INTERNATIONAL COURT OF JUSTICE

LEGAL CONSEQUENCES OF
THE SEPARATION OF CHAGOS FROM MAURITIUS IN 1965

REQUEST FOR AN ADVISORY OPINION

WRITTEN COMMENTS OF THE ARGENTINE REPUBLIC

15 MAY 2018

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Introduction

1. The present Written Comments (hereinafter "WCA") are filed pursuant to the Court's Order of 14 July 2017 upon the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 71/292 of 22 June 2017 on the *Legal Consequences of the Separation of Chagos from Mauritius in 1965*.

2. Pursuant to the same Order, the Argentine Republic (hereinafter "Argentina") filed its Written Statement (hereinafter "WSA") on 1 March 2018. Twenty-nine other States as well as the African Union also produced written statements. At the outset, points of agreement and disagreement can be mentioned.

3. The written statements reveal some significant points of agreement. For instance, with the exception of one written statement (Australia), the participants have not challenged that the Court has jurisdiction to render the requested advisory opinion on the basis of Article 96 of the Charter of the United Nations and Article 65 of the Statute of the Court. The crucial factual elements that are at the core of the request by the General Assembly are not contested either: that the Chagos Archipelago was part of Mauritius in 1965, that Mauritius was a non-self-governing territory (hereinafter "NSGT") at that time, that the administering power separated Chagos from Mauritius in 1965, that the population of the Archipelago was deported to other areas, and that Mauritians, particularly those of Chagossian origin, are not allowed to resettle in the Archipelago.

4. There is also no controversy with regard to some important legal aspects relating to the present request for an advisory opinion. For example, no participant challenged the competence of the General Assembly to deal with decolonization issues. The importance of the principles of self-determination and territorial integrity was recognized by all participants that referred to these fundamental principles of international law, although with different interpretations thereof. The obligation to respect the territorial integrity in inter-State relations is endorsed in the same manner. It is also recognized that there is a territorial sovereignty dispute between the Republic of Mauritius (hereinafter "Mauritius") and the United Kingdom of Great Britain and Northern Ireland (hereinafter "the United Kingdom"). That the process of decolonization can be assessed from an international law perspective was not challenged either.

5. Unsurprisingly, there are important points of disagreement among the participants to these advisory proceedings. While a considerable number of written statements are of the view that there are no compelling reasons that would prevent the Court from exercising its jurisdiction,[1] a minority of participants defends the opposite view.[2] This minority bases its position on the existence of a bilateral dispute and on the efforts made by one of the parties to this dispute to settle it through adjudicative means. Some factual aspects discussed by some participants are also controversial. They relate to the negotiations leading to independence in 1968 and those concerning the payment of compensation and individual renouncement of claims through the 1982 Agreement. However, the main differences arise as to the legal interpretation of some relevant provisions of the law of decolonization and their application to the case at issue in these advisory proceedings. There is disagreement about the legal effect of United Nations General Assembly resolutions in the field of decolonization in general and about the legal character of Resolution 1514 (XV) and its scope, mainly its paragraph 6 in particular. Also challenged is the legal character of the principle of self-determination during the 1960s.

6. Since some of these arguments developed in written statements have already been addressed by Argentina in its own written statement, Argentina respectfully refers the Court to the WSA filed on 1 March 2018. The present WCA will be confined to issues that still divide the participants, are directly related to, and are of importance to the present proceedings. Argentina reserves its position with regard to any aspect of the questions submitted to the Court, both of fact and law, which was addressed in other texts submitted in the first round of these written pleadings. The fact that the present WCA does not address a point of fact or law raised in other written statements, in connection or with no direct connection to the questions raised by the General Assembly's request, in no way can be interpreted as an acceptance by Argentina of these points of fact or law.

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[1] WS African Union para. 43, WSA paras. 11-30, WS Brazil para. 14, WS Cuba, WS Cyprus para. 30, WS Djibouti para. 24, WS Lesotho, WS Liechtenstein para. 18, WS Marshall Islands para. 31, WS Mauritius para. 5.20, WS Namibia, WS Nicaragua para. 5, WS Niger, WS Serbia para. 48, WS South Africa para.58, WS Vietnam paras. 4-6.

[2] This is the case of Australia, Chile, Germany, Israel, the United Kingdom and the United States of America.

7. The WCA are divided into three parts. The first part will briefly address those arguments advanced to request the Court not to exercise its advisory jurisdiction, and will demonstrate that there are no compelling reasons to do so. In particular, the question of the existence of a bilateral dispute, the role of the General Assembly in the field of decolonization, and the concomitance of this role with attempts by those directly concerned to settle their dispute by peaceful means, will be analysed.

8. The second part concerns the substantial legal issues relating to the law of decolonization that still divide the participants to these proceedings and are central to answering Question (a). In particular the legal character of General Assembly resolutions in this field will be examined, as will Resolution 1514 (XV) and the scope of its paragraph 6 concerning territorial integrity, the right to self-determination in the case at issue, the irrelevance of *uti possidetis iuris* to try to justify the separation of Chagos from Mauritius, and the relevance of General Assembly resolutions specifically dealing with Mauritius.

9. The third part will address the irrelevance of bilateral negotiations both before and after Mauritius' independence for the purposes of responding to both questions put by the General Assembly to the Court. The inappropriateness of unilateral measures in the context of the decolonization of Mauritius will also be dealt with. This part will also recall the obligation to negotiate without conditions the immediate completion of the process of decolonization of Mauritius and that these future negotiations will have to implement the course of action decided by the General Assembly.

10. The WCA will finish, with a summary of the relevant legal issues that have been raised by the General Assembly's request for an advisory opinion.

I. There are no compelling reasons to decline the exercise of the advisory jurisdiction

11. As mentioned, no participant with the exception of Australia[3] has challenged the jurisdiction of the Court in these advisory proceedings. For the reasons set out in the

[3] WS Australia, paras. 17-25.

WSA, Argentina considers that there is no doubt that the Court has jurisdiction.[4] This section will then focus on the arguments raised by a minority of States requesting the Court not to exercise it, invoking reasons of propriety.

