Corrigé
Corrected

CR 2018/20

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Monday 3 September 2018, at 10 a.m., at the Peace Palace,

President Yusuf presiding,

***on the* Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965**
(Request for advisory opinion submitted by the General Assembly of the United Nations)

VERBATIM RECORD

ANNÉE 2018

Audience publique

tenue le lundi 3 septembre 2018, à 10 heures, au Palais de la Paix,

sous la présidence de M. Yusuf, président,

***sur les* Effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965**
(Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

COMPTE RENDU

Present:	President	Yusuf
	Vice-President	Xue
	Judges	Tomka
		Abraham
		Bennouna
		Cançado Trindade
		Donoghue
		Gaja
		Sebutinde
		Bhandari
		Robinson
		Gevorgian
		Salam
		Iwasawa
	Registrar	Couvreur

Présents : M. Yusuf, président
Mme Xue, vice-présidente
MM. Tomka
Abraham
Bennouna
Cançado Trindade
Mme Donoghue
M. Gaja
Mme Sebutinde
MM. Bhandari
Robinson
Gevorgian
Salam
Iwasawa, juges

M. Couvreur, greffier

The Republic of Mauritius is represented by:

H.E. Sir Anerood Jugnauth, G.C.S.K., K.C.M.G., Q.C., Minister Mentor, Minister of Defence, Minister for Rodrigues of the Republic of Mauritius,

as Head of Delegation (from 3 to 5 September 2018);

Mr. Nayen Koomar Ballah, G.O.S.K., Secretary to Cabinet and Head of the Civil Service,

Mr. Dheerendra Kumar Dabee, G.O.S.K., S.C., Solicitor General,

H.E. Mr. Jagdish Dharamchand Koonjul, G.O.S.K., Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations in New York,

Ms Shiu Ching Young Kim Fat, Minister Counsellor, Prime Minister's Office,

Mr. Sateeaved Seebaluck, G.O.S.K., Special Adviser to the Minister Mentor, Minister of Defence, Minister for Rodrigues,

Mr. Louis Olivier Bancoult, O.S.K., Chairman and Leader of Chagos Refugees Group,

Ms Sarojini Devi Jugnauth, spouse of the Minister Mentor, Minister of Defence, Minister for Rodrigues of the Republic of Mauritius,

Mr. Philippe Sands, Q.C., Professor of International Law at University College London, Barrister at Matrix Chambers, London,

Mr. Paul S. Reichler, Attorney-at-Law, Foley Hoag LLP, member of the Bar of the District of Columbia,

Mr. Pierre Klein, Professor at the Université libre de Bruxelles,

Ms Alison Macdonald, Q.C., Barrister at Matrix Chambers, London,

Ms Marie Liseby Elysé, representative of the Chagossian community,

as Counsel;

Mr. Remi Reichhold, Barrister at 5 Essex Court, London,

Mr. Matthew Craven, SOAS University of London, Director of the Centre for the Study of Colonialism, Empire and International Law,

Mr. Andrew Loewenstein, Attorney-at-Law, Foley Hoag LLP, member of the Bar of Massachusetts,

Ms Christina Hioureas, Attorney-at-Law, Foley Hoag LLP, member of the Bars of New York, California, and England and Wales,

Mr. Yuri Parkhomenko, Attorney-at-Law, Foley Hoag LLP,

Mr. Joseph ***Klingler***, Attorney-at-Law, Foley Hoag LLP, member of the Bars of New York and the District of Columbia

Ms Lea Main-Klingst, Matrix Chambers, London,

La République de Maurice est représentée par :

S. Exc. sir Anerood Jugnauth, G.C.S.K., K.C.M.G., Q.C., ministre mentor, ministre de la défense et ministre pour Rodrigues de la République de Maurice,

comme chef de délégation (du 3 au 5 septembre 2018) ;

M. Nayen Koomar Ballah, G.O.S.K., secrétaire du cabinet et chef de la fonction publique,

M. Dheerendra Kumar Dabee, G.O.S.K., S.C., *Solicitor General*,

S. Exc. M. Jagdish Dharamchand Koonjul, G.O.S.K., ambassadeur et représentant permanent de la République de Maurice auprès de l'Organisation des Nations Unies à New York,

Mme Shiu Ching Young Kim Fat, ministre-conseillère, ***bureau*** du premier ministre,

M. Sateeaved Seebaluck, G.O.S.K., conseiller spécial auprès du ministre mentor, ministre de la défense et ministre pour Rodrigues,

M. Louis Olivier Bancoult, O.S.K., président et dirigeant du Chagos Refugees Group,

Mme Sarojini Devi Jugnauth, épouse du ministre mentor, ministre de la défense et ministre pour Rodrigues de la République de Maurice,

M. Philippe Sands, Q.C., professeur de droit international à l'University College de Londres, avocat, Matrix Chambers, Londres,

M. Paul S. Reichler, avocat, Foley Hoag LLP, membre du barreau du district de Columbia,

M. Pierre Klein, professeur à l'Université libre de Bruxelles,

Mme Alison Macdonald, Q.C., avocate, Matrix Chambers, Londres,

Mme Marie Liseby Elysé, représentante de la communauté chagossienne,

comme conseils ;

M. Remi Reichhold, avocat, 5 Essex Court, Londres,

M. Matthew Craven, Université SOAS de Londres, directeur du centre d'études sur le colonialisme, l'Empire et le droit international,

M. Andrew Loewenstein, avocat, Foley Hoag LLP, membre du barreau du Massachusetts,

Mme Christina Hioureas, avocate, Foley Hoag LLP, membre des barreaux de New York, de Californie, d'Angleterre et du pays de Galles,

M. Yuri Parkhomenko, avocat, Foley Hoag LLP,

M. Joseph ***Klingler***, avocat, Foley Hoag LLP, membre des barreaux de New York et du district de Columbia,

Mme Lea Main-Klingst, Matrix Chambers, Londres,

Ms Yuki Okada, Attorney, member of the Bar of Japan, legal intern with Foley Hoag LLP in Washington, D.C.,

as Attorneys and Technical Assistants;

H.E. Mr. Haymandoyal Dillum, Ambassador Extraordinary and Plenipotentiary of the Republic of Mauritius to the Kingdom of the Netherlands,

Mr. Kreedeo Beekharry, Senior Adviser, Office of Minister Mentor,

Mr. Yousouf Mohamed Ramjanally, First Secretary, Embassy of the Republic of Mauritius to the Benelux,

Mr. Louis Rosemond Saminaden, representative of the Chagossian community,

Mr. Roger Alexis, representative of the Chagossian community,

Ms Marie Suzelle Baptiste, representative of the Chagossian community,

Ms Marie Nella Gaspard, representative of the Chagossian community,

Ms Marie Mimose Furcy, representative of the Chagossian community,

Ms Marie Janine Sadrien, representative of the Chagossian community,

Ms Rosemonde Berthin, representative of the Chagossian community,

Mr. Sivakumaren Mardemootoo, member of the legal team for the Chagossian community,

Ms Priscilla Balgobin Bhoyrul, member of the legal team for the Chagossian community,

Ms Pooja Bissoonauthsing, member of the legal team for the Chagossian community,

Mr. Salem Mahmoud Beydoun, OSK, Honorary Consul General of the Republic of Mauritius in Lebanon,

Mr. Maxime Ricardo Clarel Hurrhungee, Security Officer,

Mr. Saravanen Valayodapillai, Security Officer.

