; Written Statement of Mauritius, para. 1.38; and Written Statement of South Africa, para. 45.

[45] See, *e.g.*, Written Statement of China, para. 13.

never considered the issue of Chagos as constituting a sovereignty dispute, but rather a decolonization issue – a decolonization issue that has arisen from a violation of the territorial integrity of Mauritius and from a violation of the right of the Mauritian people, including those of Chagossian origin, to exercise their right to self-determination in accordance with customary international law as *already* applicable in 1965.

44. There is no issue before the Court on the validity of the so-called territorial titles; it is about the verification of the legal consummation of a legal process (decolonization) and its consequences. The issues raised by the General Assembly reflect a broad concern of the international community regarding the need for legal clarity with regard to the scope and application of a set of norms of international law *in the context of decolonization*, such as territorial integrity and the right of peoples to self-determination.

45. This was even confirmed by the United Kingdom itself, which very clearly said that:

> "The Request appears to have been *carefully framed so as to avoid making an express reference to sovereignty*, and *does not* expressly seek an opinion as to which State is entitled to or should retain or acquire sovereignty and when."[46]

46. Even the second half, following this statement, in which the United Kingdom said:

> "Nevertheless, it is very difficult to read the Request in any way other than as requiring an opinion from the Court on these long-disputed issues, including through Question (b) as to the legal consequences of the current UK administration."[47]

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[46] Written Statement of the United Kingdom, para. 1.20.

[47] *Loc. cit.*

does not change the view that the Request is not concerned with sovereignty, as it relates to the consequences of not abiding by international law (thus entailing consequences), as discussed in connection with the meaning of Question (b) and its interlink with Question (a) further herein.

47. Therefore, the Advisory Opinion requested by the General Assembly is intended to provide it with the necessary legal guidance on a matter within its competence and interest, namely the granting of independence to colonial countries and peoples and the protection of their inalienable right to sovereignty, national unity, and territorial integrity, in particular for the full implementation of Resolution 1514 (XV).

48. In fact, as already argued in the Written Statement of the African Union, the General Assembly, in Resolution 1514, was "[c]*onvinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory ...".[48] And, as a consequence, the Assembly warned that:

> "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."[49]

49. These clear convictions and commands of the General Assembly truly confirm that the Request is not about a territorial sovereignty dispute, but rather how the issues of territorial integrity can affect the right to self-determination and constitute "by necessary implication"[50] a violation of international law.

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[48] **Dossier No. 55**, General Assembly Resolution 1514 (XV) "Declaration on the granting of independence to colonial countries and peoples" (A/RES/1514 (XV) of 14 December 1960) (hereinafter **"Resolution 1514 (XV)"**), Preamble.

[49] *Ibid.*, 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". See Written Statement of Argentina, para. 40.

[50] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion: I.C.J. Reports 1949*, p.182.

50. In that context, the African Union contests any and all assertions such as that "[t]he request ... in reality seeks to have the Court adjudicate upon a pre-existing bilateral dispute between the United Kingdom and Mauritius concerning sovereignty over the Chagos Archipelago and related matters",[51] or that the pre-existing bilateral dispute "that arose between the United Kingdom and Mauritius in the early 1980s concerning territorial sovereignty over the Chagos Archipelago and associated matters lies at the heart of the questions posed by the General Assembly".[52] This is simply a wrong characterization of the content of the Request. This was not in the mandate of the General Assembly and it was never its intent to deal with those alleged issues.

51. At the heart of the present Request is the question whether the United Kingdom could *under international law, as expressed in relevant resolutions of the General Assembly*, detach Chagos from Mauritius in 1965, before granting her independence in 1968. This is not about a *sovereignty dispute*, but rather about the powers of the administering authority over a colonial territory, the ascertainment of *territorial integrity* and how its violation of territorial integrity affects the exercise of the right to self-determination as will be shown in Part IV of the present Written Comments. Under customary international law, the administering authority does neither have the power nor the right to dismember the territory under its administration. Hence, the United Kingdom has acted *ultra vires*.

52. This means that the present proceedings are intended to focus on *how* the detachment of the Chagos Archipelago in 1965 – which constitutes a violation of the *territorial integrity* of Mauritius (as already emphasized in the Written Statement of the African Union) – is not in accordance with international law, and in particular the relevant resolutions of the General Assembly. There is simply *no* dispute – and surely not a sovereignty one – to decide in the present advisory proceedings.

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[51] Written Statement of Australia, para. 5.

[52] *Ibid.*, para. 59.

53. In other words, the bilateral actions and/or omissions which took place with respect to Chagos in 1965 and afterwards are part and parcel of the broader interests of the international community as a whole (represented by the General Assembly) with respect to decolonization. They are not part of a sovereignty dispute between Mauritius and the United Kingdom.

54. Even considering that there might be a bilateral dispute between Mauritius and the United Kingdom – *quod non* – the African Union considers that it is important to stress that it is not such a bilateral dispute over sovereignty between them that led to a violation of law of decolonization; it is the other way around. The violation of the right to self-determination and territorial integrity, as an obligation placed upon States, crystalized into a bilateral dispute, which overlaps with a multilateral concern - which is behind the Request.

55. Even qualifying the situation as a territorial dispute – once again *quod non* – does not preclude the Court from exercising jurisdiction in the present proceedings, as the detachment of Chagos in 1965 does not only reveal the existence of a territorial sovereignty dispute, but also that this dispute exists in a broader context, that of the process of *decolonization*, which constitutes a matter of international concern.[53]

B. The requested opinion does not circumvent the principle of consent to judicial settlement

56. The power of the General Assembly to request an advisory opinion of the Court, it was claimed, may not be used *ultra vires* in order to settle the legal status of a territory *by circumventing the agreement of parties* to a territorial dispute.[54] It has been contended that the General Assembly, acting at the request of Mauritius, seeks to bypass the required consent of the parties by requesting an advisory opinion from the Court, whereas both the United Kingdom and Mauritius, in their

[53] Written Statement of Argentina, para. 29. That international concern is reflected, for example, in the interest of the African Union, the Non-Aligned Movement, the Group of 77 and China; the African, Caribbean, and Pacific Group of States; and the Africa-South America Summit. *Cf.*, Written Statement of Cuba, p. 1; and Written Statement of Mauritius, para. 4.1.

[54] Written Statement of the Russian Federation, para. 29.

respective declarations lodged under Article 36, paragraph 2, of the ICJ Statute, excluded all legal disputes between them from the contentious jurisdiction of the Court. [55] Therefore, if granted, the opinion would not have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted for judicial settlement without its consent.[56]

57. In support of these claims, the Court's jurisprudence was recalled, particularly, the *Status of the Eastern Carelia* and the *Western Sahara Advisory Opinions*.[57]

58. Therefore, before addressing the issue of the alleged existence of a bilateral dispute between Mauritius and the United Kingdom, and its potential effect as to the permissibility of the recourse by the General Assembly to the advisory function of the Court, it is fitting to address whether the consent of States is required for such a function in the first place.

59. The fact that there are States, including the United Kingdom, which have voted against the Resolution A/RES/71/292, adopting the Request, does not constitute a compelling reason preventing the Court from giving its advisory opinion, on the grounds that they did not *consent* to the pending advisory procedure.[58]

60. In fact, the Court has repeatedly affirmed that its opinion "is given *not* to the States, *but to the organ* which is entitled to request it" (emphasis added).[59] It has indicated that by becoming a party to the Charter and the Statute of the Court, a

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[55] Written Statement of Australia, paras. 14 f.

[56] Written Statement of the United Kingdom, paras. 7.1 ff.; Written Statement of the United States, paras. 2.21 and 3.3; Written Statement of Israel, paras. 3.6, 3.17 ff; Written Statement of China, para. 15; and Written Statement of France, paras. 7 and15.

[57] *Status of the Eastern Carelia, Advisory Opinion, 1923 P.C.I.J. (ser. B) No. 5*, p. 27 (hereinafter "***Eastern Carelia Advisory Opinion***"); and *Western Sahara, Advisory Opinion*, pp. 32-33, para. 25, referring to *Interpretation of Peace Treaties Advisory Opinion*, para. 71.

[58] The record shows that 94 Member States voted in favour of the Resolution and 15 voted against it.

[59] *Interpretation of Peace Treaties Advisory Opinion*; and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I. C.J. Reports 1996*, p. 226 (hereinafter "***Nuclear Weapons Advisory Opinion***"), p. 235, para. 14.

State has already given its consent to the exercise of the Court's advisory jurisdiction.[60]

61. The Court also confirmed that "[n]o State ... can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take."[61]

62. In sum, the Court does not need the consent of any State to give an advisory opinion.

63. But the issue is not this; the States who have made this protestation are actually preoccupied with consent in *adjudicating bilateral disputes*. As it will be shown below, the Request does not concern a bilateral dispute.

C. The Request does not concern a bilateral dispute

64. The African Union does not share the view that the present proceedings concern a bilateral dispute. At the outset, the African Union would like to recall what the Court said in the *Namibia Advisory Opinion*: "The fact that ... in order to answer the question submitted to it, the Court may have to pronounce on legal issues upon which radically divergent views exist between ... [interested parties], does not convert the present case into a dispute nor bring it within the compass of Articles 82 and 83 of the Rules of Court. ... Differences of views among States on legal issues have existed in practically every advisory proceeding; if all were agreed, the need to resort to the Court *for advice* would not arise."[62] (emphasis added) Thus, the Court finds that the controverted political background of the question is not a reason to decline to give the advisory opinion requested.

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[60] *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, (hereinafter "***Namibia Advisory Opinion***" at p. 23, para. 31.

[61] *Interpretation of Peace Treaties (First Phase) Advisory Opinion*, p. 71; see also *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, p. 177, pp. 188-189.

[62] *Namibia Advisory Opinion*, p. 24, para. 34.

65. The allegation of the existence of a bilateral dispute has been pursued under two different concepts: *origination* and *characterization*.

66. As to the *origin* of the dispute, it has been contended that the Court has been asked to adjudicate a *pre-existing* bilateral dispute between the United Kingdom and Mauritius concerning sovereignty over the Chagos Archipelago and related matters,[63] and that the Request concerns a longstanding bilateral dispute that has arisen "independently in bilateral relations"[64] (*i.e.*, that is *independently* from the General Assembly), in a reference to the request concerning *Western Sahara Advisory Opinion*.[65] In that early case, the Court had found that a legal controversy did indeed exist, "but one which arose during the proceedings of the General Assembly and in relation to matters with which it was dealing";[66] but, not one that had arisen "independently in bilateral relations".[67]

67. It was claimed that, unlike the cases where the Court has decided to give an advisory opinion despite an underlying bilateral dispute, because the legal position of the parties cannot be compromised by the Court's answers, "the current Request would compromise the legal positions of the United Kingdom and Mauritius in their dispute concerning sovereignty over the Chagos Archipelago".[68] In particular, it was suggested, that in responding to Question (b), the Court will have to confront directly the substantive legal issue in dispute between the United Kingdom and Mauritius; that being a dispute that concerns the present day rights of the parties, that has not already been decided, and that specifically relates only to the existing bilateral dispute.[69]

68. The present Request finds its whole *fons et origo* in, and springs directly from, the activities of the General Assembly relative to decolonization. In the present proceedings, the nature of the dispute has been stretched thin by States wishing to

[63] Written Statement of Australia, para. 5; Written Statement of France, para.15; and Written Statement of Chile, para. 4.

[64] Written Statement of the United Kingdom, para. 1.18 and also 5.3 and 5.22.

[65] *Western Sahara Advisory Opinion*, p. 25, para. 34.

[66] *Loc. cit.*

[67] *Western Sahara Advisory Opinion*, p. 25, para. 34.

[68] Written Statement of Australia, para. 48.

[69] *Loc. cit.*

hinder the Court's performance of its duties towards the General Assembly. True, there is a *dispute*. Any decolonization process that would not be made in accordance with international law necessarily leads to disputes between the former colonial power and the newly independent State. The separation of Chagos from Mauritius created a *fait accompli* that would necessarily lead to a series of disagreements between the United Kingdom and Mauritius. And, it did. But those disagreements did not *solely* arise independently in the context of the bilateral relations of these two countries. Just like any dispute, which begins in a confined context and then evolves into a larger one in a wider context, it originated in the days of the independence of Mauritius from the United Kingdom, but was later the subject of a wider multilateral context, in particular within the United Nations and the two successive African Organizations.

69. That it had *initially* arisen in a bilateral context, does not debar it from becoming other entities' concern; thus, for the international community represented, *inter alia*, by the UN, OAU and the AU, it is not a "bilateral dispute". What counts is that the General Assembly itself (being the requesting organ) did not view it as such. The simple fact that the General Assembly made a mention in its Request to its Resolution 65/119 of 10 December 2010, in which it declared the period 2011–2020 to be the Third International Decade for the Eradication of Colonialism, and its Resolution 71/122 of 6 December 2016, in which it called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples confirms that the General Assembly sees the question of the decolonization of the Chagos Archipelago as a question of international concern and interest.

70. To claim that it is "a uniquely bilateral matter given that the relevant consent is to be found in the bilateral 1965 Agreement and the subsequent exchanges of the United Kingdom and Mauritius, both before and after independence",[70] departs from, and changes, the comprehensive and true context.

[70] Written Statement of the United Kingdom, para. 1.18.

71. It has also been suggested that the Request has arisen out of a "bilateral dispute";[71] as a matter of *characterization*. Thus, the Court has been asked by some States to decide on the implication of the existence of a bilateral dispute in the subject-matter of the request for an advisory opinion. On that, the Court has a rich jurisprudence.[72]

72. The subject-matter of the General Assembly's Request cannot be regarded as *only* a bilateral matter between the United Kingdom and Mauritius. Given the powers and responsibilities of the United Nations in questions relating to decolonization and its consequences under international law, such as those arising from the continued administration by the United Kingdom of the Chagos Archipelago, it must be deemed that such are directly of concern to the United Nations. The responsibility of the United Nations in this matter has its origin in the Charter and relevant United Nations resolutions, as well as *jus cogens*, reflected in international treaties or customary international law.

73. Within the institutional framework of the United Nations, this responsibility has been manifested by the adoption of many resolutions, and by the creation of several subsidiary bodies within the Organization, specifically established to assist in the realization of decolonization.