12. The reasons invoked are that the Court could not answer the questions without determining the bilateral dispute over sovereignty and related matters,[5] that Mauritius has sought to settle that dispute through the contentious jurisdiction of the Court,[6] through arbitration and other means of dispute settlement, and that the same matter was analysed by the arbitral tribunal in the *Chagos Marine Protect Area* case.[7]

13. The existence of a bilateral dispute is not a reason not to exercise the advisory jurisdiction in the present proceedings. The questions raised concern the decolonization of a NSGT and the General Assembly has specific competencies in this field. As in past advisory opinions, it is not surprising that some States or participants are particularly concerned and may have a bilateral dispute related to questions that nevertheless are of international concern. The WSA has already rebutted the argument that the existence of a bilateral dispute would render an advisory opinion inappropriate.[8] The Court's case law analysis displayed in prior advisory opinions cited there allows disposing of this argument also in the current case.[9] The Court rejected this argument even in cases in which there was no specific competence of the General Assembly, as is the case here in the field of decolonization, but just the exercise of its general competence to deal "with any questions or any matters" within the scope of the Organization.[10] All the more applicable here is what the Court stated in those cases: in the *Chagos* advisory opinion the questions raised by the General Assembly are "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

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[4] WSA, paras. 6-10.
[5] WS Australia, paras. 5-28; WS Chile, paras. 5-9; WS France para.19; WS Israel, paras. 3.1-3.20; WS United Kingdom, para. 7.15; WS USA paras.1.2-3.32.;
[6] WS United Kingdom, para. 5.19.
[7] WS United Kingdom, paras. 6.2 a, 6.21 a and 7.13 c.
[8] WSA, paras. 23-30.
[9] In particular: *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 24-27, paras. 30, 34, 39 and pp. 30-31, para. 53.
[10] Article 10 of the Charter of the United Nations.

Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground."[11]

14. This is not the first request for an advisory opinion in which some States or entities are particularly concerned. Indeed, in nearly all advisory opinions rendered by the Court this has been the case. The Court has even envisaged a privileged procedural situation during the oral hearings for such actors particularly concerned. If there is a dispute between two States or entities in the framework of an advisory opinion requested by an organ of the United Nations in the realm of its competencies, the advisory opinion will not settle the dispute, but it is for the parties concerned to duly pay attention to the answers of the Court and the further decisions of the competent UN organ when they comply with their obligation to settle their dispute by peaceful means.

15. Having stated that the existence of a bilateral dispute does not preclude the Court from responding to the request of the General Assembly, the other two arguments raised to convince the Court not to exercise its jurisdiction become moot. It is not relevant for the purposes of this analysis to examine whether Mauritius sought to submit its bilateral dispute to the Court through a contentious case, or if it discussed matters that are within the realm of the questions put by the General Assembly before other jurisdictions, or even if an arbitral tribunal has already dealt with some aspects of those questions. What is at stake here is the exercise by the General Assembly of its powers in the field of decolonization. It should be recalled at this stage that, according to the Court, a member of the United Nations having accepted the provisions of the Charter and Statute, "could not validly object to the General Assembly's exercise of its powers to deal with the decolonization of a non-self-governing territory and to seek an opinion on questions relevant to the exercise of those powers".[12]

II. The content of the law of decolonization and its applicability to this case

16. Some participants casted doubt on the legal nature of General Assembly resolutions in the field of decolonization in general, and on that of Resolution 1514 (XV) in particular. Also the scope of paragraph 6 of this resolution, as well as the legal

[11] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p 159, para. 50.
[12] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 24, para. 30.

character of the right of peoples to self-determination were minimized by the same participants. This part will address these issues, as well as explain that other arguments are not relevant for the purpose of these proceedings, such as the application of the principle of *uti possidetis iuris* in this case.

17. The wording of the questions put to the Court has also been criticized. Allegedly, it was not drafted in neutral terms.[13] Question (a) is whether the process of decolonization of Mauritius was lawfully completed when it was granted its independence in 1968 following the separation of Chagos in 1965. As it is, the question is absolutely neutral, allowing an answer regarding legality in one way or another. As mentioned above, the two facts stated (the independence of Mauritius in 1968 and the separation of Chagos in 1965) are undisputed. Question (a) refers to the kind of legality that is at stake: international law. It goes on to specify that this includes specific obligations: those reflected in General Assembly Resolutions 1514 (XV), 2066 (XX), 2232 (XXI) and 2357 (XXII). There is nothing extraordinary in this approach which has been used in the past as well. For example, GA Resolution ES-10/14 requesting the advisory opinion on the "Wall", after mentioning "the rules and principles of international law" as applicable law, expressly added "including the Fourth Geneva Convention of 1949 and relevant Security Council and General Assembly resolutions". The General Assembly is simply drawing the attention of the Court to the elements considered fundamental for its action in the relevant field. In the present case, this is the law of decolonization as reflected in Resolution 1514 (XV) and the specific resolutions adopted by the General Assembly with respect to Mauritius.

18. Question (b) is the kind of typical question put to the Court in advisory proceedings: what are the legal consequences arising from the continued administration by the United Kingdom of the Chagos Archipelago. The addition also draws the attention of the Court to a factual situation which is not disputed: the inability of Mauritius to implement a programme for the resettlement of its nationals in the Chagos Archipelago, in particular those of Chagossian origin. As such, Question (b) does not prejudge any answer and is sequential to Question (a). These legal consequences will depend upon the answer the Court gives to the first question.

[13] WS United Kingdom, paras. 8.7 and 9.3 ; WS United States, para. 4.14.

A. Mandatory character of General Assembly resolutions in the field of decolonization

19. It has been suggested that the four resolutions mentioned in Question (a) "are not legally binding, as is the case with most General Assembly resolutions",[14] and that in very limited circumstances, General Assembly resolutions have binding effect: "where they relate to the adoption of the scale of assessments, the budget, and the internal administration and management of the Organization under Article 17 of the Charter".[15] Indeed, the Court has already noted "that General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*".[16] This ascertainment is applicable to resolutions in general. However, here we are in a specific situation in which the General Assembly is endowed with other powers than those mentioned in Article 17 of the Charter. As the Court stated in its second advisory opinion, "[u]nder international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."[17] This is precisely the case with the competence conferred upon the General Assembly in the field of decolonization, with its exclusive power to list, delist or relist NSGTs, and to decide on how to proceed to the decolonization of these territories.[18] These resolutions are not mere recommendations as is the case when the General Assembly deals with other kinds of questions or conflicts. In this particular context of the exercise of its power in the field of decolonization, General Assembly resolutions necessarily possess mandatory effect.