Additionally, on 6 September 2018, Mauritius will be represented by:

H.E. Mr. Pravind Kumar Jugnauth, Prime Minister of the Republic of Mauritius,

as Head of Delegation (on 6 September 2018 only);

Mr. Ken Arian, Senior Adviser to the Prime Minister,

Mr. Renganaden Chokupermal, Security Officer,

Mr. Angghud Naran, Security Officer.

Mme Yuki Okada, avocate, membre du barreau du Japon, stagiaire, Foley Hoag LLP, Washington,

comme avocats et assistants techniques ;

S. Exc. M. Haymandoyal Dillum, ambassadeur extraordinaire et plénipotentiaire de la République de Maurice auprès du Royaume des Pays-Bas,

M. Kreedeo Beekharry, conseiller principal, bureau du ministre mentor,

M. Yousouf Mohamed Ramjanally, premier secrétaire, ambassade de la République de Maurice au Benelux,

M. Louis Rosemond Saminaden, représentant de la communauté chagossienne,

M. Roger Alexis, représentant de la communauté chagossienne,

Mme Marie Suzelle Baptiste, représentante de la communauté chagossienne,

Mme Marie Nella Gaspard, représentante de la communauté chagossienne,

Mme Marie Mimose Furcy, représentante de la communauté chagossienne,

Mme Marie Janine Sadrien, représentante de la communauté chagossienne,

Mme Rosemonde Berthin, représentante de la communauté chagossienne,

M. Sivakumaren Mardemootoo, membre de l'équipe juridique représentant la communauté chagossienne,

Mme Priscilla Balgobin Bhoyrul, membre de l'équipe juridique représentant la communauté chagossienne,

Mme Pooja Bissoonauthsing, membre de l'équipe juridique représentant la communauté chagossienne,

M. Salem Mahmoud Beydoun, OSK, consul général honoraire de la République de Maurice au Liban,

M. Maxime Ricardo Clarel Hurrhungee, agent de sécurité,

M. Saravanen Valayodapillai, agent de sécurité.

En outre, le 6 septembre 2018, Maurice sera représentée par :

S. Exc. M. Pravind Kumar Jugnauth, premier ministre de la République de Maurice,

comme chef de délégation (le 6 septembre 2018 uniquement) ;

M. Ken Arian, conseiller principal du premier ministre,

M. Renganaden Chokupermal, agent de sécurité,

M. Angghud Naran, agent de sécurité.

The United Kingdom of Great Britain and Northern Ireland is represented by:

Mr. Robert Buckland, Q.C., M.P., Solicitor General,

Sir Iain Macleod, K.C.M.G., Legal Adviser, Foreign and Commonwealth Office,

H.E. Mr. Peter Wilson, C.M.G., British Ambassador to the Kingdom of the Netherlands,

Mr. Eran Sthoeger, member of the New York Bar, Counsel,

Dr. Philippa Webb, member of the English Bar, 20 Essex Street Chambers, Counsel,

Mr. Jonathan Worboys, member of the English Bar, Henderson Chambers, Counsel,

Mr. Sam Wordsworth, Q.C., member of the English Bar, Essex Court Chambers, Counsel,

Sir Michael Wood, K.C.M.G., member of the English Bar, 20 Essex Street Chambers, Counsel,

Mr. Chris Murphy, Deputy Private Secretary to the Solicitor General,

Mr. Shehzad Charania, Attorney General's Office,

Ms Kirsty Hoyle, Attorney General's Office,

Mr. Andrew Murdoch, Legal Director, Foreign and Commonwealth Office,

Mr. Gavin Watson, Foreign and Commonwealth Office,

Mr. Clive Dow, Foreign and Commonwealth Office,

Ms Emma Harber, Foreign and Commonwealth Office,

Mr. Philip Dixon, British Embassy in the Kingdom of the Netherlands,

Ms Rumaana Habeeb, Foreign and Commonwealth Office,

Mr. Stephen Hilton, Foreign and Commonwealth Office,

Ms Natalie Berry, British Embassy in the Kingdom of the Netherlands,

Lieutenant Maxine Stiles, Royal Navy.

The Republic of South Africa is represented by:

H.E. Mr. V. B. Koloane, Ambassador of the Republic of South Africa to the Kingdom of the Netherlands,

Ms J. G. S. de Wet, Chief State Law Adviser (International Law), Department of International Relations and Co-operation,

Le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

M. Robert Buckland, Q.C., M.P., *Solicitor General*,

sir Iain Macleod, K.C.M.G., conseiller juridique, ministère des affaires étrangères et du Commonwealth,

S. Exc. M. Peter Wilson, C.M.G., ambassadeur du Royaume-Uni auprès du Royaume des Pays-Bas,

M. Eran Sthoeger, membre du barreau de New York, conseil,

Mme Philippa Webb, membre du barreau d'Angleterre, 20 Essex Street Chambers, conseil,

M. Jonathan Worboys, membre du barreau d'Angleterre, Henderson Chambers, conseil,

M. Sam Wordsworth, Q.C., membre du barreau d'Angleterre, Essex Court Chambers, conseil,

sir Michael Wood, K.C.M.G., membre du barreau d'Angleterre, 20 Essex Street Chambers, conseil,

M. Chris Murphy, secrétaire particulier adjoint du *Solicitor General*,

M. Shehzad Charania, bureau de l'*Attorney General*,

Mme Kirsty Hoyle, bureau de l'*Attorney General*,

M. Andrew Murdoch, directeur juridique, ministère des affaires étrangères et du Commonwealth,

M. Gavin Watson, ministère des affaires étrangères et du Commonwealth,

M. Clive Dow, ministère des affaires étrangères et du Commonwealth,

Mme Emma Harber, ministère des affaires étrangères et du Commonwealth,

M. Philip Dixon, ambassade du Royaume-Uni au Royaume des Pays-Bas,

Mme Rumaana Habeeb, ministère des affaires étrangères et du Commonwealth,

M. Stephen Hilton, ministère des affaires étrangères et du Commonwealth,

Mme Natalie Berry, ambassade du Royaume-Uni au Royaume des Pays-Bas,

Mme Maxine Stiles, lieutenant de vaisseau, marine royale.

La République d'Afrique du Sud est représentée par :

S. Exc. M. V. B. Koloane, ambassadeur de la République sud-africaine auprès du Royaume des Pays-Bas,

Mme J. G. S. de Wet, conseillère juridique principale de l'Etat (droit international), ministère des relations et de la coopération internationales,

Ms T. Steenkamp, State Law Adviser (International Law), Department of International Relations and Co-operation,

Mr. P. A. Stemmet, Legal Counsellor, Embassy of the Republic of South Africa in the Kingdom of the Netherlands.

The Federal Republic of Germany is represented by:

Dr. Christophe Eick, Legal Adviser, Federal Foreign Office, Berlin,

as Agent and Head of Delegation;

Professor Dr. Andreas Zimmermann, University of Potsdam,

as Counsel;

Professor Dr. Jelena Bäumler, University of Rostock,

Dr. Alexander Pyka, Desk Officer, Legal Foreign Office, Berlin,

as Advisers.

The Argentine Republic is represented by:

Mr. Mario Oyarzábal, Ambassador, Legal Adviser, Ministry of Foreign Affairs and Worship,

as Agent/Head of Delegation;

Mr. Nicolás Vidal, Minister, Chargé d'affaires, Embassy of the Argentine Republic in the Kingdom of the Netherlands,

as Deputy Head of Delegation;

Mr. Marcelo Kohen, Professor of International Law, Graduate Institute of International and Development Studies, Geneva; Member and Secretary-General of the Institute of International Law,

as Counsel and Advocate;

Ms Sandra Pitta, Minister, Deputy Legal Adviser, Ministry of Foreign Affairs and Worship,

Ms Josefina Bunge, Counsellor, Office of the Legal Adviser, Ministry of Foreign Affairs and Worship,

Ms Erica Lucero, First Secretary, Embassy of the Argentine Republic in the Kingdom of the Netherlands,

Ms Yanina Berra Rocca, First Secretary, Embassy of the Argentine Republic in the Kingdom of the Netherlands,

Mr. Juan Manuel Galindo Roldán, Third Secretary, Office of the Legal Adviser, Ministry of Foreign Affairs and Worship,

as Counsel.