74. Thus, whether the United Kingdom and Mauritius have a bilateral dispute between them, over the matters put to the Court in these proceedings, the Court will appreciate that a matter, which is of concern to the international community and, yet, constitutes a bilateral dispute between two States, may *co-exist simultaneously*. *Ergo*, answering a question, involving opposing positions between two States over the issue raised before the Court, does not by necessity have to assume the nature of an adjudication of a bilateral dispute; it is a request for elucidation of the applicable law, which the Court has never held back.[73]

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[71] Written Statement of Germany, para. 30; Written Statement of USA, paras. 2.2 et *seq*; Written Statement of Israel, para. 1.5; and Written Statement of France, para. 9; Written Statement of the Republic of Korea, para. 21; and Written Statement of the Russian Federation, para. 32 .

[72] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136 (hereinafter "***Wall Advisory Opinion***"), pp.158-159, paras. 48-50; *Namibia Advisory Opinion*, p. 24, para. 34.

[73] *Cf.*, *Wall Advisory Opinion*, Separate opinion of Judge Koroma, p. 204, para. 3.

75. Moreover, it is worth noting that raising the issue of an existing bilateral dispute is a classical counter-argument by the party opposing the jurisdiction of the Court in an advisory opinion. Yet, the Court has always been alert to the invalidity of such an argument to hamper it from giving its opinion, as long as it has established its jurisdiction on a legal question put to it by a competent organ of the United Nations.

76. In a very specific analogous description of the present situation, the Court has said in its *Wall Advisory Opinion* that:

> "The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and *one which is located in a much broader frame of reference than a bilateral dispute*. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground."[74] (emphasis added)

77. What happened in the *Wall Advisory Opinion* – in light of the case law accumulated in the course of the life of the two Courts, on the questions of jurisdiction in advisory proceedings and of propriety – is that the Court's conclusion was that the existence of a dispute on a bilateral basis should not bar it from giving the advisory opinion requested.

78. The Court had even went far enough as to explain that "the existence, *in the background*, of a dispute *the parties to which may be affected as a consequence* of the Court's opinion, does not change the advisory nature of the Court's task, which is to answer the questions put to it".[75] (emphasis added)

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[74] *Wall Advisory Opinion* p. 159, para. 50.

[75] *Review of Judgement No. 158 Advisory Opinion*, p. 171, para. 14.

79. Thus, the legitimate interest of the General Assembly, in obtaining an opinion with respect to its own future action, cannot be prejudiced by the fact that there may exist a legal question, or even a dispute, actually pending between States and raising issues related to those contained in a request for an advisory opinion. Some States that have opposed the Court's jurisdiction in the present proceedings have even acknowledged that it is true that bilateral disputes and agenda items of the United Nations overlap with each other in many cases.[76] Such a parallel existence of a *dispute* between two or more States and of a *situation*, of which the political organ of the United Nations was seized, does not change the advisory nature of the Court's task or prevent it from answering the questions put to it.

D. The advisory procedure is fit to determine complex and disputed issues of fact

80. It has been contended that the advisory procedure was ill-equipped or ill-adapted for the determination of complex and disputed issues of fact, given the lack of adversarial procedures and protections available in contentious proceedings.[77] It was also contended that if the Court lacked sufficient information, it should decline to provide an advisory opinion.[78]

81. It has already been explained above, however, that the historical accounts given in the present proceedings, be it in the Dossier (compiled pursuant to Article 65, Paragraph 2, of the Statute of the Court), or in the written statements of certain States, should serve no purpose for the Court other than identifying and determining the critical date and confirming the fact that the Archipelago was in fact *detached* from Mauritius. All the other factual and historical arguments may be important for conserving the rights of either Mauritius or the United Kingdom for their future bilateral interaction; but this has relative relevance to the subject-matter of the Advisory Opinion.

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[76] E.g., Written Statement of the Republic of Korea, para. 12.

[77] Written Statement of Israel, paras. 3.1 and 3.21-3.24; and Written Statement of Australia, paras. 55-58.

[78] Written Statement of Australia, para. 56.

82. It is to be recalled that the Court, in the *Western Sahara Advisory Opinion*, was furnished with "very extensive documentary evidence of the facts" by States and the Secretary-General of the United Nations. The Court "consider[ed] that the information and evidence before it are sufficient to enable it to arrive at a judicial conclusion concerning the facts which are relevant to its opinion and necessary for replying to the two questions posed in the request."[79] In the instance of the *Wall Advisory Opinion*, the Court noted that it had at its disposal a voluminous dossier submitted by the Secretary-General, as well as the information submitted by many States.[80]

83. The Court did not find that the factual and historical-intense material was a reason for it not to give its opinion because, as alleged, the advisory function was *ill-equipped* and *not fit* for examining the relevant information.

84. Further, this matter of evidentiary material and their sufficiency is not left without the control of the Court. The Court has itself observed that "the question whether the evidence available to it is sufficient to give an advisory opinion must be decided in each particular instance."[81] This is what the Court is expected to do in the present proceedings, if it decided that it needed to look further than the critical date or the fact of the detachment of the Chagos Archipelago.

85. The *sufficiency* of the evidence will depend ultimately upon what the Court will consider enough to determine the legal issues, which are requested form it in dispensing with its advisory function; not what may be needed to settle a bilateral dispute.

86. In connection with modifying the Rules of the Permanent Court, to accommodate a proposal by Judge Anzilotti, to allow national judges in advisory proceedings when the question submitted to the Court related to an actual dispute between two or more States, the Vice-President of the Court, Judge Weiss, noted that "[t]he practice of the Court had been to establish a great similarity in procedure between

[79] *Western Sahara Advisory Opinion*, p. 29, para. 47.
[80] *Wall Advisory Opinion*, pp. 161-162, para. 57.
[81] *Ibid.*, p. 161, para. 56.

affairs for judgment and for advisory opinions."[82] The Committee appointed by the Court to consider the proposal of Judge Anzilotti in September 1927, noted that the Permanent Court, not having had an advisory function under its Statute, "assimilated its advisory procedure to its contentious procedure". "[T]he results have abundantly justified its action."[83] The Court explained that,

> "The Statute does not mention advisory opinions, but leaves to the Court the entire regulation of its procedure in the matter. The Court, in the exercise of this power, *deliberately and advisedly assimilated its advisory procedure to its contentious procedure*; and the results have abundantly justified its action. Such prestige as the Court to-day enjoys as a judicial tribunal is largely due to the amount of its advisory business and the *judicial way in which it has dealt with such business*. In reality, where there are ... contending parties, the difference between contentious cases and advisory cases is only nominal. The main difference is the way in which the case comes before the Court, and even this difference may virtually disappear, as it did in the Tunisian case. So the view that advisory opinions are not binding is more theoretical than real." [84] (emphasis added)

E. The opinion will assist the General Assembly in the performance of its functions

87. It has been contended that the Court should only answer the questions put to it if they are relevant for the work of the General Assembly,[85] and that in any case the opinion will not assist the General Assembly in the performance of its functions, because the Assembly is not performing any substantive functions with respect to the Chagos Archipelago. In other words, the General Assembly *lacks* a sufficient

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[82] Fourth Annual Report of the Permanent Court of International Justice, *P.C.I.J., Series E, No. 4*, (hereinafter "**Fourth Annual Report of P.C.I.J.**"), p. 73.

[83] Report of the Committee appointed on 2 September 1927, reproduced in the Fourth Annual Report of the P.C.I.J., p. 76.

[84] *Loc. cit.*

[85] Written Statement of Germany, para. 120.

interest in the subject of the opinion.[86] It was explained, that there was no suggestion in the wording of Resolution A/RES/71/292 that the opinion of the Court "is required to guide the General Assembly in discharging its responsibilities in relation to decolonisation, or in matters relating to the Chagos Archipelago".[87] Because the sovereignty over Chagos has "never been considered actively in the General Assembly through any form of resolution", it was claimed, the Assembly *does not have a sufficient interest*.[88]

88. The Court has also been called upon to interpret the Request before it, by balancing the interests of the General Assembly, in submitting any legal question necessary for it to fulfil its own functions, while at the same time protecting the interests of those affected by the respective proceedings.[89]

89. At the outset, it must be noted that the Charter confers upon the General Assembly a very broad power to discuss matters within the scope of the activities of the United Nations, including questions relating to international peace and security *lato sensu*. After all, isn't it not true that, according to Article 96(1) of the Charter, the General Assembly "may request the International Court of Justice to give an advisory opinion on *any* legal question"?[90] The broad scope of this Article reflects the very broad competence of the General Assembly, under Charter Articles 10, 11 and 13, and hence, the almost complete liberty of the Assembly in requesting an opinion of the Court. The Court would also observe that Article 10 of the Charter has conferred upon the Assembly a competence relating to "any questions or any matters" within the scope of the Charter, and that Article 11, paragraph 2, specifically, provides it with competence on "questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations" and to make recommendations under certain conditions fixed by those Articles.[91]

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[86] Written Statement of Australia, paras. 50-54.

[87] *Ibid.*, para. 53.

[88] *Ibid.*, para. 54.

[89] Written Statement of Germany, para. 94.

[90] United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, Article 96(1) (emphasis added).

[91] *Cf.*, *Nuclear Weapons Advisory Opinion*, p. 232, para. 11; and *Wall Advisory Opinion*, p. 144, para. 14.

90. Resolution 71/292 was drawn up in the general context of the Charter-based prerogatives and policies of the General Assembly regarding the decolonization of Non-Self-Governing Territories. The Resolution specifically confirmed the nexus between the Request and the functions and interests of the General Assembly. In its preambular paragraphs it was stated, *inter alia*, that:

> "*Bearing in mind* its resolution 65/118 of 10 December 2010 on the fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reiterating its view that *it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and noting that the process of decolonization is not yet complete*,
>
> *Recalling* its resolution 65/119 of 10 December 2010, in which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism, and its resolution 71/122 of 6 December 2016, in which *it called for the immediate and full implementation* of the Declaration on the Granting of Independence to Colonial Countries and Peoples".[92] (emphasis added)

91. It is clear from these paragraphs, just a few out of many, that the General Assembly was not acting as a *transmitting agent* or *conduit*, for any party or country, as did, for example, Council of the League of Nations when it was requesting the opinion of the Permanent Court in *Eastern Carelia*; the Assembly here is requesting on its own behalf, because it had a role to fulfil with respect to decolonization.

92. And in any case, it is submitted that the practicalities, challenges and costs of resettling Chagossians in the Chagos Archipelago should not be of concern to the Court in these proceedings. The Court has already succinctly stated that

[92] **Dossier No. 7**, Resolution 71/292, Preambular paras. 4 and 5.

> "In any event, to what extent or degree its opinion will have an impact on the action of the General Assembly is not for the Court to decide. The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object or purpose."[93]

93. The Court has recognized that it is not for it to purport to decide whether or not an advisory opinion is needed by the Assembly for the performance of its functions. "The General Assembly has the right to decide for itself on the usefulness of an opinion in the light of its own needs."[94]

94. It recently reconfirmed its position that:

> "the purpose of the advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court *which will assist them in the future exercise of their functions.*"[95] (emphasis added)

95. In any case, in exercising its functions, the Court (as a principal organ of the Organization) is wholly independent of the other organs of the United Nations and is in no way obliged or concerned to render a judgment or opinion which would be politically acceptable. Its function is, in the words of Article 38 of the Statute, "to decide in accordance with international law".

96. On the substantive plain, and bearing in mind that the two Questions must be considered in the context of the comprehensive decolonization process, it is reminded that the Court itself has declared that "[t]he right of self-determination leaves the General Assembly a measure of *discretion* with respect to the *forms and procedures* by which that right is to be realized."[96] (emphasis added) Over the

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[93] *Western Sahara Advisory Opinion*, p. 37, para. 73

[94] *Nuclear Weapons Advisory Opinion*, p. 237, para. 16.

[95] *Kosovo Advisory Opinion*, p. 421, para. 44.

[96] *Cf. Western Sahara Advisory Opinion*, p. 36, para. 71.

years, the Assembly has indeed resorted to several forms and procedures open to it; not least are the facilities of Chapter VIII of the United Nations Charter.

97. In this connection, it is fitting to recall the operational Charter-based link between the General Assembly and the African Union, by virtue of Chapter VIII, which encourages "every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies".[97] Within this formula, the United Nations (through its Assembly and its Council) and the African Union have promoted each other's values and assisted in each other's labours, when possible. Indeed, the Assembly has made valuable contributions in complementing the work of the Organization of African Unity and the African Union in decolonizing Africa. It is needles to draw the attention of the Court to the many OAU/AU Decisions, that it has before it, where the two Organizations have made explicit reference to the relevant General Assembly resolutions, including on the Chagos case, thus promoting the work of the Assembly. The African Union has also actively served as a *regional partner* of the United Nations, *inter alia*, by managing peacekeeping operations in different parts of Africa.[98]

98. Following from the above, the African Union, as a regional organization, is helping the General Assembly pursue their common goal of the complete decolonization of Africa, including Mauritius.

99. Indeed, the General Assembly is at liberty to use the African Union as a vehicle to dispense with the findings of the Court in the anticipated Advisory Opinion. In this context too, the Court, while pronouncing itself on all possible consequences of the continued administration by the United Kingdom of the Chagos Archipelago, must identify all those affected, including international organizations, among which is the African Union.

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[97] UN Charter, Article 52(2).

[98] E.g., the AU Mission to Somalia (AMISOM); the two-phase reconfiguration of UNAMID. Pursuant to UN Resolution 2349 (2017), the UN Regional Office for Central Africa (UNOCA) and the UN Office for West Africa and the Sahel continued to conduct joint visits to countries affected by Boko Haram to assess the situation and propose additional support for the efforts of Lake Chad Basin Commission Member States. Security Council Resolution 2320 (2016) acknowledged the important role of the AU in efforts to prevent, mediate and settle conflicts on the African continent.

100. There is no reason why an authorized organ of the United Nations, such as the General Assembly should not, *also*, be guided by the recommendations of other relevant international organizations.

Conclusion: The Court should not exercise its discretion not to give an advisory opinion

101. In the past sections, it has been explained that *there are no compelling reasons* preventing or barring the Court from giving the requested Advisory Opinion.

102. But, surprisingly, these arguments against the Court's engagement were taken further: *even if there was sufficient evidence* to enable an opinion to be provided, *judicial propriety* may, nevertheless, require the Court to decline to exercise its advisory jurisdiction, if to exercise that jurisdiction would be unfair to a particular State, or if to proceed would be incompatible with the Court's judicial character.[99]

103. However, for the reasons set out in its Written Statement and in these Written Comments, the African Union believes that the Court has jurisdiction to be seized with the Request for an advisory opinion and that there are no compelling reasons preventing the Court from giving the requested Advisory Opinion, and accordingly, the Court should to respond to it.