20. The Court had the opportunity to ascertain this mandatory effect of resolutions dealing with territories subject to decolonization from the very beginning of its action. In its first advisory opinion on South West Africa (later Namibia), the Court expressed that

[14] WS United Kingdom, para. 8.7.
[15] Ibid., para. 8.32. In paragraph 8.50, only "budgetary matters" are considered to allow binding resolutions of the General Assembly.
[16] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, pp. 254-255, para. 70.
[17] *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion : I.C.J. Reports 1949*, p. 182.
[18] See WSA, paras. 17-20.

"A resolution recommending to an Administrative State a specific course of action creates some legal obligation which, however rudimentary, elastic and imperfect, is nevertheless a legal obligation and constitutes a measure of supervision".[19]

21. More than two decades later, once the General Assembly had adopted Resolution 1514 (XV) and a considerable number of resolutions dealing specifically with each territory to be decolonized, the Court stated in another advisory opinion relating to decolonization:

> "For it would not be correct to assume that, because the General Assembly is in principle vested with recommendatory powers, it is debarred from adopting, in specific cases within the framework of its competence, resolutions which make determinations or have operative design".[20]

22. It is then in the framework of its competencies in the field of decolonization that the General Assembly adopts resolutions making determinations and having operative design. These resolutions are not mere recommendations like in other cases and their determinations and operative design possess then a mandatory character in this field.

B. Resolution 1514 (XV) is the expression of general international law in the field of decolonization

23. To some extent, it is surprising to see exposed before the Court in 2018 the allegation that Resolution 1514 (XV) is not the expression of customary law, in the 1960s or today, after the Court's careful analysis and conclusions reached in this regard in its advisory opinions of 1971 and 1975.

24. There is no need to repeat here the relevant passages of prior advisory opinions of the Court.[21] It will suffice to add that, answering the two questions raised by the General Assembly in the *Western Sahara* advisory opinion, the Court referred to "*the application* of resolution 1514 (XV) in the decolonization of Western Sahara".[22] The

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[19] *International Status of South-West Africa, Advisory Opinion, I.C.J. Reports 1950*, p.118.
[20] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 50, para. 105.
[21] See WSA, paras. 15-18.
[22] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 68, para. 162.

wording employed is of significance. There is a direct reference to resolution 1514 (XV) as being *applicable* to the process of decolonization. The Court applies *international law* in answering requests for advisory opinions. Indeed, Resolution 1514 (XV) is the master pillar of the applicable law in the field of decolonization, as the expression of general international law in this field.

25. The General Assembly understood Resolution 1514 (XV) as the expression of international obligations from the very beginning. For this reason, a year later, it created its subsidiary organ, the Decolonization Committee (also known as Committee of 24 or "C-24"), whose exact title refers to the *implementation* of Resolution 1514 (XV)[23] and whose function is precisely monitoring such implementation.[24] The similarities with the function and work of the Trusteeship Council –an organ created by the Charter of the United Nations– are apparent, although the decision as to listing and delisting of territories rests, in the case of the decolonization of NSGTs, in the hands of the General Assembly. Resolution 1654 (XVI) which creates this Special Committee, while describing its tasks, "[r]equests the Special Committee to examine the application of the Declaration, to make suggestions and recommendations on the progress and extent of the implementation of the Declaration, and to report to the General Assembly (...)".[25]

26. The text of Resolution 1514 (XV) is central and free of any ambiguity. Paragraph 1 declares that the subjection of peoples to alien subjugation, domination and exploitation is *contrary* to the Charter of the United Nations. Paragraph 2 refers to the *right* to self-determination. Paragraph 6 states that disruption of the national unity and the territorial integrity of a country is *incompatible* with the purposes and principles of the Charter. Paragraph 7 indicates that all States shall observe faithfully and strictly not only the provisions of the Charter and the Universal Declaration of Human Rights (another GA resolution expressing the content of customary law), but also the provisions of Resolution 1514 (XV) itself. Thus, the terms of Resolution 1514 (XV) indicate its *declaratory* character of *existing* conventional and customary obligations.

27. In 1960, no State voted against Resolution 1514 (XV), and the administering powers of NSGTs, with the exception of Portugal, immediately agreed to transmit the

[23] Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.
[24] See : http://www.un.org/en/decolonization/specialcommittee.shtml
[25] Resolution1654 (XVI) of 27 November 1961, para. 4.

information required to the C-24, established to ensure the implementation of Resolution 1514 (XV) one year later.[26] Administering powers did not challenge the power of the General Assembly to deal with decolonization matters either.

28. This WCA respectfully suggests the Court to follow the Written Statement of the African Union in its precise description of the existence of the right of peoples to self-determination in the period between the adoption of the Charter in 1945 and the adoption of Resolution 1514 (XV), both through the analysis of General Assembly resolutions and state practice.[27]

29. In the case that is the subject matter of these proceedings, the administering power has mentioned that, irrespective of the customary law character of the content of Resolution 1514 (XV), this resolution could not be opposed to it because it has allegedly always objected to that resolution.[28] At the outset, it should be noted that the State concerned did not vote against Resolution 1514 (XV). Abstention, while not meaning approval, does not mean objection either. A page will not suffice to enumerate all the General Assembly and Security Council resolutions explicitly referring to Resolution 1514 (XV) adopted without the opposition of the United Kingdom.[29]

30. Also of crucial importance is the explanation of the vote of Resolution 1514 (XV). Mr. Ormsby-Gore, the representative of the United Kingdom, made a detailed analysis of the text as well as the object and purpose of the resolution. He confirmed that the basic objectives of the 43 Afro-Asian authors of the draft resolution and those of the United Kingdom were the same. He indicated that, although they would like to have been able to vote for the Declaration, "its wording in certain respects was not such that we could support it". The British representative then went onto make a careful analysis of each of the paragraphs. He criticized paragraph 1 for the reference to "alien domination", paragraph 7 of the preamble for not corresponding –according to him– to what his country was doing in dependent territories, paragraph 3 for not mentioning steps through "the preparation for independence", paragraph 2 for the difficulties existing

[26] Until 1986, the United Kingdom actively collaborated with the Decolonization or C 24 Committee (see General Assembly Resolution 41/41B of 2 December 1986).
[27] WS African Union, paras. 77-93 and 96-106.
[28] WS United Kingdom, paras. 8.59-8.61.
[29] For example, Resolutions 183 (1963) and 232 (1966) of the Security Council, and Resolutions 1746 (XVI) and 1742 (XV) of the General Assembly explicitly refer to Resolution 1514 (XV) and were adopted with the United Kingdom voting in favor of them.