Mme T. Steenkamp, conseillère juridique de l'Etat (droit international), ministère des relations et de la coopération internationales,

M. P. A. Stemmet, conseiller juridique, ambassade de la République sud-africaine au Royaume des Pays-Bas.

La République fédérale d'Allemagne est représentée par :

M. Christophe Eick, conseiller juridique, ministère fédéral des affaires étrangères, Berlin,

comme agent/chef de délégation ;

M. Andreas Zimmermann, Université de Potsdam,

comme conseil ;

Mme Jelena Bäumler, Université de Rostock,

M. Alexander Pyka, ministère fédéral des affaires étrangères, Berlin,

comme conseillers.

La République argentine est représentée par :

M. Mario Oyarzábal, ambassadeur, conseiller juridique, ministère des affaires étrangères et du culte,

comme agent et chef de délégation ;

M. Nicolás Vidal, ministre, chargé d'affaires, ambassade de la République argentine au Royaume des Pays-Bas,

comme chef adjoint de délégation ;

M. Marcelo Kohen, professeur de droit international, Institut de hautes études internationales et du développement à Genève, membre et secrétaire général de l'Institut de droit international,

comme conseil et avocat ;

Mme Sandra Pitta, ministre, conseillère juridique adjointe, ministère des affaires étrangères et du culte,

Mme Josefina Bunge, conseillère, bureau du conseiller juridique, ministère des affaires étrangères et du culte,

Mme Erica Lucero, première secrétaire, ambassade de la République argentine au Royaume des Pays-Bas,

Mme Yanina Berra Rocca, première secrétaire, ambassade de la République argentine au Royaume des Pays-Bas,

M. Juan Manuel Galindo Roldan, troisième secrétaire, bureau du conseiller juridique, ministère des affaires étrangères et du culte,

comme conseils.

Australia is represented by:

H.E. Mr. Matthew Neuhaus, Ambassador of Australia to the Kingdom of the Netherlands,

Dr. Stephen Donaghue, Q.C., Solicitor General of Australia,

Mr. Bill Campbell, Q.C., Counsel,

Ms Alicia Lewis, Acting Senior Legal Officer, Attorney-General's Department,

Ms Christina Hey-Nguyen, Legal Adviser, Australian Embassy in the Kingdom of the Netherlands,

Ms Annika Wilson, Policy and Research Intern, Australian Embassy in the Kingdom of the Netherlands,

Mr. Lewis Casey, Policy and Research Officer, Australian Embassy in the Kingdom of the Netherlands.

Belize is represented by:

H.E. Mr. Alexis Rosado, Representative of Belize,

H.E. Mr. Dylan Vernon, Ambassador of Belize to the Kingdom of the Netherlands,

Mr. Raineldo Urbina, First Secretary, Embassy of Belize in the Kingdom of Belgium;

Dr. Ben Juratowitch, Q.C., Attorney-at-Law, Belize, and admitted to practice in England and Wales, and in Queensland, Australia, Freshfields Bruckhaus Deringer,

as Counsel and Advocate;

Ms Callista Harris, legal practitioner admitted in New South Wales, Australia, Freshfields Bruckhaus Deringer,

Ms Catherine Drummond, legal practitioner admitted in Queensland, Australia, Freshfields Bruckhaus Deringer,

as Counsel.

The Republic of Botswana is represented by:

Mr. Chuchuchu Nchunga Nchunga, Deputy Government Attorney, Attorney General's Chambers, Botswana,

as Head of Delegation and Counsel ;

Mr. Shotaro Hamamoto, Professor of International Law, Kyoto University, Japan,

Ms Eunice Refiloe Malotha, Assistant Secretary for International and Commercial Services, Attorney General's Chambers, Botswana,

Ms Oteng Thamuku, Chief State Counsel, Attorney General's Chambers, Botswana,

Ms Gwiso Dube, Chief State Counsel, Attorney General's Chambers, Botswana,

as Counsel.

L'Australie est représentée par :

S. Exc. M. Matthew Neuhaus, ambassadeur d'Australie auprès du Royaume des Pays-Bas,

M. Stephen Donaghue, Q.C., *Solicitor General* d'Australie,

M. Bill Campbell, Q.C., conseil,

Mme Alicia Lewis, juriste hors classe par intérim, services de l'*Attorney-General*,

Mme Christina Hey-Nguyen, conseillère juridique, ambassade d'Australie au Royaume des Pays-Bas,

Mme Annika Wilson, stagiaire (politiques et recherche), ambassade d'Australie au Royaume des Pays-Bas,

M. Lewis Casey, chargé des politiques et de la recherche à l'ambassade d'Australie au Royaume des Pays-Bas.

Le Belize est représenté par :

S. Exc. M. Alexis Rosado, représentant du Belize,

S. Exc. M. Dylan Vernon, ambassadeur du Belize auprès du Royaume des Pays-Bas,

M. Raineldo Urbina, premier secrétaire, ambassade du Belize au Royaume de Belgique ;

M. Ben Juratowitch, Q.C., *Attorney-at-Law*, Belize, et avocat, Angleterre et pays de Galles et Queensland, Australie, Freshfields Bruckhaus Deringer,

comme conseil et avocat ;

Mme Callista Harris, avocate, New South Wales, Australie, Freshfields Bruckhaus Deringer,

Mme Catherine Drummond, avocate, Queensland, Australie, Freshfields Bruckhaus Deringer,

comme conseils.

La République du Botswana est représentée par :

M. Chuchuchu Nchunga Nchunga, *Deputy Government Attorney*, bureau de l'*Attorney General* du Botswana,

comme chef de délégation et conseil ;

M. Shotaro Hamamoto, professeur de droit international, Université de Kyoto, Japon,

Mme Eunice Refiloe Malotha, secrétaire adjointe au département des services internationaux et commerciaux, bureau de l'*Attorney General* du Botswana,

Mme Oteng Thamuku, conseillère juridique principale, bureau de l'*Attorney General* du Botswana,

Mme Gwiso Dube, conseillère juridique principale, bureau de l'*Attorney General* du Botswana,

comme conseils.

The Federative Republic of Brazil is represented by:

H.E. Ms Regina Maria Cordeiro Dunlop, Ambassador of the Federative Republic of Brazil to the Kingdom of the Netherlands,

Mr. Leonardo Gorgulho Fernandes, Minister Counsellor, Embassy of the Federative Republic of Brazil in the Kingdom of the Netherlands,

Mr. Guilherme Sorgine, Secretary, Embassy of the Federative Republic of Brazil in the Kingdom of the Netherlands.