104. It has already been asserted in the Written Statement that Article 96(1) of the Charter and Article 65(1) of the Statute of the Court suffice to establish the competence of the General Assembly to request an advisory opinion from the Court and to establish the competence of the latter to give the requested opinion.

105. Once the Court has *established its jurisdiction*, it will only exercise its discretion not to render an advisory opinion where there are "compelling reasons" not to. It has repeatedly stated that a reply to a request for an advisory opinion should not, in principle, be refused and that only compelling reasons would justify such a

[99] Written Statement of Australia, para. 36.

refusal.[100] And, to date, it has never declined to give a requested advisory opinion *through an exercise of discretion*. It has *never* refused *an admissible* request for an advisory opinion from any authorized organ.

106. The one instance the Court refused to provide an advisory opinion turned on the fact that the Court *did not consider it had* the requisite *jurisdiction*. The Permanent Court found its main ground for refusal upstream, namely, in the incompetence of the Council to deal with the question. This was an *a fortiori* case for the Court. Its refusal was mainly based, *not* as it is sometimes alleged, on the absence of Russia's consent to the advisory procedure itself. In fact, the Court said that it was "unnecessary" to deal with the issue "whether questions for advisory opinion, if they relate to matters which form the subject of a pending dispute between nations, should be put to the Court without the consent of the parties."[101] That was not the issue.

[100] *Cf.*, e.g., *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO, Advisory Opinion, I.C.J. Reports 1956*, p. 86; *Namibia Advisory Opinion*, p. 27, para. 41; *Nuclear Weapons Advisory Opinion*, p. 234, para. 14; and *Wall Advisory Opinion*, p. 164, para. 65.

[101] *Eastern Carelia Advisory Opinion*, p. 27.

PART III

THE QUESTIONS ARE CLEAR AND INTERLINKED

AND SHOULD BE FULLY ANSWERED

107. The two Questions put to the Court by the General Assembly are, each, very clear and elaborate, and their interconnection is obvious, and as such, they must both be fully answered, as has already been explained in the Written Statement of the African Union. This shall be further elaborated hereunder.

I. The Scope of the Request

108. In addition to the attempts to sway the Court towards declining to exercise its jurisdiction, it was argued that, should it find that it had jurisdiction, and should it further find that the decolonization of the territory in question has not yet been lawfully completed, it "should only consider the legal consequences *for the United Nations* generally, and *for the General Assembly* in particular, that might then derive from the continued administration of the territory in question by the United Kingdom",[102] (emphasis original) as well as for the "Special Committee on Decolonization" of the General Assembly.[103]

109. Not only was the Court invited to answer very restrictively on the legal *consequences*, but it was also requested to "refrain from considering what *remedies*, if any, would follow from any violations of international law that might have been committed by the States involved, especially with regard to the question of the resettlement of the Chagossians."[104] (emphasis added) And against the very terms of the Request, it was claimed that it "cannot be assumed to have been within the realm of what the General Assembly, as an organ seeking

[102] Written Statement of Germany, para. 143.
[103] *Ibid.*, para. 146.
[104] *Ibid.*, para. 147.

guidance for its own future work", that the Assembly had in mind such remedies, when requesting the present Advisory Opinion.[105]

110. In order to disprove these contentions and put the scope of the advisory opinion requested from the Court in the proper perspective of a "request", it is imperative to look into the terms of the Request, which establish the scope of the opinion sought. Therefore, it is important at the outset to be clear what the present case is about and what it is not, and then to consider the *adequacy* and *interconnection* of the two Questions.

111. The Questions seek to clarify whether the decolonisation of Mauritius was lawfully completed, having regard to international law, and to declare the legal consequences, under international law arising out of the continued administration by the United Kingdom of the Chagos Archipelago. These are, necessarily, and by definition, *legal questions* in the meaning of Charter, the Statute and the Court's own jurisprudence. They concern the *international legal* aspects of a set of facts, namely, the compatibility of a decolonisation process with international law, including the Charter of the United Nations, the relevant United Nations resolutions, and OAU/AU decisions. Furthermore, the Court is requested to advise on the legal consequences, under international law, of a continued administration by a Member State of the United Nations of the territories of another.

112. As such, these questions involve the *interpretation* of international norms, which is essentially a judicial task. To use the very words of the Court, the Questions submitted by the General Assembly have been "*framed in terms of law and raise problems of international law* ... [they are by their] *very nature susceptible of a reply based on law*"[106], hence they are squarely questions of a legal character.[107]

113. In contradistinction to the above restrictive position, the African Union had sought in its Written Statement that, in answering the Questions put to it in the Request, the Court should determine the consequences for the United Kingdom and all

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[105] *Loc. cit.*

[106] *Western Sahara, Advisory Opinion*, p. 18, para. 15.

[107] *Western Sahara, Advisory Opinion*, p. 18, para. 15; and *Wall Advisory Opinion*, p. 153, para. 37.

other States and international organizations, and in particular, the United Nations and all its organs, and that it should declare the appropriate commensurate remedies.[108] In legal and practical terms, this means that the Court should enlighten the General Assembly on how it should follow up on its work related to the decolonization of Mauritius from all its legal angles; above all, by pronouncing itself on the responsibilities of all those concerned and taking the appropriate measure to discharge its Charter-based duties.

II. The Questions Are Clear and Do Not Need any Reformulation

A. The principle: the Court will reformulate a question only when need be (in claris non fit interpretatio)

114. It was argued that the Court had implied, in its earlier advisory opinions, that it should not be assumed that the General Assembly wants to be provided with answers to legal issues, unless it specifically referred to them itself in its request.[109] It was further argued that it cannot be assumed that the General Assembly wanted to request the Court to provide "a comprehensive answer regarding the legal status of the territory in question and the legal consequences for States of action taken with regard to the said territory"[110]; otherwise, the Assembly ought to have clearly said so.[111] It was also *speculatively* contended, that the General Assembly chose *not* to make such a request; rather, the Assembly "only sought guidance as to the exercise of its own competences under Chapters XI and XIII of the Charter of the United Nations, while not requesting the Court to provide an answer as to possible legal consequences for States,"[112] as "the text of the request does *not* refer to the consequences *for States* that might arise from the continued administration of the Chagos archipelago by the United Kingdom."[113] (emphasis original)

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[108] Written Statement of the African Union, para. 258.
[109] Written Statement of Germany, para. 120.
[110] *Ibid.*, para. 120.
[111] *Ibid.*, para. 124.
[112] *Loc. cit.*
[113] Written Statement of Germany, para. 132.

115. After having invited the Court to interpret, and possibly reformulate the questions, in order to restrict them, it was advanced that the Court should not adopt a broad interpretation of the Questions, contrary to what it did in the case of the *Wall Advisory Opinion*, as the latter was based on the unique circumstances of the situation, and is not comparable to the present situation regarding the Chagos Archipelago.[114]

116. This, as it is submitted, is a very restrictive and presumptuous reading of the Request and appreciation of the advisory function of the Court in general. It is aimed at depriving the General Assembly of important elements of legal and practical considerations sought in the Opinion.

117. In building a case for that approach, it was pointed out that the Permanent Court did not address issues on which the requesting organ *could not be assumed to have expected* the Court to provide an opinion. It did so even where it might not be easy to discern the intention of the requesting organ.[115] It has been, therefore, advanced that the Court must *search for* and *identify* the "real question" that had been asked of it;[116] as if the questions were not clear as they have been formulated.

118. As the backbone in support of this position, the earlier Court was quoted for having said that it:[117]

> "considers that, as the letter referred to [requesting the Court's opinion] does not exactly state the question upon which its opinion is sought, it is essential that it should determine what this question is and formulate an exact statement of it, *in order more particularly to avoid dealing with points of law upon which it was not the intention of the Council or the Commission to obtain its opinion.*
>
> ...

[114] *Ibid.*, para. 115.
[115] *Ibid.*, para. 76.
[116] *Ibid.*, para. 77.
[117] *Loc. cit.*

> By expressing in this form the question contemplated ... the Court is in a position to reply to the request for an opinion submitted to it, always keeping within the scope of the question thus formulated. It follows that, in so far as the points in dispute between the interested Governments fall outside the scope of the question as set out above, the Court cannot deal with them."[118] (emphasis added)

119. This quote from the *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV) Advisory Opinion*, not being accompanied by the relevant facts and clarifications of the background leading to these statements by the Court, is misleading, when provided in connection with the present Request.

120. The issues which the Court confronted, *in casu*, were *totally irrelevant* to the issues raised in the current Request and do not apply to it in any respect. Therefore, a close look into the facts of that early opinion will reveal how different and unrepresentative it is.

121. That case originated in differences of interpretation over Article IV of the Final Protocol of the Agreement of Athens, which stipulated that any "questions of principle of importance", which may arise in the Mixed Greco-Turkish Commission for the Ex-change of Greek and Turkish Populations, shall be submitted to the President of the Greco-Turkish Arbitral Tribunal for arbitration. The differences of interpretation revolved around the conditions for appeals to the arbitrator.

122. Consequently, the Mixed Commission applied to the Permanent Court, through the agency of the Council of League of Nations, for an advisory opinion as to the interpretation of that Article, so far as it concerns the conditions for such.[119] Accordingly, the Council adopted a resolution referring to the *letter of 4 February 1928*, addressed to the Secretary-General of the League of Nations by the

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[118] *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, PCIJ, Series B, No. 16 (I)*, pp. 14 and 16.

[119] *Ibid.*, p. 5.

President of the Mixed Commission, whereby the Council requested the Court's advisory opinion upon the question *raised in the said letter*, as to the interpretation of Article IV, in regard to the conditions of referral to the arbitrator.[120]

123. The Court noted that differences of interpretation regarding the conditions for appeals to the arbitrator, mentioned in the "letter" of the President of the Mixed Commission, became apparent. The members of the Mixed Commission had taken up different standpoints regarding the wording in which the Commission was to state the persons allowed to benefit by the Agreement. The Greek members had suggested that the dispute should be settled by arbitration.[121] The President of the Commission asked its members to decide whether the dispute constituted "a question of principle of importance" arising in connection with the duties of the Commission; whereupon the Greek members expressed the opinion that the two States, which had signed the Agreement and Protocol, were alone entitled to appeal to the arbitrator (to whom the Greek Government had already referred the matter); while, on the other hand, the Turkish members held that reference to the arbitrator, without a decision of the Mixed Commission, would be contrary to the agreements in force.[122] Therefore, as the question of the conditions governing the reference to the Final Protocol subsequently formed the subject of further discussion by the Mixed Commission, the Commission had decided to ask the Council of the League of Nations to request the advisory opinion.[123] The Commission had thought that the "minutes of its meetings", at which the question had been argued, would *sufficiently indicate the doubts* which had arisen within it, regarding the application of Article IV.[124]

124. When determining the case, the Court recalled Article 72(2), of its Rules, that "the request shall contain an exact statement of the question upon which an opinion is required". It noted that the request "simply refers to the *letter* addressed ... to the Secretary-General of the League of Nations" (emphasis added) for obtaining an

[120] *Loc. cit.*
[121] *Ibid.*, p. 10, para. 9.
[122] *Ibid.*, pp. 10 f.
[123] *Ibid.*, p. 11, para. 20.
[124] *Ibid.*, p. 12, para. 27.

advisory opinion on "the conditions for appeals to the arbitrator" contemplated in Article IV. It considered that, as the "letter" did not exactly state the question upon which its opinion was sought, "it is essential that it should determine what this question is and formulate an exact statement of it, in order more particularly to avoid dealing with points of law upon which it was not the intention of the Council or the Commission to obtain its opinion."[125]

125. The Court, thus, observed that it had to ascertain that the conditions for appeals to the arbitrator were clearly defined by the actual terms of Article IV, so that no difference of opinion can be presumed to exist. For the Court, there was no doubt that only when these four conditions of Article IV were fulfilled, can a matter be referred to the President of the Tribunal.[126] After having examined the documents, as well as pleadings of the parties, the Court concluded that the differences did not relate to the conditions to which the submission of a question to the arbitrator was subject, but to whom it was to decide whether these conditions were fulfilled and by whom a question may be referred to him?[127]

126. The Court then decided to "alter the terms of the question put in order to be able to reply thereto", by expressing the points on which, its opinion is required.[128] And here comes the reason for the *latter part of the quote* in paragraph 122 above that

> "By expressing in this form the question contemplated ... the Court is in a position to reply to the request for an opinion submitted to it, always *keeping within the scope of the question thus formulated.* It follows that, in so far as the points in dispute between the interested Governments *fall outside the scope of the question as set out above, the Court cannot deal with them.*"[129] (emphasis added)

[125] *Ibid.*, p. 14, para. 36.
[126] *Ibid.*, p. 15, para. 38.
[127] *Ibid.*, para. 38.
[128] *Ibid.*, p. 16, para. 40.
[129] *Ibid.*, pp. 14 and 16.

127. What is striking in the part of the Court's opinion, quoted in paragraph 122 above, is that the situation it had to address was *entirely different* than in the present case. The Court recognized that the "letter" requesting the Court's opinion did not *exactly* state the question upon which its opinion was sought; that is quite contrary to the present Request.

128. In addition to the foregoing, the several other instances cited, in order to encourage to reformulate the questions restrictively, were very specific cases of either *obscurity* or *generality*, which were primarily related to the functionality and procedures of the General Assembly or the Security Council;[130] especially, the relationship between the United Nations on the one hand, and the former mandate territory of South West Africa/Namibia on the other.

129. No better words may reflect what Judge De Castro has stated in connection with similar allegations:

> "To challenge the validity of a resolution, it is not sufficient merely to allege that it is possible to find a better interpretation; a resolution can only be criticized if it is demonstrably absolutely impossible to find any reason whatsoever, even a debatable one, upon which an interpretation favourable to the validity of the resolution may be based."[131]

130. True, the Court in its past practice, has sometimes *interpreted, clarified, and reformulated* the questions put to it. But, the Court itself has explained the rationale for, and drawn the boundaries of this exercise, when it said

> "The Court may interpret the terms of the request and determine the scope of the questions set out in it. The Court may also take into account any matters germane to the questions submitted to it which may be necessary to enable it to form its opinion."[132]

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[130] Written Statement of Germany, paras. 78-82.

[131] *Namibia Advisory Opinion*, Separate Opinion of Judge De Castro, p. 185.

[132] *Review of Judgement No. 158 Advisory Opinion*, p. 184, para. 41.

131. These self-imposed guidelines actually *broaden* the scope of the Court's search and reach, by "tak[ing] into account any matters germane to the questions". That the Court "is, in principle, bound by the terms of the questions formulated in the request",[133] does not retract that. This is an explicative statement, that only states the obvious, in not departing from the questions asked. It is a natural corollary of the Court's (and any other court) advisory or contentious functions.