"in defining the right to self-determination in a universally acceptable form", and paragraph 5 because he considered that the method and timing for independence should be a matter for the peoples together with the administering power to work out together. It is most significant that the British representative raised no criticism with regard to paragraphs 6 and 7 at the very time when the Resolution was adopted.[30]

C. The Scope of Paragraph 6 of Resolution 1514 (XV)

31. At the outset, it is necessary to clarify a confusion introduced in one written statement, one of its sub-titles reads "Paragraph 6 of General Assembly resolution 1514 (XV) was not part of a legal right to self-determination in 1965/1968".[31] Paragraph 6 includes the principle of respect for the territorial integrity in the Declaration on the Granting of Independence to Colonial Countries and Peoples. The right to self-determination is included in paragraph 2 of the same Declaration. As such, there are two different principles applicable in the field of decolonization and this is the reason why both are included in the Declaration separately. It may be that one or the other is applicable in one form or another. As explained in the WSA as well as in other written statements,[32] in the present case, due to the fact that the administering power detached part of the territory of Mauritius, thus breaching its territorial integrity, it also prevented the Mauritian people from exercising its right to self-determination over the whole of its spatial sphere of application.

32. It has been argued that the terms of paragraph 6 of Resolution 1514 (XV) are not "appropriate for a rule of customary international law", "do not use legal terminology", they indicate "the highly political nature of the paragraph" and that "the scope and meaning of paragraph 6 was unclear".[33] Neither the terms in their context, nor the object and purpose of the Declaration justify these assertions. The *travaux préparatoires*, in this case the drafts submitted to the General Assembly and their

[30] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, pp. 1274-1276, paras. 45-58.
[31] WS United Kingdom, chapter VIII, C (i), p. 127.
[32] WS African Union, para. 157 ; WS Belize, paras. 4.1-4.2 ; WS Brazil, para. 23 ; WS Djibouti, para. 42, WS Namibia, Question 1 c), d) and e); WS South Africa, paras. 64-65.
[33] WS United Kingdom, para. 8.36.

discussions and vote, also contradict those assertions. The following paragraphs address both points.

(a) Interpretation of Paragraph 6

33. For a start, it is worth repeating the text of paragraph 6:

> "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".[34]

34. The terms recall, as mentioned by a delegation in 1960,[35] the wording of Article 2, paragraph 4, of the Charter of the United Nations. In its 2010 advisory opinion, the Court stated the following:

> "The Court recalls that the principle of territorial integrity is an important part of the international legal order and is enshrined in the Charter of the United Nations, in particular in Article 2, paragraph 4".[36]

35. This does not mean that territorial integrity must be encapsulated in Article 2, paragraph 4. Indeed, respect for territorial integrity has been an elementary rule governing international relations even long before the adoption of the Charter of the United Nations. There is no doubt that, even in times when war was permitted under international law, respect for territorial integrity among States in time of peace was universally accepted, as a corollary of the principle of equal sovereignty, under which each State must respect the territory of the other.[37]

36. The reference made by the Court to paragraph 4 of Article 2 of the Charter does not confine respect for territorial integrity only to situations involving the use of force. It has been simply referred to because territorial integrity is *explicitly* mentioned in that provision of the Charter.

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[34] French text: "Toute tentative visant à détruire partiellement ou totalement l'unité nationale et l'intégrité territoriale d'un pays est incompatible avec les buts et les principes de la Charte des Nations Unies." Spanish text: "Todo intento encaminado a quebrantar total o parcialmente la unidad nacional y la integridad territorial de un país es incompatible con los propósitos y principios de la Carta de las Naciones Unidas."

[35] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, p. 1276, para. 62 (Mr. Schurmann (Netherlands)).

[36] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 437, para. 80.

[37] Cf. Struycken, A.A.H., "La Société des Nations et l'intégrité territoriale". *Bibliotheca Visseriana Dissertationvm ivs internationale illvstrantivm*. Leiden, Brill, 1923, Vol. I, p. 105.

37. To invoke that the reference of paragraph 6 is identical in its content to Article 2 paragraph 4 of the Charter is tantamount to depriving paragraph 6 of Resolution 1514 (XV) of any *effet utile*. Indeed, paragraph 6 is not the only one of the Declaration referring to territorial integrity. Paragraph 4 of Resolution 1514 (XV) addresses questions relating to the use of force, and it also includes a reference to territorial integrity.[38] It is not by chance that the *Friendly Relations Declaration* also refers to territorial integrity both in the section relating to the use of force and in that relating to the right of peoples to self-determination.

38. The interpretation to be given to the terms of paragraph 6 is straightforward. "Any attempt" refers to any action or claim, actual or potential, going against territorial integrity. Examples can be a mere exercise of authority on foreign territory or the occupation of and claim of sovereignty over territory of others. The word "attempt" also allows including a *factual* situation such as the latter, which cannot change the *legal* situation: it is merely an *attempt* to change it.

39. The reference not only to territorial integrity but also to *national unity* reinforces the idea of avoiding the division of nations. This must have also been clear to Mr. Ormsby-Gore in 1960, when –referring to the manner the United Kingdom was discharging its obligations under Chapters XI, XII and XIII of the Charter– he alluded to "[t]he degree to which the peoples of these territories, with our help, can succeed in creating new nations, *undivided*, strong and genuinely independent…".[39] As explained in the WSA, the reference to the territorial integrity "of a country" meant not only States, but also territories of the peoples still under process of decolonization.[40] The final part of the paragraph contains a *legal* ascertainment, which is the consequence of the conduct envisaged in the rule embodied in paragraph 6: this kind of conduct "is incompatible with the purposes and principles of the Charter of the United Nations", which, as is well known, are embodied in Articles 1 and 2 of the Charter of the United Nations.

40. The *Friendly Relations Declaration* adopted by Resolution 2625 (XXV) confirms the customary character and legal scope of paragraph 6 of Resolution 1514 (XV).