The Republic of Cyprus is represented by:

H.E. Mr. Costas Clerides, Attorney General of the Republic of Cyprus,

as Agent;

Ms Mary-Ann Stavrinides, Attorney of the Republic, Law Office of the Republic of Cyprus,

Ms Joanna Demetriou, Counsel of the Republic, Law Office of the Republic of Cyprus,

H.E. Mr. Elpidoforos Economou, Ambassador of the Republic of Cyprus to the Kingdom of the Netherlands, Ministry of Foreign Affairs,

H.E. Mr. Tasos Tzionis, Ambassador, Ministry of Foreign Affairs,

Mr. George Samouel, First Secretary, Deputy Head of Mission of the Embassy of the Republic of Cyprus in the Kingdom of the Netherlands, Ministry of Foreign Affairs,

Ms Maria Pilikou, Adviser, Ministry of Foreign Affairs,

Dr. Nicholas Ioannides, Adviser, Ministry of Foreign Affairs,

Professor Vaughan Lowe, Q.C., Essex Court Chambers, Emeritus Chichele Professor of International Law, University of Oxford,

Mr. Polyvios G. Polyviou, Chryssafinis & Polyviou LLC,

Mr. Levon Arakelian, Chryssafinis & Polyviou LLC,

Professor Antonios Tzanakopoulos, Associate Professor of Public International Law, University of Oxford, Door Tenant at Three Stone, London.

The United States of America is represented by:

Ms Jennifer G. Newstead, Legal Adviser, United States Department of State,

Ms Maegan L. Conklin, Assistant Legal Adviser, United States Department of State,

Ms Karen Johnson, Assistant Legal Adviser, United States Department of State,

as Counsel and Advocates;

La République fédérative du Brésil est représentée par :

S. Exc. Mme Regina Maria Cordeiro Dunlop, ambassadeur de la République fédérative du Brésil auprès du Royaume des Pays-Bas,

M. Leonardo Gorgulho Fernandes, ministre-conseiller, ambassade de la République fédérative du Brésil au Royaume des Pays-Bas,

M. Guilherme Sorgine, secrétaire, ambassade de la République fédérative du Brésil au Royaume des Pays-Bas.

La République de Chypre est représentée par :

S. Exc. M. Costas Clerides, *Attorney General* de la République de Chypre,

comme agent ;

Mme Mary-Ann Stavrinides, *Attorney of the Republic*, bureau de l'*Attorney General* de la République de Chypre,

Mme Joanna Demetriou, *Counsel of the Republic*, bureau de l'*Attorney General* de la République de Chypre,

S. Exc. M. Elpidoforos Economou, ambassadeur de la République de Chypre auprès du Royaume des Pays-Bas, ministère des affaires étrangères,

S. Exc. M. Tasos Tzionis, ambassadeur, ministère des affaires étrangères,

M. George Samouel, premier secrétaire, chef adjoint de mission de l'ambassade de la République de Chypre au Royaume des Pays-Bas, ministère des affaires étrangères,

Mme Maria Pilikou, conseillère du ministère des affaires étrangères,

M. Nicholas Ioannides, conseiller du ministère des affaires étrangères,

M. Vaughan Lowe, Q.C., cabinet Essex Court Chambers, professeur émérite de droit international à l'Université d'Oxford (chaire Chichele),

M. Polyvios G. Polyviou, cabinet Chryssafinis & Polyviou,

M. Levon Arakelian, cabinet Chryssafinis & Polyviou,

M. Antonios Tzanakopoulos, professeur associé de droit international public à l'Université d'Oxford, *Door Tenant* auprès du cabinet Three Stone, Londres.

Les Etats-Unis d'Amérique sont représentés par :

Mme Jennifer G. Newstead, conseillère juridique du département d'Etat américain,

Mme Maegan L. Conklin, conseillère juridique adjointe du département d'Etat américain,

Mme Karen Johnson, conseillère juridique adjointe du département d'Etat américain,

comme conseils et avocates ;

Mr. James L. Bischoff, Attorney Adviser,

Ms Meredith A. Johnston, Attorney Adviser,

Ms Amy M. Stern, Attorney Adviser,

Mr. Paul B. Dean, Legal Counsellor, Embassy of the United States in the Kingdom of the Netherlands,

Mr. David M. Bigge, Deputy Legal Counsellor, Embassy of the United States in the Kingdom of the Netherlands,

as Counsel.

The Republic of Guatemala is represented by:

H.E. Ms Gladys Marithza Ruiz Sánchez De Vielman, Ambassador, Representative of Guatemala,

as Head of Delegation;

Mr. Lesther Antonio Ortega Lemus, Minister Counsellor, Co-Representative of Guatemala and Counsel,

Ms Celeste Amparo Marinelli Block, Counsellor,

Ms Lucia Rodríguez Fetzer, First Secretary

Professor Jorge Antonio Ortega Gaytán, member of the Board of Guatemala's Academy of Geography and History.

The Republic of the Marshall Islands is represented by:

Dr. Filimon Manoni, Attorney-General of the Republic of the Marshall Islands,

Mr. Caleb W. Christopher, Legal Adviser, Permanent Mission of the Republic of the Marshall Islands to the United Nations, New York.

The Republic of India is represented by:

H.E. Mr. Venu Rajamony, Ambassador of India to the Kingdom of the Netherlands,

Dr. Luther Rangreji, Legal Counsellor.

The State of Israel is represented by:

Dr. Tal Becker, Legal Adviser, Ministry of Foreign Affairs,

H.E. Mr. Aviv Shir-On, Ambassador of the State of Israel to the Kingdom of the Netherlands,

Dr. Roy Schöndorf, Deputy Attorney General (International Law), Ministry of Justice,

Mr. Omri Sender, Legal Consultant to the Ministry of Foreign Affairs,

M. James L. Bischoff, avocat-conseil,

Mme Meredith A. Johnston, avocate-conseil,

Mme Amy M. Stern, avocate-conseil,

M. Paul B. Dean, conseiller juridique de l'ambassade des Etats-Unis d'Amérique au Royaume des Pays-Bas,

M. David M. Bigge, conseiller juridique adjoint de l'ambassade des Etats-Unis d'Amérique au Royaume des Pays-Bas,

comme conseils.

La République du Guatemala est représentée par :

S. Exc. Mme Gladys Marithza Ruiz Sánchez De Vielman, ambassadeur et représentante du Guatemala,

comme cheffe de délégation ;

M. Lesther Antonio Ortega Lemus, ministre-conseiller, coreprésentant du Guatemala, conseil,

Mme Celeste Amparo Marinelli Block, conseillère,

Mme Lucia Rodríguez Fetzer, première secrétaire,

M. Jorge Antonio Ortega Gaytán, membre du conseil d'administration de l'académie de géographie et d'histoire du Guatemala.

La République des Iles Marshall est représentée par :

M. Filimon Manoni, *Attorney-General* de la République des Iles Marshall,

M. Caleb W. Christopher, conseiller juridique, mission permanente de la République des Iles Marshall auprès de l'Organisation des Nations Unies, New York.

La République de l'Inde est représentée par :

S. Exc. M. Venu Rajamony, ambassadeur de l'Inde auprès du Royaume des Pays-Bas,

M. Luther Rangreji, conseiller juridique.

L'Etat d'Israël est représenté par :

M. Tal Becker, conseiller juridique, ministère des affaires étrangères,

S. Exc. M. Aviv Shir-On, ambassadeur de l'Etat d'Israël auprès du Royaume des Pays-Bas,

M. Roy Schöndorf, *Attorney General* adjoint (droit international), ministère de la justice,

M. Omri Sender, conseiller juridique, ministère des affaires étrangères,

Ms Shira Giveon, International Law Department, Ministry of Foreign Affairs,

Ms Meital Nir-tal, Legal Adviser, Embassy of the State of Israel in the Kingdom of the Netherlands,

Ms Hanni Maoz, Embassy of the State of Israel in the Kingdom of the Netherlands.