132. Moreover, the real concern for the Court is *verification*. The Court has pointed out that "if it is to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction, it must ascertain what are the legal questions really in issue in questions formulated in a request".[134] In the present Request, the two Questions have been framed in such a way that the legal *consequences* investigated are expressly stated.

133. The Court has in some previous cases departed from the language of the question put to it where the question was *not adequately* formulated, or where the Court determined, "on the basis of its examination of the background to the request, that the request *did not reflect the "legal questions really in issue"*".[135] (emphasis added) Similarly, where the question asked was *unclear or vague*, the Court has clarified the question before giving its opinion.[136]

134. The Court has also been told that, "absent a clear indication to the contrary"[137], it cannot be assumed that the General Assembly wanted to exclude or restrict the Court's power to reformulate the questions put to it.[138] This, however, raises three issues:

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[133] *Loc. cit.*

[134] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980,* p. 73 (hereinafter "***Interpretation of Agreement between WHO and Egypt Advisory Opinion***"), p. 88, para. 35.

[135] E.g., *Interpretation of the Agreement between the WHO and Egypt Advisory Opinion,* para. 35.

[136] E.g., *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982,* pp. 348-350, paras. 46-48.

[137] Written Statement of Germany, para. 91.

[138] Written Statement of Germany, para. 91.

135. *First*, this proposition of an "indication to the contrary" attempts to shift the burden of proof to the Assembly, and not the party making it, which is legally untenable. Second, the African Union is not suggesting, and no other State in these proceedings has suggested, that the Court is *excluded* from or *restricted* in reformulating the questions put to it. *Third*, it is precisely for this and other reasons that the General Assembly has drafted the questions in such a manner that they would not need reformulating in the first place, as further explained hereunder.

B. The Questions are specific and adequate

136. Having discussed above the propositions aimed at restricting the functionality of the Court, as well as the theoretical and methodological considerations and approaches used by the Court in discharging its judicial function, especially in advisory opinions, it is now turn to explore, whether the questions addressed in this Request require reformulation by the Court, on the basis of being unspecific or inadequate.

137. It has been claimed that "the current request does *not* refer to legal consequences for States. This is fully in line with the drafting history of the request as set out above, and is also in line with the underlying intentions of its main sponsors who were interested in the practical consequences of the Court's findings *for the work of the General Assembly* only. Hence, unlike other previous requests, it possesses a relatively limited and narrow scope."[139] It was stated that, because Resolution A/RES/71/292 – unlike in the case of the *Wall Advisory Opinion* - did not specify States or other entities, the Court had to first interpret Question (b), relevant to the consequences, in order to decide if it had to determine the consequences for others than the Assembly itself. In support, it was claimed that, because the question put the Court in the case of the *Wall Advisory Opinion* included a specific reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949, it was implied that the General Assembly had thereby wanted to

[139] *Ibid.*, para. 121.

make specific reference to obligations of third States arising under Article 1 of that Convention.[140]

138. It is submitted, however, that the task of the Court in the present case has been facilitated by the manner in which the General Assembly has posed the Questions, and the Court does not need to go through the route that it is being solicited to take.

139. Regardless whether, or not, the Assembly had enumerated the entities for which there were effects ensuing from the continued administration of Chagos by the United Kingdom, be they States, the United Nations or other international organizations, the Court has to pronounce itself on all possible effects and identify all those affected and their consequent obligations, as it will be shown in Part IV of the present Written Comments. It shall immediately be recalled here, that the Charter "has defined the position of the Members in relation to the Organization by requiring them to give it every assistance in any action undertaken by it (Article 2, para. 5) ... by authorizing the General Assembly to make recommendations to the Members".[141] It goes without saying, the principles and purposes of the United Nations must be observed by all its organs, including the General Assembly and, no less, by the Court, as well as also by each of the Member States.

140. The Questions – each individually – make different express references to "international law". These references indicate that the Court is requested to give its opinion considering the *full extent* of that *law*; this is true for the *substantive (objective) law* (as the framework for the practice of stable and organized international relations) to be applied, and is equally true for the *subjects of the law* (its addressees, *viz.*, the United Kingdom, all other States and international organizations).

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[140] *Ibid.*, para. 111.

[141] *Reparation of Injuries Suffered in Service of the U.N., Advisory Opinion, 1949 I.C.J.*, p. 174 at p. 178.

141. When, in Question (a), the Court was asked to decide whether "the process of decolonization of Mauritius [was] lawfully completed ... having regard to international law, *including* obligations reflected in General Assembly resolutions" (emphasis added), it was clear that it was asked to perform a two-tier legal analysis; at the level of general international law and at the level of the specific relevant resolutions of the General Assembly.

142. In fact, basic grammatical and textual analyses of the construction of Question (a) show that the preposition "including" referred to *part* (*viz.*, the resolutions) of the *whole* being considered (*viz.*, general international law). As such, that formula is *not mutually exhaustive*; both tiers *have* to be answered.

143. The same line of analyses applies to Question (b) too. The preposition "including" has been intentionally used twice, in addition to the idiomatic expression "in particular"; which means *specifically* (which, in turn, also implies *part* of a *whole*). Thus, the question has been unfolded telescopically, *transitioning the investigation of the Court from one level to the other*. By asking 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 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" (emphasis added), the Court is requested to address to the *full extent* the *consequences* in view of the *substantive law* to be applied, and for *subjects of the law* (*viz.*, the United Kingdom, all other States and international organizations).

144. After all, the Court had unreservedly declared that

> "there is nothing in Article 96 of the Charter or Article 65 of the Statute of the Court which requires that the replies to the questions *should be designed to assist the requesting body* in its own future operations or which *makes it obligatory that the effect to be given to an*

advisory opinion should be the responsibility of the body requesting the opinion."[142] (emphasis added)

Thus, the Court recognized a responsibility of other entities, besides the General Assembly, the latter being "the requesting body".

145. What makes this declaration by the Court of particular importance and interest to the present debate, is that it is a *general* statement by the Court, that is not related to the specificities of the advisory opinion amidst which it was made, as the position of the Court on the specific issues was made earlier in the opinion.

146. The two Questions asked by the General Assembly in the present Request meet all the criteria set by the Court itself and are clear and legal as could be. They require absolutely no reformulation. Moreover, they have been formulated in a manner that interconnects and interlinks them, as further explained hereunder.

III. The Questions Posed to the Court Are Clearly Interlinked and Should Be Both Fully Answered by the Court

147. It was further suggested that if the Court were to answer the first Question, it should, however, exercise its discretion and refrain from answering the second. The reason for this, it was claimed, was that Question (b) "is obscure and very general".[143]

148. Having demonstrated and concluded, however, that Question (b), like Question (a), was clear and did not require any reformulation, along the lines set in the jurisprudence of the two Courts, it is now turn to show that the two Questions are interconnected and interlinked and that they both must be fully answered.

149. However, for the avoidance of doubt, there is nothing in the Court's rules or jurisprudence that suggests that in order to answer multiple questions, those

[142] *Review of Judgement No. 158 Advisory Opinion*, p.75, para. 22.

[143] Written Statement of the United Kingdom, paras. 9.15 and 9.21.

questions have to be interlinked; in the present Request, however, they are. And in any case, the Court has to answer any questions put to it, as already amply explained.

150. In every case, whether contentious or advisory, the first question which arises for the Court is: What is being asked for? In the present case, right from the beginning of the proceedings it was apparent that the General Assembly was asking the Court to give it an opinion on precise legal questions, as already explained. The Court is asked to opine on whether or not the decolonisation of Mauritius was lawfully completed in light of the dismemberment of the Chagos Archipelago; and, to opine on the consequences, under international law, flowing from that dismemberment. The task of the Court has been facilitated by the manner in which the General Assembly has posed the Questions.

151. The two Questions asked to the Court are so formulated that an answer to the second is called for only if the answer to the first is in the *negative*.

152. The first Question reads:

> (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?" (emphasis added)

153. The *textual* analysis of Question (a) is very telling. It was formulated in the *past tense*, as the Request specifically located the question in the context of the time "when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius", and it is, therefore, clear that these words have to be interpreted by reference to that (critical) date onwards.

154. Moreover, the phrase "having regard to international law" refers to primary obligations, that is, to what States are *obliged* to do under international law. That the phrase comes after the statement on the investigated event and its *temporal context*, can only mean that the event (whether it had occurred or not) *is* governed by international law, which, as a legal regime, has *consequences*.

155. The cumulative effect of the two textual and contextual observations is that there *will be consequences* running from the critical date, if the answer is in the negative; and it should be.

156. The second Question reads:

> (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?"

157. The Question (a) is followed by the conjunction "and", and Question(b) is preceded by *that* conjunction. "And" is used as a function word to indicate a *connection*. Therefore, it cannot be conceived that the General Assembly thought for a moment that the Court was being given the choice, in Resolution A/RES/71/292, of choosing not to answer the second question at whim; if the Court had to do so, it will undoubtedly have its own judicial reasons for that. But, if it didn't, it will have to answer it.

158. Moreover, the drafters of the Request were well aware that Question (b) on the *consequences* was unseparably interlinked with Question (a), as it was a corollary of the core issue at the heart Question (a); if the decolonization of Mauritius *was not lawfully completed* following the separation of the Chagos Archipelago from Mauritius and *having regard to international law*, then *there were* consequences to be drawn, as formulated in Question (b).

159. Therefore, if the answer to Question (a) is in the *negative*, meaning that the United Kingdom *continued* to administer the Chagos Archipelago, the Court will have to pronounce itself on the "consequences under international law ... arising from the continued administration", as requested in Question (b) and as it will be shown in Part IV of the present Written Comments.

160. The two Questions should be taken up separately and in turn and should be fully answered.

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161. In the light of the foregoing, it is submitted that the Court should answer the Questions put to it in the present Request. The underlying facts, the unescapable practicalities and unambiguous legal design behind these two Questions merit the full attention of the Court and a corresponding comprehensive pronouncement.

PART IV

THE ILLEGAL SEPARATION OF THE CHAGOS ARCHIPELAGO BREACHED THE RIGHT TO SELF-DETERMINATION AND THE TERRITORIAL INTEGRITY OF MAURITIUS

I. Introduction

162. There are three critical issues in relation to Question (a) on which the General Assembly has requested an advisory opinion of the Court that can be distilled from the written statements submitted to the Court:

i) first, whether the right to self-determination was part of customary international law at the time of the separation of the Chagos Archipelago in 1965 and of the independence of Mauritius in 1968;

ii) second, whether the right to self-determination gives rise to a correlative obligation on the part of States administering Non-Self-Governing Territories to enable the exercise of that right within the entire territorial unit; and

iii) third, whether the excision by the United Kingdom of the Chagos Archipelago from Mauritius in 1965, before Mauritius gained independence in 1968, violated the right to self-determination of the people of Mauritius.

163. The African Union's position in respect to these issues is as follows:

i) first, the right to self-determination was firmly established in customary international law by the end of the 1950s;

ii) second, the right to self-determination is inextricably linked to the principle of territorial integrity;

iii) third, the excision of the Chagos Archipelago from Mauritius prevented the people of Mauritius from exercising its right to self-determination within the relevant territorial unit, including the Chagossians; and

iv) fourth, the process of decolonisation was not lawfully completed when Mauritius gained independence in 1968.

II. The Existence of the Right to Self-Determination in Customary International Law by 1965

164. Important to the determination of Question (a) put to the Court, is whether the right to self-determination existed *as a legal right in customary international law by 1965*, the time of excision of the Chagos Archipelago, and in 1968, at the time of Mauritius' independence. Over many pages in its Written Statement, the African Union has already had the chance to explain how the right to self-determination was part of customary international law by the late 1950s, and thus, a legal right at the time of the separation of the Chagos Archipelago from Mauritius. In doing so, it relied on abundant State practice, General Assembly and Security Council resolutions, as well as the jurisprudence of this Court, in addition to scholarly writings on international law.[144]

165. Of the States that have deliberated the customary status of the right to self-determination in 1965 and 1968, the majority share the African Union's view that the right to self-determination *was already firmly established* as customary international law by 1965.[145] They resolutely believe that Resolution 1514 (XV) reflects rules of customary international law, existing at the date of its adoption.[146]

[144] Written Statement of the African Union, Part III.

[145] Of the 11 States that addressed the question of the status of the right to self-determination at the relevant time 9 are of the view that the right of self-determination was firmly established in customary

166. Adopting an opposing position are the United Kingdom and the United States, who claimed that the right to self-determination did not crystallise in customary international law by 1960 at the time of the adoption of Resolution 1514.[147] The United Kingdom, in particular, explained that in subsequent General Assembly resolutions and other international instruments "[t]he *principle* was elaborated upon, though *not transformed* into a 'right'."[148] (emphasis added) But this contradicts some express positions previously adopted by the United Kingdom. For instance, in the proceedings of the *Kosovo Advisory Opinion*, it unequivocally stated that:

> "The principle of self-determination was articulated *as a right* of all colonial countries and peoples by General Assembly resolution 1514(XV)".[149] (emphasis added)

167. Also, when speaking before the Security Council on the question concerning the situation in the Falkland Islands, the United Kingdom said that:

> "182. It is true that we took the position in the 1960s that self-determination was a principle and not a right. However, in 1966 the two International Covenants ... were adopted ...
>
> 183. The United Kingdom has ratified both ... Furthermore, in 1970, the General Assembly adopted by consensus - that is, with the United Kingdom joining in the consensus - resolution 2625 (XXV), containing

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international law by 1965. *Cf.* Written Statements of Argentina, Belize, Brazil, Djibouti, Guatemala, Mauritius, Namibia, the Netherlands and South Africa.

[146] Written Statement of Argentina, para. 48; Written Statement of Belize, para. 3.7; Written Statement of Brazil, para. 17; Written Statement of Djibouti, paras. 31-32; Written Statement of Mauritius, paras. 6.29 and 6.32; Written Statement of the Netherlands, para. 3.4; Written Statement of Nicaragua, paras. 8-9; and Written Statement of South Africa, para. 63.

[147] Written Statement of the United Kingdom, paras. 8.24, 8.31 and 8.65 *et seq*; and Written Statement of the United States, paras. 4.22, 4.29 and 4.31.

[148] Written Statement of the United Kingdom, para. 8.66.

[149] Written Statement of the United Kingdom in the *Request for an Advisory Opinion of the International Court of Justice on the Question "Is the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo in Accordance with International Law?"*, para. 5.2. *See also* Written Statement of Belize, para. 3.7.

the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States ...