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[38] Resolution 1514 (XV), paragraph 4: "All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

[39] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, p. 1275, para. 46 [emphasis added].

[40] WSA, para. 38.

Obviously, there was no need to explicitly cite this latter resolution: the *Friendly Relations Declarations* simply included and further explained the content of paragraph 6, as it also did with paragraph 2 of Resolution 1514 (XV). And the *Friendly Relations Declaration* not only did not replace "country" with "State", but simply explained that "[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of *any State or country*".[41]

(b) The travaux préparatoires

41. The preparatory work also confirms this interpretation of paragraph 6. When the Afro-Asian draft was presented (including paragraph 6 as it is), Guatemala wished to add a further paragraph after it, willing to make a particular situation clearer and specified.[42] After the explanation given by one of the States authors of the draft resolution that the situation envisaged by Guatemala was indeed included in paragraph 6, Guatemala withdrew its draft amendment.[43] Both Iran[44] and Afghanistan,[45] equally co-authors of the Afro-Asian draft, also agreed on this interpretation. There was a discussion between two States about a particular situation and whether this was covered by paragraph 6 or not,[46] but no State challenged the content of this paragraph or criticized it for that matter. It is significant that the United Kingdom, while explaining its abstention, analyzed and criticized nearly all paragraphs of Resolution 1514 (XV) except paragraph 6.[47]

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[41] See Written Statement United Kingdom, para. 8.48.
[42] United Nations, General Assembly, 15th session, Official Records, Annexes 1960-61, Part 2, Agenda Item 87, Guatemala Amendment to Document A/L.323, A/L.325, 7 December 1960, A/PV.947, p. 7.
[43] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, p. 1271, paras. 8-15 and pp. 1276-1277, paras. 63-65.
[44] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, p. 1271, paras. 8-15 and pp. 1269-1270, paras. 31.
[45] Ibid., pp. 1269-1270, para. 54.
[46] United Nations, General Assembly, 15th session, Official Records, 947th plenary meeting, 14 December 1960, A/PV.947, p. 1276, para. 62 and p. 1279, paras. 95-98.
[47] Supra, para. 30.

(c) Irrelevance of uti possidetis iuris *in this context*

42. Paragraph 6 has been discussed by a participant of these proceedings as though it were dealing with a question of prohibiting or not "changes of boundaries" of colonial territories prior to independence.[48] A reference to *uti possidetis iuris* and the fact that it implies respect for the boundaries at the time of independence was also invoked in this regard.[49] Both contentions are inappropriate in the present context.

43. As the Court has already had the occasion to declare, *uti possidetis iuris* "is a general principle, which is logically connected with the phenomenon of the obtaining of independence, wherever it occurs" [50]. The purpose of *uti possidetis*, as it was developed in Latin America in the 19th century was twofold: to avoid fratricidal struggles provoked by the challenging of boundaries, and also to avoid recolonization of territories assigned by the former colonial power to one administrative division or another.[51] The questions raised by the General Assembly's request for an advisory opinion are totally different and do not concern "a boundary of colonial territories prior to independence". They concern the capacity of an administering power to grant independence to one of its colonies while keeping at the same time part of the territory of this colony, claiming its own sovereignty over the territory kept. Thus, examples mentioned of partition or of merger of former colonies at the time of their independence, in order to constitute two different independent States or a single one, are completely different situations to the one at stake in the present proceedings.

44. The real question under scrutiny here requires the analysis of whether the purpose of the administering power in granting independence to a colony while keeping part of the territory of the latter for itself constitutes conduct in accordance with paragraph 6 of Resolution 1514 (XV) or not. As mentioned by many written statements, this conduct is not in accordance with the respect for the territorial integrity of the country concerned.[52]

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[48] WSUK, para. 8.46.
[49] WSUK, paras. 8.29-8.30.
[50] *Frontier Dispute, Judgment, I.C.J. Reports 1986*, p. 565, para. 20.
[51] Ibid., p. 565, para. 20 and p. 566, para. 23 ; *Affaire des frontières colombo-vénézuéliennes, R.I.A.A.*, vol. 1, p. 228.
[52] WSA, paras. 33-47 ; WS African Union, paras. 143-157, 187 ; WS Belize, para. 4.1 ; WS Brazil, paras. 20-23 ; WS Cuba ; WS Djibouti, paras. 33-34,42 ; WS Guatemala, para. 34 ; WS Madagascar ; WS Namibia, Question 1 c), d) and e) ; WS Nicaragua, paras. 7-10; WS Serbia para. 39; WS South Africa, para. 60.

45. The reference to *uti possidetis* in this context is misleading. The underlying suggested idea would be that, before independence the colonial power could decide on its own on the boundaries of its colonies, and then the newly independent State becomes sovereign over the territory to the extent decided by the colonizer. This was not the understanding of the principle by the new South American States that fought for independence from Spanish colonial rule in the first part of the 19th century. As it is well known the principle was called the *uti possidetis iuris of 1810.*[53] The year 1810 is not the year of the declaration of independence of those countries, but the year marking the beginning of the liberation struggle for independence. Declarations of independence were issued later, in different years.[54] Since 1810 these countries no longer recognized the metropolitan authorities, and consequently any change that those authorities could make to the administrative limits would not matter for the determination of the boundaries of the newly independent States.[55] What was applicable in the 19th century was even more relevant a century later.

46. In the 20th century context, there is a crucial element that obviously was not present at the time of Latin American independence: the development of international law that included the right to create independent States through the recognition of the right of peoples to self-determination, the legal status of colonial territories as different from the territories of the metropolis, and the existence of a universal organization supervising the process of decolonization.

47. As a result of this, a colonial power cannot invoke *uti possidetis iuris* to keep part of the territory of its colony when granting independence. It cannot unilaterally decide the fate of a colonial territory, which falls within the realm of the competencies of the United Nations under Chapter XI of the Charter and its development.