The Republic of Kenya is represented by:

H.E. Mr. Lawrence Lenayapa, Ambassador of the Republic of Kenya to the Kingdom of the Netherlands,

Ms Pauline Mcharo, Deputy Chief State Counsel, Office of the Attorney General of Kenya,

Ms Rose Sumbeiywo, Counsellor, Embassy of Kenya in the Kingdom of the Netherlands,

Mr. Edwin Rioba, Counsellor, Embassy of Kenya in the Kingdom of the Netherlands,

Ms Edith Kaki, Legal Officer, Embassy of Kenya in the Kingdom of the Netherlands.

The Republic of Nicaragua is represented by:

H.E. Mr. Carlos José Argüello Gómez, Ambassador of Nicaragua to the Kingdom of the Netherlands,

as Head of Delegation;

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Ms Sherly Noguera de Argüello, Consul General of the Republic of Nicaragua,

The Federal Republic of Nigeria is represented by:

Mr. Dayo Apata, Solicitor General of the Federal Republic of Nigeria, Permanent Secretary, Federal Ministry of Justice,

H.E. Mr. Oji N. Ngofa, Ambassador,

Mr. Alex Ebimiebo,

Mr. Otaigbe M. Irusota,

Mr. A. T. Abdullahi,

Ms Kehinde Ibrahim,

Mr. F. O. Oni,

Ms E. N. Ozoagu.

Mme Shira Giveon, département de droit international, ministère des affaires étrangères,

Mme Meital Nir-tal, conseillère juridique, ambassade de l'Etat d'Israël au Royaume des Pays-Bas,

Mme Hanni Maoz, ambassade de l'Etat d'Israël au Royaume des Pays-Bas.

La République du Kenya est représentée par :

S. Exc. M. Lawrence Lenayapa, ambassadeur de la République du Kenya auprès du Royaume des Pays-Bas,

Mme Pauline Mcharo, conseillère juridique principale adjointe, bureau de l'*Attorney General* du Kenya,

Mme Rose Sumbeiywo, conseillère, ambassade de la République du Kenya au Royaume des Pays-Bas,

M. Edwin Rioba, conseiller, ambassade de la République du Kenya au Royaume des Pays-Bas,

Mme Edith Kaki, juriste, ambassade de la République du Kenya au Royaume des Pays-Bas.

La République du Nicaragua est représentée par :

S. Exc. M. Carlos José Argüello Gómez, ambassadeur du Nicaragua auprès du Royaume des Pays-Bas,

comme chef de délégation ;

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Mme Sherly Noguera de Argüello, consule générale de la République du Nicaragua,

La République fédérale du Nigéria est représentée par :

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S. Exc. M. Oji N. Ngofa, ambassadeur,

M. Alex Ebimiebo,

M. Otaigbe M. Irusota,

M. A.T. Abdullahi,

Mme Kehinde Ibrahim,

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The Republic of Serbia is represented by:

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as Head of Delegation;

Mr. Marko Jovanović, Ph.D., Assistant Chief Legal Counsel at the Ministry of Foreign Affairs,

H.E. M. Petar Vico, Ambassador of the Republic of Serbia to the Kingdom of the Netherlands,

Ms Marija Stajić-Radivojša, First Counsellor at the Embassy of the Republic of Serbia in the Kingdom of the Netherlands.

The Kingdom of Thailand is represented by:

H.E. Mr. Virachai Plasai, Ambassador of the Kingdom of Thailand to the United States of America,

as Head of Delegation;

H.E. Ms Eksiri Pintaruchi, Ambassador of the Kingdom of Thailand to the Kingdom of the Netherlands,

Ms Tanyarat Mungkalarungsi, Minister-Counsellor, Royal Thai Embassy, The Hague,

Ms Prim Masrinuan, Counsellor, Department of Treaties and Legal Affairs, Ministry of Foreign Affairs of Thailand,

Ms Anisong Soralump, First Secretary, Royal Thai Embassy, The Hague

Ms Alina Miron, Professor, Université d'Angers, France.

The Republic of Vanuatu is represented by:

Mr. Robert McCorquodale, Brick Court Chambers, member of the Bar of England and Wales,

Ms Jennifer Robinson, Doughty Street Chambers, member of the Bar of England and Wales,

Ms Nicola Peart, Three Crowns LLP, member of the Bar of England and Wales,

Mr. Noah Patrick Kouback, Minister Counsellor and Deputy Permanent Representative, Chargé d'affaires, Permanent Mission of Vanuatu in Geneva.

The Republic of Zambia is represented by:

Mr. Abraham Mwansa, S.C., Solicitor General,

Ms Mutinta Mushabati, Senior Counsel,

Mr. Emmanuel Tembo, Senior State Advocate,

Ms Bertha Musonda Chileshe, Counsellor,

Mr. Dapo Akande, Professor of Public International Law.

La République de Serbie est représentée par :

M. Aleksandar Gajić, conseiller juridique principal du ministère des affaires étrangères,

comme chef de délégation ;

M. Marko Jovanović, conseiller juridique principal adjoint du ministère des affaires étrangères,

S. Exc. M. Petar Vico, ambassadeur de la République de Serbie auprès du Royaume des Pays-Bas,

Mme Marija Stajić-Radivojša, première conseillère de l'ambassade de la République de Serbie au Royaume des Pays-Bas.

Le Royaume de Thaïlande est représenté par :

S. Exc. M. Virachai Plasai, ambassadeur du Royaume de Thaïlande auprès des Etats-Unis d'Amérique,

comme chef de délégation ;

S. Exc. Mme Eksiri Pintaruchi, ambassadeur du Royaume de Thaïlande auprès du Royaume des Pays-Bas,

Mme Tanyarat Mungkalarungsi, ministre-conseillère, ambassade royale de Thaïlande, La Haye,

Mme Prim Masrinuan, conseillère, département des traités et affaires juridiques, ministère des affaires étrangères de la Thaïlande,

Mme Anisong Soralump, première secrétaire, ambassade royale de Thaïlande, La Haye,

Mme Alina Miron, professeur, Université d'Angers, France.

La République du Vanuatu est représentée par :

M. Robert McCorquodale, Brick Court Chambers, membre du barreau d'Angleterre et du pays de Galles,

Mme Jennifer Robinson, Doughty Street Chambers, membre du barreau d'Angleterre et du pays de Galles,

Mme Nicola Peart, Three Crowns LLP, membre du barreau d'Angleterre et du pays de Galles,

M. Noah Patrick Kouback, ministre-conseiller et représentant permanent adjoint, chargé d'affaires, mission permanente du Vanuatu à Genève.

La République de Zambie est représentée par :

M. Abraham Mwansa, S.C., *Solicitor General*,

Mme Mutinta Mushabati, conseillère principale,

M. Emmanuel Tembo, avocat principal de l'Etat,

Mme Bertha Musonda Chileshe, conseillère,

M. Dapo Akande, professeur de droit international public.

The African Union is represented by:

H.E. Dr. Namira Negm, Legal Counsel of the African Union,

as Head of the Delegation;

Dr. Mohamed Gomaa,

Professor Dr. Makane Moïse Mbengue,

as Counsel;

Mr. Mohammed Salem Boukhari Khalil, Legal Assistant,

Ms Elise Ruggeri Abonnat, Legal Assistant,

Ms Betelhem Arega Asmamaw, Legal Assistant,

Ms Meseret Fassil Assefa, Legal Assistant,

Mr. Khaled Taher, Legal and Media Assistant,

Ms Emilie Gonin, Legal Assistant,

Mr. Karim Ashraf Ahmed, Legal Assistant,

Ms Radwa Khalil, Legal Assistant.