Not only has my country endorsed the right to self-determination in the sense of the Charter, the Covenants and this Declaration, but we have gone a great deal further to disprove the allegation that we are the colonial Power *par excellence*. Since General Assembly resolution 1514 (XV), containing the Declaration on the Granting of Independence to Colonial Countries and Peoples, was adopted at the end of 1960, we have brought to sovereign independence and membership of the United Nations no less than 28 States".[150]

168. The United Kingdom also claimed that the content of "the principle of equal rights and self-determination", as recognised by Article 1(2) of the UN Charter, was not defined by the Charter.[151] However, as the African Union has previously stated,[152] it is noteworthy that the French version of Article 1(2) of the UN Charter – *equally authoritative* as the English version – refers to the *right* (droit) to self-determination of peoples:

> "Développer entre les nations des relations amicales fondées sur le respect du principe de l'égalité de droits des peoples et leur *droit* à disposer d'eux-mêmes, et prendre toutes autres mesures propres à consolider la paix du monde." (emphasis added)

169. The United Kingdom also claimed that the General Assembly resolutions on decolonisation adopted during the 1960s "were non-binding and did not reflect extant obligations under international law".[153] But, this generalisation fails to consider the importance of the Assembly's resolutions, as declaratory evidence of

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[150] Security Council Official Records, 37th year, 2366th Meeting, 25 May 1982, New York, S/PV.2366, paras. 182 and 183.

[151] Written Statement of the United Kingdom, para. 8.66.

[152] Written Statement of the African Union, para. 81. See also Written Statement of Belize, para. 2.3 and Written Statement of Mauritius, para. 6.22.

[153] Written Statement of the United Kingdom, para. 8.69.

international practice, concerning the existence of a right to self-determination in customary international law.

170. Moreover, the process of decolonisation of a significant number of Non-Self-Governing and Trust Territories during the 1950s and early 1960s, having occurred contemporaneously with the adoption of these General Assembly resolutions, is evidence of a wide acceptance by the administering powers of the existence of a *right* to self-determination under international law[154]. In fact, thirty Non-Self-Governing and Trust Territories achieved independence *before* the adoption of Resolution 1514 and 19 countries between 1960 and 1965.[155]

171. The resolutions addressing decolonisation of the 1950s and 1960s, also consistently and explicitly referred to the *right* to self-determination.[156] As early as 1950, General Assembly resolution 421(V) referred to "the right of peoples and nations to self-determination".[157] Two years later Resolution 545(VI) in 1952 decided that "States having the responsibility for the administration of Non-Self-Governing Territories, should promote the realization of [the right of self-determination], in conformity with the Purposes and Principles of the United Nations".[158]

172. For example, General Assembly resolution 1188 (XII) adopted in 1957, provided in clear and mandatory terms that Member States were under an obligation to promote and facilitate the exercise of the right to self-determination by colonial peoples. It stated:

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[154] Written Statement of the African Union, paras. 97-98. Also, Written Statement of Brazil, para. 13; Written Statement of Mauritius, para. 6.33; and Written Statement of the Netherlands, para. 3.7.

[155] Written Statement of the African Union, paras. 97-98.

[156] See e.g., Written Statement of Belize, paras. 2.5-2.12; and Written Statement of Mauritius, paras. 6.23-6.29.

[157] General Assembly Resolution 421(V), *Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights*, (A/RES/421 (V) of 4 December 1950), para. 6.

[158] 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*, (A/RES/545(VI) of 5 February 1952), para. 1.

(a) Member States shall, in their relations with one another, give due respect to the right of self-determination;

(b) Member States having responsibility for the administration of Non-Self-Governing Territories shall promote the realization and facilitate the exercise of this right by the peoples of such Territories.[159]

173. Subsequent resolutions adopted by the General Assembly continued to affirm the existence of a right to self-determination.[160]

174. The African Union notes the observation of The Netherlands that the principal concern of abstaining States was not the use of the term "right" with regard to the right to self-determination, but a concern that the scope of that right was not confined to the populations of Non-Self-Governing Territories.[161] By the time Resolution 1514 was adopted in 1960 any opposition to the General Assembly's continued affirmation of the *right* to self-determination had waned.[162]

175. Further, the United Kingdom and the United States submit that the negotiation history of Article 1, Common to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights reveals a lack of consensus amongst Member States, as to the existence, meaning and scope of a right to self-determination that continued to exist at the time the Covenants were adopted in 1966.[163] The United States observed that, during the drafting process, the United Kingdom voted to delete draft Article 1.[164] But, the United Kingdom ultimately *abstained* in the final vote on adoption of draft Article

[159] General Assembly Resolution 1188(XII), *Recommendation concerning international respect for the right of peoples and nations to self-determination* (A/RES/1188(XII) of 11 December 1957) (hereinafter "**Resolution 1188**"), adopted by 54 votes in favour, 0 against, and 13 abstentions, Operative Para. 1, subparagraphs (a) and (b). Operative Paragraph 1, subparagraphs (a) and (b).

[160] Written Statement of the African Union, para. 93.

[161] Written Statement of the Netherlands, para. 3.6.

[162] See e.g. Written Statement of Mauritius, para. 6.27.

[163] Written Statement of the United Kingdom, para. 8.70; and Written Statement of the United States, paras. 4.37-4.39.

[164] Written Statement of the United States, para. 4.37.

1.[165] Draft Article 1 was approved in 1955 by the Third Committee of the General Assembly in November 1955 by 41 votes in favour to none, with 17 abstentions.[166]

176. The division of opinion between those States that considered self-determination as a political principle and those who considered it to be a legal right was resolved early on in negotiations.[167] It appears from the Report of the Third Committee of the General Assembly that some States were concerned that Article 1 would impose on colonial powers greater obligations than the Charter itself, in that Non-Self-Governing Territories would be granted the immediate right to independence rather than progressively.[168]

177. Further, the United States claimed that State practice during the 1950s and 1960s was not extensive and virtually uniform, so as to indicate a general acceptance of the existence of the right to self-determination in international law on the basis that in some instances the political status of a Non-Self-Governing Territory changed "without prior attempt to ascertain the freely expressed wishes of the people of the territory".[169] However, contrary to the interpretation of State practice offered by the United States, and as comprehensively noted by Mauritius, in the majority of cases concerning Non-Self-Governing Territories plebiscites or elections were organised or supervised by the United Nations before those territories became independent or integrated with other States.[170]

178. There is, thus, no doubt that the right to self-determination was part of customary international law at the time of adoption of Resolution 1514 and that its customary content, meaning and scope were clear at the critical moment of the separation of the Chagos Archipelago from Mauritius in 1965.

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[165] General Assembly, *Draft International Covenants on Human Rights: Report of the Third Committee*, (A/3077 of 8 December 1955) (hereinafter **"Report of the Third Committee of the General Assembly"**), para. 74.

[166] *Loc. cit.*

[167] Written Statement of Mauritius, para. 6.24.

[168] Report of the Third Committee of the General Assembly, para. 30.

[169] Written Statement of the United States, para. 4.71.

[170] Written Statement of Mauritius, para. 6.44.

179. The evolution of the principle of self-determination into a right by the end of the 1950s was inextricably linked to the process of decolonisation. As the Court affirmed, Resolution 1514 became "the basis for the process of decolonization".[171]

III. The Right to Self-Determination Was and Is Still Intrinsically Linked to the Right to Territorial Integrity

180. The United Kingdom stated that the formulations of the principle of self-determination are silent as to the territory on which the people is living.[172] This is incorrect.

181. As emphasised in the Written Statement of the African Union, at the critical date the right to self-determination was intrinsically linked to the principle of territorial integrity, in that, in the context of decolonisation, a people could only exercise its right within a territorial unit.[173] As a matter of customary international law, a people can only exercise its right of self- determination within a territory. This had already been confirmed by Resolution 1514.[174] This position is also shared by the majority of States who have commented on the issue in these proceedings.[175]

182. The connection between self-determination and territorial integrity, as pertaining to the fact that the definition of *people* was based on the territory on which they lived, it was rightly explained, is that:

> "in the context of decolonization the right of self-determination was applied to all inhabitants of a colonial territory and not to minority, ethnical groups or segments of the population within that territory.

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[171] *Western Sahara Advisory Opinion*, p.32, para. 57.

[172] Written Statement of the United Kingdom, para. 8.28.

[173] Written Statement of the African Union, paras. 135-157.

[174] **Dossier No. 55**, Resolution 1514 (XV), *op. cit.*, para. 6.

[175] E.g., Written Statement of Argentina, paras. 38-45; Written Statement of Belize, paras. 3.1-3.13; Written Statement of Brazil, paras. 20-24; Written Statement of Mauritius, para. 6.50(3); Written Statement of Djibouti, paras. 35-42; and Written Statement of Namibia, p. 3.

> The holder of the right of self-determination or 'right to decolonization' was thus primarily territorially defined."[176]

183. A corollary of the fact that the right to self-determination was to be exercised within a specific territorial unit, was that the unit in question could not be dismembered *prior* to the exercise of the right of self-determination.[177] This was clearly set out in the famous Paragraph 6 of Resolution 1514 (XV), which provided that:

> "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."[178] (emphasis added)

184. However, against the conviction of the majority of the States participating in these proceedings, [179] the United Kingdom and the United States maintained that Paragraph 6 did not reflect a rule of customary international law in 1965.[180] They contended that there was no uniform interpretation of the meaning of that Paragraph or a uniform State practice confirming it.[181]

185. The United Kingdom maintained that the language of Paragraph 6 was "at most of statement of policy not law".[182] Both the United States and the United Kingdom further suggest that it related to the territorial integrity of newly independent states, on the basis of comments made by Indonesia, Iran, Pakistan, Tunisia and Cyprus in 1960.[183]

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[176] Written Statement of the Netherlands, para. 3.17.

[177] See paras. 142 to 157 of the Written Statement of the African Union.

[178] **Dossier No. 55**, Resolution 1514 (XV), *op. cit.*, para. 6.

[179] E.g., Written Statement of Argentina, paras. 38-45; Written Statement of Belize, paras. 3.1-3.13; Written Statement of Brazil, paras. 20-24; Written Statement of Mauritius, para. 6.50(3); Written Statement of Djibouti, paras. 35-42; Written Statement of Namibia, p. 3; Written Statement of Nicaragua, para. 9.

[180] Written Statement of the United Kingdom, paras. 8.31-8.61; and Written Statement of the United States, paras. 4.47-4.72.

[181] Written Statement of the United Kingdom, paras. 8.37-8.46; and Written Statement of the United States, paras. 4.47-4..49.

[182] Written Statement of the United Kingdom, para. 8.36.

[183] *Ibid.*, paras. 8.40-8.45; and Written Statement of the United States, paras. 4.47-4.50.

186. A close analysis, however, yields different conclusions. ***First***, there is nothing in the language of Paragraph 6 that suggests that it is a statement of policy, rather than law. In fact, the terms of Paragraph 6 are strictly legalistic. It refers to the legal concepts of "national unity" and "territorial integrity", as well as to an international treaty, namely "the Charter of the United Nations".

187. Actually, the United Kingdom is contradicting its own positions. On 7 December 1967, during the discussions of the Fourth Committee on the implementation of Resolution 1514, the United Kingdom highlighted the importance of the principle of territorial integrity in Paragraph 6, as it said:

> "The term 'territorial integrity' as used in paragraph 6 of resolution 1514 (XV), referred to the wholeness and indivisibility of Territories which had been administered as a single unit – for example the former Belgian Congo and Kenya. That was the principle which the Organization of the African Unity (OAU) had wisely acknowledged in recognizing all former colonial boundaries, however illogical."[184]

188. ***Second***, it is clear that the prohibition of any attempt at the "partial or total disruption of the national unity and territorial integrity of a country", as set out in Paragraph 6, was applicable to colonial territories *prior* to their independence. Argentina has aptly explained that:

> "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

[184] **Dossier No. 201**, Fourth Committee, summary record, 1741st Meeting, Thursday, 7 December 1967, 11:00 a.m. (A/C.4/SR.1741), para. 31.

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."[185]

189. Thus, the comments of Indonesia, Iran, Pakistan, Tunisia and Cyprus, relied on by the United Kingdom and the United States do not support their argument that Paragraph 6 of Resolution 1514 did not apply to Non-Self-Governing Territories *prior* to their independence. None of these comments explicitly excludes the application of Paragraph 6 to Non-Self-Governing Territories *prior* to their independence. At best, they might support an argument that Paragraph 6 *also* applied to such Territories, *after* they had achieved independence:

- Indonesia's comments are no indication that Paragraph 6 did not apply to Non-Self-Governing Territories *prior* to their independence.[186] They focus on the retention of West new Guinea/West Irian by the Netherlands after Indonesia's independence. The retention had taken place prior to Indonesia's independence, in 1949, when The

[185] Written Statement of Argentina, para. 40.

[186] **Dossier No. 67**, General Assembly, verbatim record, 15th Session, 936th Plenary Meeting, Monday, 5 December 1960, 8:30 p.m. (A/PV.936), para. 55. The first comment relied upon by the United Kingdom and the United States refers to the concept of territorial integrity in paragraphs 4, 6 and 7 of Resolution 1514 (not only paragraph 6) and notes:

> "Moreover, it is a matter of great importance to us that this declaration is designed to prevent any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a country. It emphatically declares in paragraphs 4, 6 and 7 that the integrity of the national territories of peoples which have attained independence shall be respected. This is a rejection of colonial activities which create disputes such as that of Western Irian between Indonesia and the Netherlands. It is a categorical rejection, therefore, of the Dutch colonial policy which, as I have already pointed out, misuses the sacred right of self-determination in order to continue colonialism in an integral part of our national territory, West Irian."

Dossier No. 74, General Assembly, verbatim record, 15th Session, 947th Plenary Meeting, Wednesday, 14 December 1960, 3:00 p.m. (A/PV.947), para. 9. The second comment relied on by the United Kingdom and the United States confirms that Paragraph 6 of the Resolution applies to a situation of disruption of territorial integrity or national unity *after* independence but does not exclude its application prior to the country's independence:

> "When drafting this document my delegation was one of the sponsors of paragraph 6, and in bringing it into the draft resolution we had in mind the continuation of Dutch colonialism in West Irian is a partial disruption of the national unity and the territorial integrity of our country."

Netherlands separated West New Guinea from the rest of Indonesia. Indonesia's comments were made after it became independent.