48. Situations like the one under review were called "incomplete territorial devolutions" in the work of the International Law Commission.[56] In his first report on State succession in matters other than treaties, the then Special Rapporteur and later Judge and

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[53] As the Swiss Federal Council (the Swiss Government)'s arbitral award in the Colombian-Venezuelan Boundaries stated: "Lorsque les Colonies espagnoles de l'Amérique centrale et méridionale se proclamèrent indépendantes, dans la seconde moitié du dix-neuvième siècle, elles adoptèrent un principe de droit constitutionnel et international auquel elles donnèrent le nom d'*uti possidetis juris* de 1810, à l'effet de constater que les limites des Républiques nouvellement constituées seraient les frontières des provinces espagnoles auxquelles elles se substituaient." (*Affaire des frontières colombo-vénézuéliennes, R.I.A.A.*, vol. 1, p. 228)

[54] For example, Argentina declared its independence in 1816, Chile in 1818 and Peru in 1820.

[55] Kohen, Marcelo, *Possession contestée et souveraineté territoriale*, Paris, P.U.F., 1997, pp. 464-46.

[56] It is also known as « décolonisation inachevée » in French.

President of the Court, Mohammed Bedjaoui, mentioned this as one of the problems posed by the territorial aspect of State succession. He stated the following:

> "The Commission could consider the question whether such incomplete territorial devolution is compatible with the rules of international law and, in that connexion, study possible correlations between the principle of territorial integrity and the abolition of the colonial regime. In the language of private law, such incomplete devolution could be regarded as *partial failure to make delivery*."[57]

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49. To sum up, it can be said that:

a) Respect for territorial integrity has been a longstanding rule of international law;

b) Paragraph 6 of Resolution 1514 (XV) declares the application of the principle of territorial integrity to decolonization;

c) No State rejected paragraph 6 nor challenge its legal character, in particular the administering power involved in the situation under scrutiny.

D. Self-determination was a right recognized by international law in the 1960s

50. Two participants have questioned the legal nature of the right of peoples to self-determination at the time of the separation of Chagos from Mauritius.[58] This not only contradicts the analysis made by the Court on this issue,[59] but the explicit position of one of these participants itself when Resolution 1514 (XV) was discussed, as mentioned above.[60]

51. As written in 1963 by the former Judge and President of the Court, Dame Rosalyn Higgins, in terms that cannot allow any doubt:

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[57] First Report on succession of States in respect of rights and duties resulting from sources other than treaties, *Yearbook of the International Law Commission*, 1968, vol. II, p. 114.

[58] WS United Kingdom, para. 8.65 ; WS United States, paras. 4.46, 4.61, 4.64.

[59] *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. 31, para. 52; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, pp. 31-33, paras. 54-59.

[60] WCA, para. 31.

"It therefore seems inescapable that self-determination has developed into an international legal right, and is not an essentially domestic matter. The extent and scope of this right is still open to some debate".[61]

52. Indeed, there is nothing unusual in the existence of different interpretations on the content, scope and extent of legal rules. Quite the contrary, this appears to be the case in numerous international disputes. Nevertheless, the fact that States disagree on the content of a rule is by no means tantamount to the denial of the existence of that rule. The discussion about the content of a right or of an obligation is rather evidence of the legal existence of that right or obligation.

53. It is true that the General Assembly, in the exercise of its competencies in the field of decolonization, has not always applied the principle of self-determination to populations of NSGTs. However, this has been explained by the Court itself, not as a denial of the right of self-determination, but in terms of its inapplicability in certain circumstances:

"The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory. Those instances were based either on the consideration that a certain population did not constitute a 'people' entitled to self-determination or on the conviction that a consultation was totally unnecessary, in view of special circumstances".[62]

54. In the situation raised by the General Assembly's request for the current advisory opinion, neither of these instances are present: there is no doubt that the General Assembly recognized the existence of the Mauritian people and their right to self-determination and consequently to become independent. The same resolution in which the General Assembly warned the administering power against the dismemberment of Mauritius as contrary to its territorial integrity "[r]eaffirm[ed] the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance

[61] Higgins, Rosalyn, *The Development of International law through the Political Organs of the United Nations*, London, New York, Toronto, Oxford University Press, 1963, p. 193.
[62] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 33, para. 59.

with General Assembly resolution 1514 (XV)".[63] This includes the Mauritians of Chagossian origin, expelled as a consequence of the separation of the Archipelago before granting the independence to Mauritius.

E. The legal scope of the specific resolutions dealing with the separation of Chagos

55. It is contended that the three specific General Assembly resolutions dealing with Mauritius and mentioned in Question (a) do not create obligations to the administering power or are not drafted in mandatory terms.[64] Both assertions are inaccurate. What these resolutions have done is to ascertain that that policy of separation constitutes a disruption of the territorial integrity of Mauritius and contravenes the Charter, Resolution 1514 (XV) and other relevant resolutions. For the sake of clarity, it is worth recalling the relevant parts of those three resolutions.

56. By the fourth operative paragraph of Resolution 2066 (XX) of 16 December 1965 "[the General Assembly] [i]nvites the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity". The wording is clear and it was employed before the granting of independence: the verb "to violate" in connexion with "the territorial integrity" cannot but refer to the existence of a legal obligation not to do so. The "invitation" is "to take no action", in the sense of not to effectively produce that dismemberment, since steps to do so had started just some weeks before, as will be discussed below.

57. Resolutions 2232 (XXI) and 2357 (XXII) of the General Assembly deals with the situation of a specific number of NSGTs including Mauritius. The General Assembly expressed its deep concern for policies aiming "at the disruption of the territorial integrity of some of these Territories and the creation by administering Powers of military bases and installations in contravention of the relevant resolutions of the General Assembly". Operative paragraph 4 of both resolutions "[r]eiterates its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of

[63] Resolution 2066 (XX), para. 2.
[64] WS United Kingdom, paras. 8.7 and 8.50-8.51.

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)".[65] Again, these resolutions were adopted before Mauritius was granted its independence. They do not contain "invitations" any more, since the original steps to dismember the territorial integrity had already taken place. It is the "deep concern" about these measures that is pointed out by the General Assembly in these resolutions.

58. The noun "declaration", the adjective "incompatible" and the reference to the UN Charter and Resolution 1514 (XV) employed in Resolutions 2232 (XXI) and 2357 (XXII) cast no doubt on their scope: these resolutions have a declaratory effect with regard to the fact that granting independence to Mauritius while disrupting its territorial integrity is not in accordance with the Charter, the rules relating to decolonization as embodied in Resolution 1514 (XV) and the very specific General Assembly resolutions determining the manner in which Mauritius should be decolonized.