L'Union africaine est représentée par :

S. Exc. Mme Namira Negm, conseillère juridique de l'Union africaine,

comme cheffe de délégation ;

M. Mohamed Gomaa,

M. Makane Moïse Mbengue,

comme conseils ;

M. Mohammed Salem Boukhari Khalil, juriste,

Mme Elise Ruggeri Abonnat, juriste,

Mme Betelhem Arega Asmamaw, juriste,

Mme Meseret Fassil Assefa, juriste,

M. Khaled Taher, juriste et assistant de presse,

Mme Emilie Gonin, juriste,

M. Karim Ashraf Ahmed, juriste,

Mme Radwa Khalil, juriste.

The PRESIDENT: Please be seated. The sitting is open.

For reasons duly made known to me, Judge Bennouna will join the sitting later this morning.

With this morning's sitting, the Court begins a week of hearings on the request for an advisory opinion submitted to the Court by the General Assembly of the United Nations on the question of the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

On 22 June 2017, by resolution 71/292, the General Assembly of the United Nations decided to request an advisory opinion from the Court. The text of the resolution was transmitted to the Court by a letter from the Secretary-General of the United Nations dated 23 June 2017 and received in the Registry on 28 June 2017. I shall ask the Registrar to read from the operative paragraph of that resolution the questions on which the Court is asked to render an advisory opinion.

The REGISTRAR: Merci, Monsieur le président.

a) «Le processus de décolonisation a-t-il été validement mené à bien lorsque Maurice a obtenu son indépendance en 1968, à la suite de la séparation de l'archipel des Chagos de son territoire et au regard du droit international, notamment des obligations évoquées dans les résolutions de l'Assemblée générale 1514 (XV) du 14 décembre 1960, 2066 (XX) du 16 décembre 1965, 2232 (XXI) du 20 décembre 1966 et 2357 (XXII) du 19 décembre 1967 ?» ;

b) «Quelles sont les conséquences en droit international, y compris au regard des obligations évoquées dans les résolutions susmentionnées, du maintien de l'archipel des Chagos sous l'administration du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, notamment en ce qui concerne l'impossibilité dans laquelle se trouve Maurice d'y mener un programme de réinstallation pour ses nationaux, en particulier ceux d'origine chagossienne ?».

The PRESIDENT: In accordance with Article 66, paragraph 1, of the Statute, the Registrar notified forthwith the request for an advisory opinion to all States entitled to appear before the Court.

By an Order dated 14 July 2017, the Court decided, in accordance with Article 66, paragraph 2, of the Statute, that the United Nations and its Member States were likely to be able to furnish information on these questions. By the same Order, the Court fixed, respectively, 30 January 2018 as the time-limit within which written statements might be submitted to it on the questions, and 16 April 2018 as the time-limit within which States and organizations having

presented written statements might submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute.

Pursuant to Article 65, paragraph 2, of the Statute, on 4 December 2017, the Secretary-General of the United Nations communicated to the Court a dossier of documents likely to throw light upon the questions. The dossier was subsequently placed on the Court's website.

Following a request from the African Union on 10 January 2018 that it be permitted to participate in the proceedings, the Court decided, by an Order dated 17 January 2018, that the African Union was likely to be able to furnish information on the questions submitted to the Court for an advisory opinion. By the same Order, the Court decided to extend to 1 March 2018 the time-limit within which all written statements on the questions might be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute, and to extend to 15 May 2018 the time-limit within which States and organizations having presented written statements might submit written comments, in accordance with Article 66, paragraph 4, of the Statute.

Within the time-limit thus extended by the Court in its Order of 17 January 2018, written statements were filed in the Registry, in order of receipt, by the following participants: Belize, Germany, Cyprus, Liechtenstein, Netherlands, the United Kingdom of Great Britain and Northern Ireland, Serbia, France, Israel, the Russian Federation, the United States of America, Seychelles, Australia, India, Chile, Brazil, the Republic of Korea, Madagascar, China, Djibouti, Mauritius, Nicaragua, the African Union, Guatemala, Argentina, Lesotho, Cuba, Viet Nam, South Africa, the Marshall Islands and Namibia.

On 14 March 2018, the Court decided to accept a written statement by Niger, submitted on 6 March 2018, after expiry of the relevant time-limit.

On 15 March 2018, the Registrar communicated a set of the written statements received in the Registry to all States having submitted written statements, as well as to the African Union.

By communications dated 26 March 2018 addressed to the United Nations and its Member States, as well as to the African Union, the Registrar asked them to inform the Registry, by 15 June 2018 at the latest, if they intended to take part in the oral proceedings.

Within the time-limit as extended by the Court in its Order of 17 January 2018, written comments on the written statements were filed in the Registry, in order of their receipt, by: the

African Union, Serbia, Nicaragua, the United Kingdom of Great Britain and Northern Ireland, Mauritius, Seychelles, Guatemala, Cyprus, the Marshall Islands, the United States of America and Argentina.

On 22 May 2018, the Registrar communicated a set of the written comments on the written statements to all States having submitted written statements, as well as to the African Union.

By letters dated 29 May 2018, the Registrar communicated to the United Nations, and to all its Member States that had not participated in the written proceedings, copies of all the written statements and written comments.

For the purposes of the current oral proceedings, the Court was informed that the following participants, set out in speaking order, wished to take the floor: Mauritius, the United Kingdom of Great Britain and Northern Ireland, South Africa, Germany, Argentina, Australia, Belize, Botswana, Brazil, Cyprus, the United States of America, Guatemala, the Marshall Islands, India, Israel, Kenya, Nicaragua, Nigeria, Serbia, Thailand, Vanuatu, Zambia and the African Union.

By letters dated 21 June 2018, the Registrar transmitted to the United Nations and its Member States, as well as to the African Union, the list of participants in the oral proceedings and enclosed a detailed schedule of those proceedings. By letters dated 26 June 2018, the Registrar informed the participants in the oral proceedings of certain practical arrangements regarding the organization of the hearings. The Philippines, which had originally expressed a wish to participate in the oral proceedings, subsequently informed the Court that it no longer intended to make an oral statement at the hearings.

This morning, the Court will hear the Republic of Mauritius; and this afternoon, the United Kingdom of Great Britain and Northern Ireland will take the floor. Both Mauritius and the United Kingdom will speak for a maximum duration of three hours, and all the other participants in the oral proceedings will speak for a maximum of 40 minutes each.

Before inviting Mauritius to address the Court, I would add that, in accordance with Article 106 of the Rules of Court, the Court has decided today that the written statements and written comments submitted in the current advisory proceedings by Member States of the United Nations, as well as by the African Union, are to be made accessible to the public with effect from the opening of the present hearings. Further, these written submissions will be posted on the

Court's website as of today. In addition, the text of the oral statements will also be placed on the Court's website.

I now give the floor to Sir Anerood Jugnauth, Minister Mentor of Mauritius. You have the floor, Sir.

Sir Anerood JUGNAUTH:

1. Mr. President, Members of the Court, it is a special honour for me to open the oral pleadings on behalf of the Republic of Mauritius.

2. I sincerely thank the Court for promptly organizing these proceedings on the General Assembly's request for an advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. I also extend my Government's appreciation to all the participants in this process.

3. Mr. President, I have been immensely privileged to witness and participate in my country's political advancement, from a colony to independence on 12 March 1968. I am the only one still alive among those who participated in the Mauritius Constitutional Conference at Lancaster House in 1965 where talks on the ultimate status of Mauritius were held.