- Iran's comments do not specifically refer to Paragraph 6 of Resolution 1514. Nowhere did it state that the Paragraph *did not apply* to Non-Self-Governing Territories *prior* to their independence.[187]

- Pakistan's comments do not even support the fact that Paragraph 6 applies to Non-Self-Governing Territories *after* they have achieved independence.[188]

- Tunisia's comments do not discuss Paragraph 6 altogether. They refer, *inter alia*, to disturbances caused by Belgium in the Congo after the country's independence, and concluded that there must be a commitment from colonial powers to respect the independence, sovereignty and territorial integrity of new States.[189]

- Finally, Cyprus's comments are a general reference to the fact that Paragraph 6 relates to the colonial policy of "divide and rule". There is no indication as to whether it refers to partial or total disruption of the

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[187] **Dossier No. 57**, General Assembly, verbatim record, 15th Session, 926th Plenary Meeting, Monday, 28 November 1960, 3:00 p.m. (A/PV.926), para. 71. The relevant passage reads as follows:

> "Member States, and especially the former Administering Powers, must, moreover, refrain from any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country. Thus, it would be desirable if, in the declaration on the termination of colonialism, all Member States would solemnly reaffirm the undertaking they assumed under the United Nations Charter never in any way whatever to violate the national sovereignty and territorial integrity of another State."

[188] **Dossier No.61**, General Assembly, verbatim record, 15th Session, 930th Plenary Meeting, Thursday, 1 December 1960, 10:30 a.m. (A/PV.930), para. 73. The relevant passage reads as follows:

> "Lest our fellow Members be inclined to think that, in putting forth these imperatives without clarification, we are become oblivious of certain related demands of international security and a stable world order, we would point out the provisions of paragraph 6. This paragraph embodies an important safeguard against any attempt to disrupt the national unity and territorial integrity of a country."

[189] **Dossier No.60**, General Assembly, verbatim record, 15th Session, 929th Plenary Meeting, Wednesday, 30 November 1960, 3:00 p.m. (A/PV.929), para. 126.

national unity and territorial integrity of a country prior or after independence.[190]

190. To the extent that these comments support an argument that Paragraph 6 applied to Non-Self-Governing Territories, *after* they had achieved independence, the African Union takes no issue with this interpretation of Paragraph 6. It submits that Paragraph 6 was sufficiently broad to cover territorial integrity of Non-Self-Governing Territories *prior to and after their independence.*

191. ***Third***, General Assembly and Security Council resolutions, as well as State practice, in the years immediately following the adoption of Resolution 1514, leave no room for doubt that Paragraph 6 prevented any State from dismembering a colonial unit, *prior* to the exercise of the right to self-determination, and that this was a rule of customary international law in 1965. A vast number of General Assembly resolutions, adopted shortly after Resolution 1514, support the fact that Paragraph 6 protected the territorial integrity of colonial territories.[191] For instance, Resolution 1573 (XV) on the Question of Algeria, adopted just a few days after Resolution 1514, stated:

> "*Taking note* of the fact that the two parties concerned have accepted the right of self-determination as the basis for the solution of the Algerian problem ...
>
> *Convinced* that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory ...
>
> 2. *Recognises the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the*

[190] **Dossier No.72**, General Assembly, verbatim record, 15th Session, 945th Plenary Meeting, Tuesday, 13 December 1960, 3:00 p.m. (A/PV.945), para. 93. The comment reads:

> "This is essential in order to counter the consequences of the policy of 'divide and rule', which often is the sad legacy of colonialism and carries its evil effects further into the future."

[191] Written Statement of the African Union, paras. 154-175. See also, e.g., Written Statement of Mauritius, paras. 6.51-6.55; Written Statement of the Marshall Islands, para. 20; Written Statement of Belize, paras. 3.5-3.6.

right of self-determination on the basis of respect for the unity and territorial integrity of Algeria".[192] (emphasis added)

192. A year after Resolution 1514 was adopted, Resolution 1654 (XVI) expressed concerns that "contrary to the provisions of paragraph 6 of the Declaration, acts aimed at *the partial or total disruption of national unity and territorial integrity* are still being carried out *in certain countries in the process of decolonisation* ..."[193] (emphasis added)

193. And, again, a month after the issuance of Resolution 1654, Resolution 1724 (XVI) on the Question of Algeria recalled that the right to self-determination had to be implemented respecting the territorial integrity of Algeria:

> "*Recalling* further its resolution 1573 (XV) of 19 December 1960 by which it recognized the right of the Algerian people to self-determination and independence, the imperative need for adequate and effective guarantees to ensure the successful and just implementation of the right to self-determination on the basis of respect for the unity and territorial integrity of Algeria, and the fact that the United Nations has a responsibility to contribute towards the successful and just implementation of that right, ...
>
> *Calls upon* the two parties to resume negotiations with a view to implementing the right of the Algerian people to self-determination and independence respecting the unity and territorial integrity of Algeria."[194]

194. No less than 22 General Assembly and Security Council resolutions were issued, endorsing the principle embodied in Paragraph 6 of Resolution 1514 that the

[192] General Assembly Resolution 1573 (XV), Question of Algeria (A/RES/1573(XV) of 19 December 1960), Preambular paras. 9 and 11, and Operative Para. 2.

[193] 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, (A/RES/1654(XVI) of 27 November 1961), Preambular para. 6.

[194] General Assembly Resolution 1724 (XVI), Question of Algeria, (A/RES/1724(XVI) of 20 December 1961), Preambular para. 7.

territorial integrity of colonial units prior to independence must be respected.[195] They related to South West Africa, [196] Basutoland, Bechuanaland and Swaziland, [197] Oman, [198] Aden, [199] Nauru, [200] Equatorial Guinea, [201] Gibraltar, [202] Comoro Archipelago, [203] French Somaliland (Djibouti), [204] and 26 Non-Self Governing Territories, including Mauritius.[205]

195. What is remarkable about these resolutions is that they were adopted (i) prior to the detachment of the Chagos Archipelago from Mauritius; (ii) prior to the independence of Mauritius; or (iii) shortly thereafter.

196. State practice during the relevant period further demonstrates that there was a customary international law principle that territorial integrity of colonial units had to be respected so that the people could exercise their right to self-determination.

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[195] Written Statement of Mauritius, para. 6.55.

[196] General Assembly, 18th Session, Question of South West Africa, (A/RES/1899(XVIII) of 13 November 1963); General Assembly, 20th Session, Question of South West Africa, (A/RES/2074(XX) of 17 December 1965); General Assembly, 5th Special Session, Question of South West Africa, (A/RES/2248(S-V) of 19 May 1967); General Assembly, 22nd Session, Question of South West Africa, (A/RES/2372(XXII) of 12 June 1968) (adopted by 96-2 with 18 abstentions); Security Council, The Situation in Namibia, (S/RES/264 of 20 March 1969) (adopted by 13-0 with 2 abstentions); Security Council, The Situation in Namibia, (S/RES/269 of 12 August 1969) (adopted by 11-0 with 4 abstentions).

[197] General Assembly, 17th Session, Question of Basutoland, Bechuanaland and Swaziland, (A/RES/1817(XVII) of 18 December 1962); General Assembly, 20th Session, Question of Basutoland, Bechuanaland and Swaziland, (A/RES/2063(XX) of 16 December 1965).

[198] General Assembly, 22nd Session, Question of Oman, (A/RES/2302(XXII) of 12 December 1967); General Assembly, 21st Session, Question of Oman, (A/RES/2238(XXI) of 20 December 1966).

[199] General Assembly, 21st Session, Question of Aden, (A/RES/2183(XXI) of 12 December 1966).

[200] General Assembly, 22nd Session, Question of the Trust Territory of Nauru, (A/RES/2347(XXII) of 19 December 1967).

[201] General Assembly, 21st Session, Question of Equatorial Guinea, (A/RES/2230(XXI) of 20 December 1966); General Assembly, 22nd Session Question of Equatorial Guinea, (A/RES/2355(XXII) of 19 December 1967).

[202] General Assembly, 22nd Session, Question of Gibraltar, (A/RES/2353(XXII) of 19 December 1967).

[203] General Assembly, 28th Session, Question of Comoro Archipelago, (A/RES/3161(XXVIII) of 14 December 1973); General Assembly, 29th Session, Question of Comoro Archipelago, (A/RES/3291(XXIX) of 13 December 1974).

[204] General Assembly, 30th Session Question of French Somaliland, A/RES/3480(XXX) of 11 December 1975).

[205] **Dossier No. 171**, Resolution 2232 (XXI), *op. cit.*; **Dossier No. 198**, Resolution 2357 (XXII), *op. cit.*

197. The United States insists that there was no uniform State practice in this respect.[206] In support of its argument, it relies on (i) the decolonisation of British Cameroons and Ruanda-Urundi, which it says, were each "split into two" and each part took a different path to independence; (ii) the decolonisation of Jamaica, where Jamaica was separated from the Cayman Islands and the Turks and Caicos Islands, but retained governing authority over both territories, which did not accede to independence at the same time as Jamaica and remained separate Non-Self-Governing Territories; (iii) several Non-Self-Governing Territories, which "chose another status" than independence; and (iv) several Non-Self-Governing Territories, which changed status "without a prior attempt to ascertain the freely expressed wished of the people of the territory".[207]

198. Again, this is incorrect. As shown above, there was a principle of customary international law in 1965, whereby *the territorial integrity* of the colonial unit had to be maintained until the right to self-determination had been freely exercised.

199. In this respect, the African Union notes that most of the examples relied on by the United States in support of an alleged contrary State practice (*i.e.*, States that have voluntarily foregone their right to territorial integrity) are plainly irrelevant. The facts that certain Non-Self-Governing Territories freely chose another status than independence, or that others acceded to independence without an attempt to ascertain the wish of the people of the territory, does not contradict the fact the *territorial integrity* of the colonial unit had to be maintained until the right to self-determination *had been freely exercised.* These comments only address the three examples that are connected to the question at stake, namely Ruanda-Urundi, British Cameroons and Jamaica.

200. As correctly emphasised by Mauritius, the only exception to the principle that a new State is formed from the totality of the previous Non-Self-Governing Territory is where there have been circumstances in which maintaining the

[206] Written Statement of the United States, paras. 4.65-4.72.

[207] *Ibid.*, paras. 4.69-4.72.

integrity of the unit proved impossible as a consequence of disturbances.[208] This is precisely what happened in respect of Ruanda-Urundi.[209] The General Assembly referred to the fact that efforts to maintain the unity of Ruanda-Urundi did not succeed. It should nevertheless be recalled that all prior General Assembly resolutions had emphasised that Ruanda-Urundi should accede to independence "*as a single, united and composite State*".[210]

201. Where there was otherwise a question as to whether the territorial integrity should be altered (by merger or division) the United Nations supervised plebiscites, which were almost invariably held.[211] This was, in fact, the case in respect of British Cameroons,[212] the very example relied on by the United States.

202. Further, as acknowledged by the United States, the Turks and Caicos and Cayman Islands *were given the possibility to become independent* and voted to remain United Kingdom's colonies in 1962.[213]

203. Finally, the African Union notes that the United Kingdom has invoked the 'persistent objector' rule and submitted, in the alternative, that "[e]ven if there had been a customary "right" for the people of a non-self-governing territory to territorial integrity in the 1960s, it would not be binding on the United Kingdom, because it was a persistent objector".[214] The United Kingdom stated that it has found some elements of Resolution 1514 unacceptable, including the language of Paragraph 6 pertaining to the territorial integrity of a country.[215]

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[208] Written Statement of Mauritius, para. 6.58 referring to Ruanda-Urundi, General Assembly, 16th Session, The future of Ruanda-Urundi, (A/RES/1746(XVI) of 27 June 1962) (hereinafter "**Resolution 1746(XVI)**").

[209] *Loc. cit.*

[210] *Loc. Cit.*

[211] Written Statement of Mauritius, paras. 6.58-6.60.

[212] General Assembly, 13th Session, The future of the Trust Territory of the Cameroons under United Kingdom administration, (A/RES/1350(XIII) of 13 March 1959; and General Assembly, 14th Session, The future of the Trust Territory of the Cameroons under United Kingdom administration: organization of a further plebiscite in the northern part of the Territory, (A/RES/1473(XIV) of 12 December 1959).

[213] Written Statement of the United States, para. 4.68.

[214] Written Statement of the United Kingdom, paras. 8.59-8.61 and 8.71.

[215] Written Statement of the United Kingdom, para. 8.61.

204. But, as already explained above, the United Kingdom has previously reaffirmed in 1967 as "a basic principle" the "wholeness and indivisibility of Territories which had been administered as a single unit."[216] Furthermore, the United Kingdom does not appear to have objected to the *existence* of a right to self-determination at the relevant date. Rather, the United Kingdom appears to have been concerned that the right to self-determination could be interpreted as imposing a duty on administering powers to grant Non-Self-Governing Territories *immediate* independence.[217]

205. In any event, it is trite doctrine that once a rule of customary international law is established that a State cannot unilaterally exempt itself from its obligations under that rule.

206. As a Non-Self-Governing Territory, Mauritius was expected to have enjoyed the protections of the Charter. While it may have been not evident at the time of the drafting of the Charter that the principle of self-determination applied to Non-Self-Governing Territories, the Court, in its seminal *Namibia Advisory Opinion*, recognised that the

> "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 yet attained a full measure of self-government*" (Art. 73). Thus it clearly embraced territories under a colonial regime."[218] (emphasis added)

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[216] Written Statement of Belize, para. 3.7 referring to **Dossier No. 201**, Fourth Committee, 1741st Meeting, *op. cit.*, para. 31.

[217] Report of the Working Group of Officials on the Question of Ratification of the International Covenants on Human Rights, 1 August 1974, Annex D, para. 5, Annex 86 to Written Statement of the United Kingdom. See also Written Statement of Mauritius, para. 6.40.

[218] *Namibia Advisory Opinion*, *op. cit.*, p. 31, para. 52.

IV. The Decolonisation of Mauritius Was Not Lawfully Completed in 1968

207. Neither the United Kingdom nor the United States sought to establish that during the decolonisation of Mauritius the United Kingdom respected the right to self-determination, including the right to territorial integrity. They merely argued that Resolution 2066 did not reflect a mandatory obligation.[219] The United States further maintained that States strongly disagreed over the language in the context of Resolutions 2332 (XXI) and 2357 (XXII), suggesting, that they, therefore, did not represent *opinio juris* at the time.[220] As has been clarified in the Written Statement of the African Union, this is incorrect.