59. As a last resort argument, it was advanced that Resolution 2066 (XX) referred to "future" possible dismemberment of the territory of Mauritius, but not to that of Chagos in 1965. The argument is that the creation of the "British Indian Ocean Territory" [hereinafter "BIOT"] was informed to the Fourth Committee of the General Assembly on 16 November 1965 and Resolution 2066 (XX) was adopted one month later.[66] Indeed, the BIOT Order 1965 was issued on 8 November 1965.[67] There cannot be any reasonable doubt that the General Assembly reacted in that manner *because* the administering power adopted this decision. In the preamble of Resolution 2066 (XX), the General Assembly "[n]ot[ed] with deep concerned that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, in particular of paragraph 6 thereof". If the administering power had followed the General Assembly, it should have not implemented the 8 November 1965 Order. The further adoption by the General Assembly of Resolutions 2232 (XXI) and 2357 (XXII) confirms this interpretation. They unequivocally refer to the detachment of territory with the purpose of establishing a military base, which is exactly what

[65] Resolution 2232 (XXI) of 20 December 1966 and Resolution 2357 (XXII) of 19 December 1967.
[66] WS United Kingdom, para. 8.52
[67] WS United Kingdom, Annex 11.

happened in the Chagos Archipelago. What the General Assembly took into consideration when it adopted the three resolutions specifically dealing with Mauritius was the separation of Chagos, not an hypothetical future separation that nobody had in mind and which is furthermore even difficult to envisage practically.

III. The question of bilateral negotiations and unilateral measures

60. This section will examine the argument that Mauritian representatives allegedly accepted the separation of Chagos in bilateral negotiations both before and after independence. It will be demonstrated that there is no need to enter into the analysis of these negotiations, either because those prior to independence did not prevent the General Assembly from adopting its position in this regard, or because those subsequent to independence were not concerned with the legality of the separation of Chagos (**A**). This section will also explain why unilateral measures taken by the administering power cannot modify the legal situation (**B**). In order to answer Question (b), it is necessary to stress the existence of an obligation for the parties concerned to hold negotiations in order to fully and unconditionally implement General Assembly resolutions aimed at the completion of the process of decolonization (**C**).

A. Bilateral negotiations before and after independence have not modified the legal situation

61. The two main participants to these proceedings expressed opposite views about the conditions and content of the negotiations led by the administering power with Mauritian delegates in 1965.[68] Argentina is of the view that, for the purposes of these advisory proceedings, it is not necessary for the Court to examine these negotiations. The crucial fact is that the General Assembly adopted Resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII) *after* these negotiations were conducted. In other words, these negotiations and their outcome, whatever they might have been, were immaterial to

[68] WS Mauritius, paras. 3.39-3.96 ; WS United Kingdom, paras. 3-7-3.37.

the decision of the General Assembly that considered that the territorial integrity of Mauritius was threatened by the separation of part of its territory.

62. The Agreement between the United Kingdom and Mauritius of 7 July 1982 needs not be examined by the Court for the purposes of these advisory proceedings either. With regard to Question (a), this agreement is irrelevant with regard to the decolonization of Mauritius since it did not in any way concern the legality of the separation of Chagos. No inference can be made from it. Mauritius in no way recognized the legality of the separation of Chagos or the legality of the deportation of the Ilois. It simply accepted a modality for a payment of an *ex gratia* sum of money and assumed a best efforts obligation to convince the persons concerned not to pursue individual claims. With regard to Question (b) it could not have an impact in terms of the consequences of the continued administration of the detached territory by the United Kingdom, including the inability of Mauritius to resettle its nationals in the archipelago.

63. In consequence, neither the 1965 negotiations nor the 1982 Agreement are relevant to the answer the Court will give to the questions raised by the General Assembly.

B. Unilateral measures taken by the administering power cannot modify the legal situation

64. The present request for an advisory opinion not only raises the issue of the competencies of the General Assembly, but also those of the administering powers during the process of decolonization. Two elements must be taken into consideration in this regard: *first*, that the territories of colonies (or NSGTs) have a separate and distinct status from the territory of the territory of the State administering it,[69] and *second*, that it is the United Nations through the General Assembly that supervises the process of decolonization.

65. Two consequences may be drawn from these two key issues. *First*, it is the General Assembly (and hence, not the administering power) that decides about listing or

[69] *Friendly Relations Declaration*: "The territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles."

delisting territories for which Chapter XI of the Charter and Resolution 1514 (XV) are applicable. As a result, it is also the General Assembly that decides the manner in which decolonization must be accomplished with regard to the listed territories. *Second*, the administering power cannot treat this territory as though it were for it to decide on constitutional changes, uses of the territories for purposes other than decolonization, or subordinating decolonization to conditions that it alone decides.

66. The United Kingdom's Written Statement explains: "From the date of the cession by France in 1814 until 8 November 1965, when the Chagos Archipelago was detached from the (then) colony of Mauritius, the Archipelago was administered by the United Kingdom as a Dependency of Mauritius."[70] There follows a long digression about the scope of the notion of "dependency" in British domestic law to conclude that "[t]he Chagos Archipelago was 'attached' to Mauritius for purely administrative purposes. While included for some purposes within the definition of the 'Colony of Mauritius', it was in law and in fact quite distinct from Mauritius."[71]

67. The treatment under domestic law, as well as the administrative distinction that domestic law may establish with regard to a colonial territory under its administration is irrelevant *for the purposes of decolonization.* The colonial power cannot invoke its domestic law to keep part of the territory of a colony at the time of the independence of the latter. What is applicable here is international law.[72] Indeed, this is a basic rule governing the relations between international law and domestic law: a State cannot invoke its domestic law as a justification for its failure to perform a treaty (Article 27 of the Vienna Convention on the Law of Treaties) or a customary rule. Equally, an internationally wrongful act is governed by international law, irrespective of how domestic law characterizes the same act (Article 3 of the ILC Articles on State responsibility).

68. What is crucial is that, in exercising its powers in the field of decolonization, the General Assembly recognized that the Chagos Archipelago was part and parcel of the NSGT of Mauritius and warned the administering power against any action aimed at breaching its territorial integrity, as seen in the prior section.