4. Today Mauritius is a peaceful and stable democratic State. It has maintained excellent relations with all States concerned with the questions referred to the Court. However, I am sorry to say that more than 50 years after independence, and more than 50 years after I travelled to London for the Constitutional Conference, the process of decolonization of Mauritius remains incomplete as a result of the unlawful detachment of an integral part of our territory on the eve of our independence.

5. Following long periods of Dutch and French occupation from 1638 to 1810, there followed 157 years of British colonial rule. Throughout that period, the Chagos Archipelago was always an integral part of Mauritius and was treated as such by successive administering Powers.

6. Mr. President, Members of the Court, as you will have read in our Written Statement, in the run-up to the 1965 Conference, officials of the colonial Power devised a strategy by which Mauritian representatives were given no room for any choice[1]. In parallel with the scheduled

[1] See Written Statement of the Republic of Mauritius (hereinafter "StMU"), 1 Mar. 2018, paras. 3.15-3.90 . See also Written Comments of the Republic of Mauritius (hereinafter "CoMU"), 15 May 2018, paras. 1.14-1.32.

constitutional talks, small private meetings on "defence matters" were organized by the Colonial Secretary in London, to which only five Mauritian representatives were invited, including Premier Sir Seewoosagur Ramgoolam[2]. These secret meetings were not, at that time, made known to the other Mauritian representatives, myself included, although we were later told of the immense pressure that was imposed on the small group. The official records, which only came to light many years later, reveal that during the first two meetings, on 13 and 20 September 1965, Mauritian representatives had indeed expressed strenuous opposition to the proposal to detach the Chagos Archipelago[3].

7. In the face of this opposition, the then British Prime Minister, Harold Wilson, decided to have a "private word" with Sir Seewoosagur. [Screen on]

8. Speaking notes prepared for Mr. Wilson set out in clear and unambiguous terms that the object of that meeting was "to frighten [Sir Seewoosagur] with hope: hope that he might get independence; ***F***right lest he might not unless he is sensible about the detachment of the Chagos Archipelago"[4]. [Screen off]

9. The record of that meeting shows how the then Prime Minister of the colonial Power put this objective into practice. He told Sir Seewoosagur that he and his colleagues could return to Mauritius "either with Independence or without it" and that "the best solution of all might be Independence and detachment by agreement"[5].

10. Sir Seewoosagur understood Prime Minister Wilson's words to be in the nature of a threat. It is against that backdrop of immense pressure and in circumstances amounting to duress that, less than five hours later, four of the five Mauritian representatives yielded to the detachment

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[2] See StMU, paras. 3.59-3.84.

[3] See *ibid*., paras. 3.30, 3.36-3.38 and 3.51-3.52.

[4] UK Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965), StMU, Ann. 59.

[5] See UK Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (StMU, Ann. 60)

> ("*The Prime Minister* went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although we could not of course commit the Colonial Secretary at this point.")

of the Chagos Archipelago[6]. They did so only because the administering Power made it abundantly clear that independence would only be granted if they "agreed" to a detachment, and the dismemberment of Mauritius.

11. Mr. President, the administering Power now contends that Mauritius freely consented to the detachment of the Chagos Archipelago[7]. Yet the choice we were faced with was no choice at all: it was independence on condition of "agreement" to detachment, or no independence, with detachment anyway. This was not — and cannot be treated as — the freely expressed will of the people of Mauritius. It cannot meet the requirements of self-determination. At no time were the Mauritian people, either as a whole or through their representatives, given any opportunity to retain the Chagos Archipelago.

12. Six weeks after the 1965 Conference, the administering Power unilaterally detached the Chagos Archipelago from the territory of Mauritius. It did so by way of Order in Council, which created a new colony, the so-called "BIOT". Its sole purpose was the establishment of a military base on Diego Garcia, the largest island in the Chagos Archipelago.

13. To facilitate that, between 1967 and 1973, the administering Power forcibly removed the entire population of the Chagos Archipelago. Some 1,500 men, women and children, many of whom had ancestors originating and living in those islands for generations, were removed. A few of them are in the courtroom today and later this morning you will see a video statement from one of them. The shameful eviction caused, and continues to cause, immense suffering to part of the Mauritian population, commonly referred to as Chagossians.

14. The Chagossians have fought for more than four decades for the right to return to their place of birth, but without success. While the United Kingdom ~~***will***~~ contend that they have given financial support to them, let me say that no amount of monetary compensation can remedy the flagrant and ongoing breaches of their fundamental human rights, rights that are an inherent part of the principle of self-determination. Mauritius fully supports their immediate right of return to the

[6] See StMU, paras. 3.82-3.84.

[7] Written Statement of the United Kingdom of Great Britain and Northern Ireland (hereinafter "StGB"), 15 Feb. 2018, paras. 1.4, 1.23, 3.7-3.8, 3.35-3.37, 3.52.

Chagos Archipelago, to their homes. But as long as our decolonization is not complete, we are not able to implement a programme for resettlement.

15. Mr. President, Members of the Court, one of the facts revealed by the release of records from the British archives, decades after the event, shows that the administering Power sought to carry out the detachment as quickly as possible, so as to present the United Nations — and its Committee of 24 — with a fait accompli[8]. Mr. President, there was a clear plan to do the excision behind the back of the United Nations.

16. There is a complaint that Mauritius relies primarily on the colonial Power's documents and has failed to produce its own contemporaneous records[9]. But Mauritius was a colony of the United Kingdom before, during and for three years after the 1965 Conference. It was British Colonial and Foreign Office officials who produced records of all the relevant meetings at Lancaster House. Those official records, and the views expressed by its own politicians and officials, seem to be challenged by no one except the former administering Power which produced them.

17. Mr. President, Members of the Court, after achieving independence, and as soon as its socio-economic conditions permitted, Mauritius has consistently voiced its opposition to the detachment of the Chagos Archipelago[10]. It has done so dozens of times before the United Nations General Assembly, over many decades, and it has done so before many other United Nations and international fora. There is widespread recognition among the international community, including the African Union and the Non-Aligned Movement, that the process of decolonization of Mauritius remains incomplete[11]. This overwhelming consensus is also reflected in the written submissions made to the Court in these proceedings.

18. Mauritius has been clear that the Request for an advisory opinion is not intended to bring into question the presence of the base on Diego Garcia, only one of the islands of the Chagos Archipelago. Mauritius recognizes its existence and has repeatedly made it clear to the

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[8] UK Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister*, FO 371/184529 (5 Nov. 1965), para. 7, StMU, Ann. 70. See also StMU, paras. 4.24-4.41.

[9] Written Comments of the United Kingdom of Great Britain and Northern Ireland (hereinafter "CoGB"), 14 May 2018, para. 2.49.

[10] See StMU, paras. 4.2-4.22.

[11] *Ibid.*, paras. 4.42-4.48.

United States and the administering Power that it accepts the future operation of the base in accordance with international law[12]. This is a solemn commitment on behalf of Mauritius and we trust the Court will recognize it as such. Mauritius is also committed to the protection of the environment and has been a responsible guardian of other areas of great environmental significance within its territory[13].

19. Monsieur le président, Mesdames et Messieurs de la Cour, la question qui se trouve au coeur de cette requête — l'achèvement de la décolonisation de Maurice — est inextricablement liée à l'un des principaux buts des Nations Unies : «développer entre les nations des relations ***amicales*** fondées sur le respect du principe de l'égalité de droits des peuples et de leur droit à disposer d'eux-mêmes». La République de Maurice est attachée à la règle de droit et consciente de la place toute particulière de la Cour dans l'ordre juridique international. Le peuple mauricien espère que la Cour remplira son mandat et répondra aux deux questions posées par l'Assemblée générale dans la résolution adoptée par une majorité écrasante des votes exprimés. Un avis consultatif de la Cour contribuerait indubitablement à la décolonisation de Maurice et permettrait la réinstallation des Chagossiens qui le souhaitent.