208. The African Union has submitted that the decolonisation of Mauritius was not lawfully completed, in that the relevant territorial unit for self-determination, Mauritius, *including* the Chagos Archipelago, was dismembered prior to the independence of Mauritius without seeking the free consent of the population as a whole.[221] This is evidenced by General Assembly Resolution 2066, which explicitly refers to the violation by the United Kingdom of the right to self-determination and territorial integrity of Mauritius, as well as by Resolutions 2232 and 2357, which also relate to the right to self-determination and its corollary of territorial integrity.[222] Many States shared the same position.[223]

209. Resolution 2066 used *mandatory* language in relation to the detachment of the Chagos Archipelago. It noted with deep concern any step taken by the United Kingdom of establishing a military base as a *contravention* to Resolution 1514

[219] Written Statement of the United Kingdom, paras. 8.49-8.54; and Written Statement of the United States, paras. 4.55-4.57.

[220] Written tatement of the United States, paras. 4.57-4.58.

[221] Written Statement of the African Union, paras. 129-198.

[222] *Ibid.*, paras. 158-175.

[223] Written Statement of Argentina, paras. 48-51 ; Written Statement of Belize, paras. 4.1-4.2 ; Written statement of Brazil, paras. 23-24 ; Written Statement of Djibouti, paras. 35-42 ; Written Statement of India, paras. 57-65 ; Written Statement of Mauritius, paras. 6.62-6.108; Written Statement of Namibia, p. 3 ; Written Statement of Nicaragua, paras. 10-13; and Written Statement of South Africa, para. 78.

(XV).[224] The Resolution further confirmed that "the [United Kingdom] ha[d] not *fully implemented* Resolution 1514", invited the United Kingdom "to take effective measures with a view to the *immediate and full implementation* of the Resolution 1514" and called on it "to take no action which would dismember the Territory of Mauritius and *violate its territorial integrity*".[225]

210. Resolutions 2232 and 2357 were adopted without a negative vote. This, alone, puts into question the assertion of the United States, that States strongly disagreed over the language on territorial integrity in the context of Resolutions 2332 and 2357. Had their disagreement been as strong as alleged by the United States, the relevant States, *including the United Kingdom and the United States themselves*, would have voted against them.

211. Resolution 2232, adopted in 1966, recalled Resolutions 1514 (XV) and 2066 (XX) and reiterated "[the General Assembly's] 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)".[226]

212. The Resolution reaffirmed "the inalienable right of the people of these Territories to self-determination and independence" and called upon "the administering Powers to implement without delay the relevant resolutions of the General Assembly".[227]

213. The United Kingdom did not abide by Resolution 2232 (XXI). Ten days after the General Assembly had passed the Resolution, on 30 December 1966, the United Kingdom concluded a bilateral agreement with the United States, by exchange of

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[224] **Dossier No. 146**, Resolution 2066 (XX), *op. cit.*, Preambular para. 5.

[225] *Ibid*, Preambular para. 4 and paras. 3 and 4.

[226] **Dossier No. 171**, Resolution 2232 (XXI), *op. cit.*, para. 4.

[227] *Ibid*, paras. 2 and 3.

notes, on the Availability for Defence Purposes of the British Indian Ocean Territory.[228]

214. This fact did not escape the attention of the Special Committee. On 5 December 1967, the Special Committee transmitted its Sixth Report, which explicitly stated that it had once again called on the United Kingdom "to return to Mauritius ... the islands detached from [it] in violation of [its] territorial integrity and to desist from establishing military installations therein".[229]

215. Moreover, a number of representatives in the Committee explicitly condemned the United Kingdom's failure to comply with its obligations under Resolution 2066,[230] with the Indian representative explicitly stating that the dismemberment of the Chagos Islands from Mauritius constituted a "clear violation of General Assembly resolution 2066 (XX)".[231]

216. Shortly after the Special Committee transmitted its Sixth Report, the Fourth Committee of the UN General Assembly met again to discuss the implementation of Resolution 1514 (XV). [232] During those discussions, a number of representatives condemned the United Kingdom's actions in respect of Mauritius and the Chagos Islands. [233] At the conclusion of its meetings, the Fourth Committee adopted draft resolution A/C.4/L.899 and subsequently recommended

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[228] "*Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the Availability for Defence Purposes of the British Indian Ocean Territory*" (signed an entered into force 30 December 1966) Treaty Series No. 15 (1967).

[229] **Dossier No. 254**, Report 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, Twenty-Second Session, 1967 (A/6700/Rev.1 (Part III), p. 37.

[230] **Dossier No. 254**, Report of the Special Committee, Twenty-Second Session, *op. cit.*, p. 48 (Polish representative) and p. 49 (Bulgarian representative).

[231] **Dossier No. 254**, Report of the Special Committee, Twenty-Second Session, p. 48.

[232] **Dossier No. 201**, Fourth Committee, 1741st Meeting, *op. cit.*; **Dossier No. 202**, Fourth Committee, summary record, 1750th Meeting, Thursday, 14 December 1967, 4:05 p.m. (A/C.4/SR.1750); **Dossier No. 203**, Fourth Committee, summary record, 1751st Meeting, Friday, 15 December 1967, 11:00 a.m. (A/C.4/SR.1751); **Dossier No. 204**, Fourth Committee, summary record, 1752nd Meeting, Friday, 15 December 1967, 3:25 p.m. (A/C.4/SR.1752); **Dossier No. 205**, Fourth Committee, summary record, 1755th Meeting, Saturday, 16 December 1967, 3:30 p.m. (A/C.4/SR.1755).

[233] **Dossier No. 204**, Fourth Committee, 1752nd Meeting, *op. cit.*, paras. 3 (Representative of India) and 82-84 (Representative of Poland).

it to the General Assembly.[234] The text of that resolution reflected what would become General Assembly Resolution 2357 (XXII).

217. Resolution 2357 recalled, *inter alia*, Resolutions 1514 (XV), 2066 (XX) and 2232 (XXI), and referred to the Special Committee's Sixth Report, including the chapter on Mauritius. In this Resolution, the General Assembly expressed its deep concern

> "at the information contained in the Report of the Special Committee on the continuation of policies which aim, among other things, at the disruption of the territorial integrity of some of these Territories and at the creation by the administering Powers of military bases and installations in contravention of the relevant General Assembly resolutions".[235]

218. It, further, reaffirmed "the inalienable right of the people of these Territories to self-determination and independence". Furthermore, it called "upon the administering Powers to implement without delay the relevant resolutions of the General Assembly" and reiterated "[the General Assembly's] 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)".[236]

219. Therefore, in relation to the facts relevant to Question (a), of whether the decolonisation of Mauritius was lawfully completed, it is submitted that:

(i) the relevant unit of decolonisation was the entire territory of Mauritius, including the Chagos Archipelago,

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[234] **Dossier No. 205**, Fourth Committee, 1755th Meeting, *op. cit.*, p. 562; **Dossier No. 200**, Report of the Fourth Committee, "Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples – Territories not Considered Separately" (A/7013 of 18 December 1967), pp. 15 and 22-24.

[235] **Dossier No. 198**, Resolution 2357 (XXII), *op. cit.*, Preambular para. 6.

[236] *Ibid*, ., Preambular paras. 1, 2 and 5, and paras. 2-4.

(ii) the United Nations recognised the entire territory of Mauritius as the unit of self-determination,

(iii) the decision of the administering power to dismember Mauritius *prior* to independence had no effect on the self-determination unit, which remained the entire territory of Mauritius,

(iv) the right of self-determination had to be exercised according to the freely expressed will of the people of the territory concerned,

(v) the detachment of the Chagos Archipelago was carried out in secret without any attempt to ascertain the view of the people of Mauritius, and

(vi) that the "Agreement" of the Council of Ministers of Mauritius was not capable of meeting the requirements of self-determination, in that Mauritius in fact had no choice at all.[237]

220. On that very last point, *viz.*, the Agreement of 1965, it should be asked how can a colony manage under the authority of a colonial power, if it was threatened, either to accept the detachment of part of its territory or remain a colony forever? The African Union is not inviting the Court to consider the validity of the 1965 Agreement, because it is not part of the legal question put before it. On the contrary, the use of that Agreement should be confined to the necessary facts required to ensure that neither freewill nor self-determination were exercised by the representatives of Mauritius or by the people of Chagos in 1965.

221. The African Union respectfully invites the Court to conclude that the decolonisation of Mauritius was not lawfully completed, in that the relevant

[237] Written Statement of Mauritius, paras. 6.62-6.108.

territorial unit for self-determination, Mauritius, *including* the Chagos Archipelago, was dismembered prior to the independence of Mauritius, without seeking the free consent of the population as a whole. In other words, the Court's answer should be in the *negative*.

222. The above demonstrates that there cannot be a sovereignty dispute or a territorial dispute between Mauritius and the United Kingdom, when one of them – the United Kingdom *in casu* – never had any title over a territory or could not even claim a title over a territory. Territorial titles can only be acquired in conformity with general international law. No State can acquire a title over a territory that it did not administer *in accordance with international law*. Moreover, no State can claim title over a territory, and the people attached to it, when it has violated the right of self-determination of that said people by depriving them of deciding on the future status of their territory. This is exactly what has happened in the case of the Chagos Archipelago.

223. The maxims *nemo auditur propriam turpitudinem allegans* and *ex injuria jus non oritur* are general principles of law that the Court has steadily recognised in its own case law and that should be taken into account in the present proceedings.[238] They imply that a State cannot derive a right from its own guilt or from an internationally wrongful act. And as shown by the African Union, as well as by other States in the present proceedings, the detachment of the Chagos Archipelago in 1965 constituted, and continues to the present day to constitute an internationally wrongful act, from which the United Kingdom cannot derive any right, and surely not a territorial title that would allow it to characterise the issue between Mauritius and the United Kingdom as an issue of (territorial) sovereignty.

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[238] *Gabcikovo-Nagymaros Project (Hungary/Slovakia), Judgment, I.C.J. Reports 1997*, p. 7 at p. 76, para. 133.

V. The Court Should Adopt a Broad Approach in Determining the Legal Consequences of the Continued Unlawful Administration of the Chagos Archipelago

224. In view of the above, the African Union's position in respect of Question (b) can be summed up as follows:

i) As a result of the continued administration by the United Kingdom of the Chagos Archipelago, the United Kingdom has violated, and continues to violate, a number of distinct international obligations of *erga omnes* character, (which as such, apply to Mauritius) *inter alia*: (i) the respect for the right to self-determination of the Mauritian people; (ii) the obligation to refrain from any act violating the territorial integrity or the national unity of Mauritius; and (iii) the fundamental human rights of Mauritian nationals, in particular those of the Chagossian origin.[239]

ii) The breach of international obligations by a State does not release that State from fulfilling those obligations. [240]

iii) The United Kingdom is under an obligation to complete the process of decolonisation of Mauritius, to bring the unlawful situation to an immediate end, and to give full reparation to Mauritius.

iv) Third States and international organisations are under an obligation to assist in the completion of the decolonisation of Mauritius, and to refrain from aiding or assisting the United Kingdom in its continued administration of the Chagos Archipelago and the maintenance of the present unlawful situation.

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[239] Written Statement of the African Union, para. 217.

[240] *Ibid.*, para. 219.

225. As already indicated in the present Written Comments, the African Union notes the submissions of the United Kingdom that Question (b) is "both vague and expressed in very broad terms".[241] The African Union is of the view that, on the contrary, Question (b) is clear. The Question is directed at the legal consequences that flow from a specific factual situation. As stated in paragraph 151 of the present Written Comments, in order to answer that Question, the Court will need to determine Question (a), namely, whether the process of decolonisation of Mauritius was lawfully completed, and whether any legal consequences arise in international law from the United Kingdom's continued administration of the Chagos Archipelago. Thus, as has happened in the past,[242] this Court is asked to identify the relevant legal principles and provide guidance on how those principles ought to be applied.

226. The African Union has already responded to claims that the Court should narrowly interpret Question (b) so as to limit its consideration to "issues that are relevant for the General Assembly with regard to the overall process of decolonization", and not the legal consequences that might arise for States.[243] It has been contended that, had the General Assembly intended for this Court to consider the legal consequences for States, it would have said so in express terms.[244] In addition, it was argued that according to its jurisprudence, the Court should take into consideration previous confirmations made by those States sponsoring the Request that "the only intention in submitting the request was to provide the General Assembly with the necessary legal parameters to guide the work of the General Assembly itself".[245]

227. This reading of the political statements made before, during or after the adoption of Resolution 71/292 is, again, very literal and restrictive and puts much into the mouths of others. Even though, these allegations do not say in what exact words

[241] Written Statement of the United Kingdom, para. 9.4.

[242] *Nuclear Weapons Advisory Opinion*, *op. cit.*, p. 234 para. 13; *Wall Advisory Opinion*, *op. cit.* p. 154, para. 38.

[243] Written Statement of Germany, paras. 131-132.

[244] Written Statement of Germany, para.133.

[245] Written Statement of Germany, para. 134.

such *exclusory* statements were made, the reference to guiding the work of the General Assembly *itself*, can never reveal an intent that the Assembly wishes to have an opinion that cannot be pursued by any parties beyond itself.

228. Moreover, Germany distinguished the present Questions from the question posed in the *Wall Advisory Opinion*, on the basis that the latter included specific reference to the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War, thereby implying that the General Assembly wanted to make specific reference to the obligations of third States under that Convention.[246] The African Union, however, submits that it is for this Court to determine *for which entities* the legal consequences arise in the present case. The African Union, thus, recalls the findings of the Court in the *Wall Advisory Opinion* that:

> "the Court considers that the question posed to it in relation to the legal consequences of the construction of the wall is not an abstract one, and moreover that *it would be for the Court to determine for whom any such consequences arise*."[247] (emphasis added)

229. Furthermore, matters of decolonisation, self-determination and territorial integrity are of concern *not only* to the United Nations but also to all States and interested international organisation; whether acting through the General Assembly or otherwise. This is reflected in Question (b) that refers to the consequences in international law, "including obligations reflected in the above-mentioned resolutions". In this regard the African Union recalls that Resolution 1514 calls upon *all States* to observe the provisions of the UN Charter, UN Declaration on Human Rights and the Declaration on the Granting of Independence to Colonial countries and Peoples. Pursuant to Operative Paragraph 7:

> "All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-

[246] Written Statement of Germany, para. 111.

[247] *Wall Advisory Opinion, op. cit.*, p. 155, para. 40.

interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."[248]

230. Further, the African Union recalls General Assembly Resolution 2625 (XXV) on the Declaration on Principles of Friendly Relations between States that:

> "Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle "[249]

231. General Assembly resolutions that reaffirm Resolution 1514 and address the implementation of the Declaration on the Granting of Independence to Colonial countries and Peoples have addressed "all States", as well as the administering States. For example, General Assembly Resolution 72/111 (2017):

> "12. *Calls upon* all States, in particular the administering Powers, as well as the specialized agencies and other organizations of the United Nations system, to give effect within their respective spheres of competence to the recommendations of the Special Committee for the implementation of the Declaration and other relevant resolutions of the United Nations;"[250]

and

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[248] **Dossier No. 55,** Resolution 1514 (XV), para. 7.