[70] WS United Kingdom, para. 2.13.
[71] Ibid., para. 2.38.
[72] Part II of the WCA has explained how international law deals with this situation.

69. It was also mentioned in the same written statement that "[a]s a British Overseas Territory, the BIOT had (and has) a constitution and government distinct from that of the United Kingdom".[73] Indeed, the creation of the BIOT was an Order of the British Government and according to the Order itself, "[t]here shall be a Commissioner for the Territory who shall be appointed by her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during her Majesty's pleasure".[74] In these circumstances, it becomes difficult to understand any attempt at showing that the BIOT, by the fact of being later declared a "British Overseas Territory" (BOT) is considered by the United Kingdom as a separate entity. Again, the domestic characterization of the territory by the administering power is immaterial for the purposes of the application of international law in the field of decolonization. The example mentioned in the WSA of the treatment granted by Portugal to its colonies as "overseas provinces" and its rejection by the General Assembly speaks volumes about the irrelevance of unilateral characterizations by the administering powers when international law comes to apply in the field of decolonization.[75]

70. To sum up, the separation of Chagos in 1965 was a unilateral measure of the administering power that did not receive the approval of the United Nations General Assembly, the organ in charge of the supervision of the process of decolonization. As such, this unilateral measure was unable to decide the fate of this territory. It is for the General Assembly to determine the manner in which a NSGT must be decolonized and consequently when the colonial situation comes to an end. It is for this reason that the General Assembly has requested the advisory opinion of the Court in the present case.

C. The obligation to unconditionally negotiate the immediate completion of the process of decolonization

71. The position of the United Kingdom on the issue of Chagos was summarized by the British representative at the General Assembly in the following manner:

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[73] Ibid., para. 2.33.
[74] The British Indian Ocean Territory Order 1965, Article 4 (Annex 11 of the WS United Kingdom).
[75] WSA, para. 18.

> "The British Government maintains that the British Indian Ocean Territory is British and has been since 1814. It does not recognize the sovereignty claim of the Mauritian Government. However, the British Government has recognized Mauritius as the only State which has the right to assert a claim to sovereignty when the United Kingdom relinquishes its own sovereignty. Successive British Governments have given undertakings to the Government of Mauritius that the Territory will be ceded when no longer required for defence purposes.
> The British Government remains open to discussions regarding arrangements governing the British Indian Ocean Territory or the future of the Territory. The British Government has stated that when the time comes for the Territory to be ceded it will liaise closely with the Government of Mauritius."[76]

72. This statement overlooks an essential element of the question: that the territory concerned falls within the realm of decolonization, with all the consequences already examined both in the WSA and in the WCA, above all the different and separate status of the territory concerned. It also subordinates negotiations with Mauritius to the unilateral decision of the administering power as to when it considers that the territory is "no longer required for defence purposes". This position is incompatible with both the law of decolonization and the obligation to settle disputes through peaceful means. *First*, defence purposes of the administering powers cannot be invoked to delay the decolonization of NSGTs. *Second*, there is a "duty (...) [t]o bring a speedy end to colonialism".[77] *Third*, one of the parties to a dispute cannot use its own appraisal of the question to avoid negotiating with the other in order to settle it by peaceful means.[78] Consequently, the administering power has the obligation to negotiate with Mauritius the immediate end of the colonial situation in Chagos without conditions, in order to allow Mauritius to recover its territorial integrity that was breached at the time of its independence and to bring to an end and in a complete manner the process of decolonization of Mauritius.

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[76] General Assembly, verbatim record, 54th Session, 19th Plenary Meeting, Thursday,30 September 1999, 3:00pm (A/54/PV.19) (UN Dossier No. 292). WS United Kingdom, para. 5.10.
[77] *Friendly Relations* Declaration.
[78] See WSA, paras. 61-65.

Conclusions

73. In the light of the analysis of the written statements submitted in these advisory proceedings, Argentina respectfully reiterates the proposed elements of the answers to the questions raised by the General Assembly as indicated in the WSA.[79]

74. To summarize the essential points at issue in these proceedings:

A) The Court has jurisdiction and there are no compelling reasons not to exercise it:

a) The existence of a sovereignty dispute is coupled with a situation of decolonization and as such does not deprive the General Assembly of its competencies in the field of decolonization;

b) The attempts made by Mauritius to settle the bilateral dispute by different peaceful means or the arbitral award on the Marine Protected Area do not affect the exercise of advisory jurisdiction by the Court, and they do not impact the answering of the questions put by the General Assembly;

B) With regard to Question (a):

c) The General Assembly possesses particular powers in the field of decolonization, as recognized by the Court more than forty years ago;

d) It is for the General Assembly to determine how and when a NSGT has been decolonized;

e) The territory of a colony or a NSGT has a separate and distinct status to that of the State administering it;

f) Resolution 1514 (XV) declared existing international law rules, in particular the principles of self-determination of peoples and of respect for the territorial integrity;

g) Resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII) specified the manner in which Resolution 1514 (XV) must be applied to the NSGT of Mauritius;

h) Respect for the territorial integrity is applicable to States and to peoples whose right to self-determination has been recognized, in the manner established by the relevant General Assembly resolutions;

[79] WSA, paras. 67-68.

i) The administering power is not entitled to take unilateral measures that change the status of the NSGT or to dispose of it for its own purposes;

j) Bilateral negotiations that took place in 1965 did not influence the General Assembly's views expressed in its Resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII) and consequently there is no need to examine their content;

k) The 1982 Agreement does not relate to the status of the Chagos Archipelago and consequently does not influence the answers of the Court to the questions raised by the General Assembly;

l) The unilateral constitution of the Chagos Archipelago as the "BIOT" and its qualification as a "BOT" do not modify or affect the international legal situation of the territory as a NSGT in the context of the decolonization process;

m) The separation of the Chagos Archipelago from Mauritius disrupted the territorial integrity of the latter and prevented the Mauritian people from exercising its right to self-determination over the whole of its territory;

n) As a result, the process of decolonization was not lawfully completed when Mauritius was granted independence in 1968;

C) With regard to Question (b):

o) The treatment inflicted on the Mauritian population deported from Chagos constituted a breach of fundamental human rights;

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

q) The administering power has the obligation to pursue negotiations in good faith and without conditions with Mauritius in order to render effective the immediate termination of the illegal situation and to allow the completion of the decolonization process.

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