[249] General Assembly Resolution 2625 (XXV), *"Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations"* (A/RES/2625 (XXV) of 24 October 1970) (hereinafter **"Resolution 2625 (XXV)"**), para. 1.

[250] General Assembly Resolution 72/111 (2017), *"Implementation of the Declaration on the Granting of Independence to Colonial countries and Peoples"*, (A/RES/72/111 of 15 December 2017) (hereinafter **"Resolution 72/111 (2017)"**), para. 12.

"16. *Urges* all States, directly and through their action in the specialized agencies and other organizations of the United Nations system, to provide moral and material assistance, as needed, to the peoples of the Non-Self-Governing Territories."[251]

232. Furthermore, as the African Union has previously submitted, international obligations relating to self-determination are *erga omnes* and therefore the concern of all States.[252] As this Court has stated in the *Wall Advisory Opinion*,

"The Court would observe that the obligations violated by Israel include certain obligations *erga omnes*. As the Court indicated in the *Barcelona Traction* case, such obligations are by their very nature "the concern of all States" and, "In view of the importance of the rights involved, all States can be held to have a legal interest in their protection" *(Barcelona Traction, Light and Power Company, Limited, Second Phase, Judgment, I.C.J. Reports 1970,* p. 32, para. 33). The obligations *erga omnes* violated by Israel are the obligation to respect the right of the Palestinian people to self-determination, and certain of its obligations under international humanitarian law."[253]

233. It was suggested that, in order to answer Question (b), the Court would need to express an opinion on whether the United Kingdom or Mauritius currently enjoys sovereignty over the Chagos Archipelago, and that this in turn would require it to consider the body of bilateral dealings between the two States before and after the independence of Mauritius in 1968.[254] The African Union submits, however, that, to the contrary, addressing the question of sovereignty and the bilateral dealings between the two States before and after the independence of Mauritius is not necessary for the determination of that Question.

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[251] Resolution 72/111 (2017), *op. cit.*, para. 16.

[252] Written Statement of the African Union, para. 217.

[253] *Wall Advisory Opinion, op. cit.*, p. 199, para. 155.

[254] Written statement of the United Kingdom, para. 9.5.

234. Question (b) asks this Court to consider the legal consequences of the failure to complete the decolonisation process (should this Court so find) and of the continued administration of the Chagos Archipelago by the United Kingdom. The questions of sovereignty or the bilateral dealings between the two States have no relevance to the question of the content of the United Kingdom's international responsibility that arises, as a consequence of its commission of an internationally wrongful act, or acts resulting from the failure to lawfully complete decolonisation and the continued administration of Chagos. In addition, as has been amply explained, Question (b), as such, does not entail circumvention of the requirement of consent to international litigation as the United Kingdom suggests.[255]

235. It has also been stated that "[i]n order to be able to consider the Question, the Court would presumably need to have information on the existence, feasibility of, and intentions behind any resettlement programme that Mauritius might have for resettling its nationals, 'including but not limited to those of Chagossian origin', on the Chagos Archipelago."[256] It is submitted, however, that this position runs against the very principles of State Responsibility, as the consideration of the legal consequences that flow from an internationally wrongful act is limited to the obligations of the responsible State.[257] The intentions of the injured State are not relevant and, thus, do not require examination.

236. In this connection, the United Kingdom contends that the Court should not seek to *reopen* findings of the Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on Law of the Sea and that "the Parties would remain bound by the Award even if the Court were to reach a conflicting or differing interpretation as to their rights and obligations vis-à-vis each other."[258] In particular, the United Kingdom referred to its undertaking in the 1965 Agreement, that it would return the Chagos Archipelago to Mauritius when it was no longer

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[255] *Loc. cit.*

[256] *Ibid.*, para. 9.9.

[257] The text of the draft articles with commentaries thereto is reproduced in *Yearbook of the International Law Commission 2001*, vol. II (Part Two), A/CN.4/SER.A/2001/Add.1 (Part 2), pp. 30-143.

[258] Written statement of the United Kingdom, para. 9.14.

needed for defence purpose,[259] and to the finding that the undertaking gave Mauritius an interest in the condition in which the Chagos Archipelago would be returned.[260]

237. This position by the United Kingdom is untenable. A finding that the United Kingdom is responsible for the commission of a continuing internationally wrongful act and that, as a consequence, the United Kingdom is under an obligation to bring the unlawful situation to an immediate end and to make full reparation to Mauritius for the injury caused, would not conflict with the findings of the Arbitral Tribunal. It is recalled that the decision of the Tribunal concerned the *nature* of Mauritius' rights, pursuant to the 1965 Agreement. The Tribunal found, *inter alia:*

> "(1) that the United Kingdom's undertaking to ensure that fishing rights in the Chagos Archipelago would remain available to Mauritius as far as practicable is legally binding insofar as it relates to the territorial sea;
>
> (2) that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding; and
>
> (3) that the United Kingdom's undertaking to preserve the benefit of any minerals or oil discovered in or near the Chagos Archipelago for Mauritius is legally binding".[261]

238. Thus, the obligations of the United Kingdom and Mauritius, pursuant to the Award of the Arbitral Tribunal, are not in conflict with, and should not provide an obstacle to, the United Kingdom's obligation to complete the decolonisation process. The United Kingdom's obligation to cede the Chagos Archipelago to Mauritius when it is no longer needed for defence purposes would not be breached

[259] *Ibid.*, para. 9.12 (a).

[260] *Ibid.*, para. 9.12 (d).

[261] *Chagos Arbitration Award*, para. 547 B., *(Dispositif)*, Permanent Court of Arbitration, 18 March 2015 (hereinafter "**Chagos Arbitration Award**").

by the return of the Chagos Archipelago to Mauritius before the Archipelago is no longer so needed. Furthermore, Mauritius has repeatedly made it clear to the United Kingdom and the United States that "it recognises the existence of the military on Diego Garcia and accepts its future operation in accordance with international law".[262] Therefore, in these circumstances, the existence of the military base provides no basis for delaying the immediate completion of decolonisation.[263]

239. Further, the United Kingdom submitted that the findings of the Arbitral Tribunal constituted the legal consequences for *it* with regard to its continued administration of the Chagos Archipelago.[264] But, this is not correct.

240. This argument assumes that the decolonisation process was lawfully completed in 1968. However, as explained above, the decolonisation process was not lawfully completed. Therefore, the legal consequences for the United Kingdom, with regard to her continued administration of the Chagos Archipelago are the ones that flow from an internationally wrongful act, as provided in Part II of the ILC Articles on State responsibility. Generally, these legal consequences differ from the findings of the Arbitral Tribunal that concern the nature of the rights of Mauritius' rights, pursuant to the United Kingdom's undertakings in the 1965 Agreement, as already explained above.

241. The African Union believes that it is notable that the UNCLOS Arbitral Tribunal has found that the United Kingdom's "undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago",[265] and that "Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned".[266] Mauritius has correctly emphasised that:

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[262] Written statement of Mauritius, para. 7.22.

[263] *Loc. cit.*

[264] Written statement of the United Kingdom, para. 9.13.

[265] *Chagos Arbitration Award*, para. 298.

[266] *Loc. cit.*

"in order to assist with bringing decolonisation to an immediate end in an orderly fashion, the administering power must consult and cooperate with Mauritius with regard to all matters of administration and exercise of sovereign rights".[267]

[267] Written statement of Mauritius, paras. 7.45 *et seq.*

PART V

CONCLUSIONS AND SUBMISSIONS

242. The African Union has demonstrated through its Written Statement of 1 March 2018 and its present Written Comments, the extent to which it is concerned with the complete decolonisation of Africa, including putting a peaceful and legal end to the issue of the Chagos Archipelago in all its aspects. It has also explained that the illegal detachment/excision/separation of the Chagos Archipelago in 1965 from Mauritius , by the administering power, the United Kingdom. This resulted in breaching the inalienable rights of the Mauritian People, including the Chagossian population, to *self-determination* and *territorial integrity*, which by the time Chagos was detached, they were already part of international law governing the process of decolonisation. They constituted part of customary international law at the time of the separation of Chagos.

243. So relevant are the words of Judge Ammoun, in his Separate Opinion in the *Namibia Advisory Opinion* that:

> "If there is any "general practice" which might be held, beyond dispute, to constitute law within the meaning of Article 38, paragraph 1 (*b*), of the Statute of the Court, it must surely be that which is made up of the conscious action of the peoples themselves, engaged in a determined struggle ... for the purpose of asserting ... the right of self-determination ... Indeed one is bound to recognize that *the right of peoples to self-determination*, before being written into charters that were not granted but won in bitter struggle, had first been written painfully, with the blood of the peoples, in the finally awakened conscience of humanity. And without those same peoples ... who since the Second World War have streamed into the new international Organization, the first of a universalist character, would it have been possible to achieve that impressive number of declarations and resolutions whereby the great principles they had helped consecrate

have been translated into law and applied to the reshaping of international relations?"[268] (emphasis added)

244. According to the customary law of self-determination, as *already* applicable in 1965, the United Kingdom did not have any right to excise the Chagos Archipelago from Mauritius before granting it independence. It is not open to the United Kingdom to claim that it had any territorial title over Chagos at that date that would have allowed it to exercise sovereignty over the Archipelago.

245. The United Kingdom respected neither the right to self-determination of the people of Mauritius, nor the territorial integrity of Mauritius, including the Chagossians, when it *unilaterally* detached Chagos. No alleged subsequent *agreement* between the United Kingdom and the Authorities of Mauritius can change the fact that *the detachment was contrary to customary international law.*

246. As was shown by the African Union, as well as by many other States in the present proceedings, the detachment of the Chagos Archipelago in 1965 constituted, and continues to the present day to constitute an internationally wrongful act from which the United Kingdom cannot derive any right, and surely not a territorial title, that would allow it to characterise the issue between Mauritius and the United Kingdom as an issue of (territorial) sovereignty.

247. In the view of the African Union, the Agreement of 5 November 1965, by which the Mauritius Council of Ministers agreed to detachment by the United Kingdom Government of the Chagos Archipelago in return for certain undertakings, on which the UK relies extensively to justify a so-called territorial title over the Chagos, is null and void under general international law, as reflected in Article 53 of the 1969 Vienna Convention on the Law of Treaties, as it has blatantly violated the right of the *people of Mauritius, including the Chagossians* to fully exercise their right of self-determination and in accordance with international law. The right of the *people* to exercise self-determination is part of *jus cogens*, as

[268] *Namibia Advisory Opinion, op. cit.*, Separate Opinion of Judge Ammoun, p. 74, para. 5.

mentioned in the Written Statement of the African Union[269] and in the Preliminary Remarks to the present Written Comments.

248. It is very telling to see how the United Kingdom laid extensive focus on the matter of the characterisation of self-determination. It suffices to recall what the Permanent Representative of the United Kingdom said when speaking before the Security Council on the question concerning the situation in the Falkland Islands,[270] or the position it adopted in the proceedings of the *Kosovo Advisory Opinion*, [271] to ascertain that the United Kingdom in fact shared how the international community as a whole perceived self-determination.

249. The Court is reminded of its *dictum* in the *Western Sahara Advisory Opinion*, in which the Court emphasised that "[i]ts answer is requested in order to *assist* the General Assembly to determine *its future decolonization policy*".[272] (emphasis added) The Africa Union is convinced that the Court will play a definitive role in clarifying and consolidating the international law applicable to decolonisation.

250. For the reasons set out in the Written Statement and the present Written Comments, the African Union respectfully submits that the Court should answer the questions put to it by the General Assembly as follows:

a. The Court is competent to give the Advisory Opinion requested by the General Assembly in its Resolution 71/292 of 22 June 2017 and should answer the two Questions put to it;

b. The process of decolonisation of Mauritius was not 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

[269] Written Statement of the African Union, para. 69.

[270] Security Council Meeting, 25 May, 1982, S/PV.2366, paras. 182-183.

[271] Written Statement of the United Kingdom in the *Request for an Advisory Opinion of the International Court of Justice on the Question "Is the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo in Accordance with International Law?"*, para. 5.21. See also Written Statement of Belize, para. 3.7.

[272] *Western Sahara Advisory Opinion*, p. 68, para. 161.

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;

c. The continued administration by the United Kingdom 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, constitutes an internationally wrongful act with several consequences under international law;

d. The continued administration by the United Kingdom of the Chagos Archipelago constitutes a breach of international obligations, reflected in the relevant resolutions mentioned under paragraph "b" hereinabove, as it violates a number of fundamental rules of international law, and in particular:

   i. the right of the people of Mauritius, in particular those of Chagossian origin, to self-determination;
   ii. the inviolability of the territorial integrity of States;
   iii. the respect for State sovereignty;
   iv. the binding relevant and applicable United Nations resolutions;
   v. the relevant provisions of the International Covenant on Civil and Political Rights; and
   vi. the relevant provisions of the International Covenant on Economic, Social and Cultural Rights.

e. The United Kingdom is obliged under general international law to:

   i. complete the process of decolonisation of Mauritius;
   ii. cease immediately its administration of the Chagos Archipelago;
   iii. make *restitutio in integrum* by returning the Chagos Archipelago to Mauritius; and

iv. make compensation, covering both the material and moral damage suffered by the people of Mauritius, and in particular those of Chagossian origin.

f. All States and international organisations, and in particular the United Nations and all its organs, have a duty to cooperate and to take the appropriate measures in order to induce the United Kingdom to comply with the obligations stated in paragraphs "d" and "e" hereinabove.

g. All States and international organisations, and in particular the United Nations and all its organs, have a duty to refrain from cooperating with the United Kingdom in pursuance of its continued administration of the Chagos Archipelago and the maintenance of the present illegal situation.

251. In light of the above, the African Union respectfully invites the Court to make, at the very least, a declaration in the operative part of its advisory opinion that the United Kingdom has failed to comply with its international obligations towards Mauritius, its people, in particular those of Chagossian origin, so as to provide an appropriate form of satisfaction.

252. Finally, the African Union respectfully invites the Court to recommend to the General Assembly to take all necessary measures to ensure the compliance by the United Kingdom with its Advisory opinion.

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78. The African Union further reserves the right to respond to further submissions of other States during the oral hearings, or in any other manner the Court may prescribe.

Ambassador Dr. Namira Negm

The Legal Counsel

of

the African Union