20. Monsieur le président, je vais maintenant indiquer comment la présentation de la République de Maurice sera organisée. Le professeur Pierre Klein me succédera et traitera des questions de compétence et d'opportunité. M[e] Alison Macdonald traitera ensuite de la première question et M[e] Paul Reichler de la seconde. Enfin, le professeur Philippe Sands conclura la présentation de Maurice en parlant du rôle de la Cour en matière de droit à l'autodétermination. Il présentera aussi une vidéo qui permettra à la Cour d'entendre Mme Marie Liseby Elysé qui représente les personnes qui ont été expulsées de force de l'archipel des Chagos.

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[12] See *ibid.*, para. 1.30 and Chap. 7, Part III. B. 2. See also Letter from the Minister for Foreign Affairs and Regional Co-operation, Republic of Mauritius, to Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000), StMU, Ann. 141; Letter from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004), StMU, Ann. 147; Letter from the Minister for Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004), StMU, Ann. 148; Note Verbale from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014), StMU, Ann. 168; Letter from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017), StMU, Ann. 193.

[13] See StMU, para. 1.30.

21. Monsieur le président, Mesdames et Messieurs de la Cour, c'est un privilège pour la République de Maurice d'apparaître pour la première fois devant la Cour. Et c'est un privilège tout particulier pour moi de me présenter devant vous aujourd'hui. Je resterai à la disposition de la Cour pour toute assistance qui serait requise durant ces audiences. Je vous prie maintenant de bien vouloir passer la parole au professeur Klein et vous remercie pour votre aimable attention.

Le PRESIDENT : Je donne maintenant la parole à M. le professeur Pierre Klein. Vous avez la parole, Monsieur.

M. KLEIN : Merci, Monsieur le président.

LA COUR EST COMPÉTENTE ET IL N'EXISTE AUCUNE RAISON POUR ELLE DE REFUSER DE RENDRE L'AVIS CONSULTATIF QUI LUI EST DEMANDÉ

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est un honneur pour moi d'intervenir dans la présente instance au nom de la République de Maurice. Quelques-uns des Etats qui ont soumis des exposés écrits dans le cadre de la présente procédure jugent que la Cour n'est pas compétente pour rendre l'avis consultatif qui lui est demandé ou qu'il n'est pas opportun pour elle de répondre à cette demande. Maurice estime pour sa part, tout comme la grande majorité des participants à cette procédure qui se sont exprimés sur ces questions, que ces objections sont manifestement infondées et qu'il n'existe en réalité aucun motif pour la Cour de refuser de rendre un avis dans la présente espèce. La Cour est parfaitement en mesure de répondre aujourd'hui à la demande d'avis dont elle est saisie, comme elle l'a d'ailleurs fait dans le passé pour *toutes* les demandes formulées par l'Assemblée générale. Je voudrais, dans cette perspective, revenir ce matin sur les raisons pour lesquelles ces objections doivent être écartées, en évoquant très brièvement la question de la compétence, puis en traitant avec toute l'attention qu'elle mérite celle de l'opportunité.

2. Si nous pouvons disposer très rapidement de la première de ces questions, c'est avant tout parce que l'affirmation selon laquelle la Cour ne serait pas compétente en raison du fait que la question qui lui a été soumise ne serait pas la «vraie» question en débat est profondément viciée. Le seul Etat qui a avancé cette objection — en l'occurrence, l'Australie — l'a fondée sur sa propre reformulation de la question adressée à la Cour, pour la faire correspondre à ce que cet Etat estime

être le véritable objet de la demande[14]. Maurice a montré dans ses observations écrites à quel point cette approche s'avérait problématique et a rappelé qu'il n'appartenait à aucun participant à une procédure consultative de reformuler selon sa propre vision la question posée par l'organe ou l'organisation qui a présenté la demande d'avis. Vous me permettrez donc de ne pas développer ce point davantage et de vous renvoyer à ce sujet aux observations écrites de Maurice[15]. Je rappellerai simplement à ce stade que la compétence de la Cour ne fait ici aucun doute, car les questions qui lui ont été soumises sont manifestement des questions juridiques, soulevant des points de droit et appelant une réponse en droit, et qu'elles ont été adressées à la Cour par un organe dont la compétence pour ce faire est clairement établie par le paragraphe 1 de l'article 96 de la Charte.

3. Ce sont en fait surtout les arguments relatifs à l'opportunité pour la Cour de répondre aux questions que lui a posées l'Assemblée générale qui ont suscité des débats dans le cadre de la procédure écrite — et qui continueront certainement à en susciter dans le cadre de la procédure orale. La discrétion dont dispose la Cour pour décider de répondre — ou non — à une demande d'avis consultatif, même lorsque sa compétence pour le faire est incontestable, est clairement établie. Cette discrétion n'a été remise en cause par aucun participant à la présente procédure. Tous ceux qui ont examiné cette question ont aussi été unanimes à constater que, selon la jurisprudence constante de la Cour, ce n'est que s'il existe des raisons *décisives* de ne pas répondre à une telle demande que la Cour devrait refuser de le faire[16]. Consensus, donc, sur les principes. Divergences de vues, par contre, sur leur application en l'espèce. Pour un petit nombre d'Etats, de telles raisons décisives existeraient ici et la Cour ne pourrait répondre aux questions qui lui sont soumises au risque de mettre en cause l'intégrité de sa fonction judiciaire[17]. Pourquoi ? Pour quatre raisons essentiellement :

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[14] Exposé écrit du Gouvernement de l'Australie (27 février 2018) (ci-après «EéAUS»), par. 24-25.

[15] Observations écrites de la République de Maurice (15 mai 2018) (ci-après «OéMU»), par. 2.22-2.23.

[16] Voir notamment *Différend relatif à l'immunité de juridiction d'un rapporteur spécial de la Commission des droits de l'homme, avis consultatif, C.I.J. Recueil 1999 (I)*, p. 78, par. 29 ; *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif* (ci-après «*Edification d'un mur (avis consultatif)*»), *C.I.J. Recueil 2004 (I)*, p. 136, par. 44 ; *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif, C.I.J. Recueil 2010 (II)*, p. 416, par. 30.

[17] Voir EéAUS (27 février 2018) ; exposé écrit de la République du Chili (28 février 2018) ; exposé écrit des Etats-Unis d'Amérique (1er mars 2018) (ci-après «EéUS») ; exposé écrit de la République française (ci-après «EéFR») ; exposé écrit de l'Etat d'Israël (27 février 2018) (ci-après «EéIL») ; exposé écrit du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (15 février 2018) (ci-après «EéGB»).

— *premièrement*, la Cour serait en réalité saisie ici d'un différend strictement bilatéral portant sur une question de souveraineté territoriale, que Maurice tenterait de faire régler par la voie judiciaire sans le consentement de la puissance administrant l'archipel des Chagos ;

— *deuxièmement*, la demande ne s'inscrirait pas dans le cadre des activités de l'Assemblée générale et la réponse ne servirait pas l'Assemblée ou ses organes subsidiaires ;

— *troisièmement*, la procédure consultative ne serait pas adaptée pour le traitement d'un dossier comme celui dont la Cour est maintenant saisie et qui met en cause de nombreux éléments de fait et de preuve ;

— enfin, *quatrièmement*, l'avis consultatif qui serait rendu par la Cour reviendrait forcément sur des prononcés du tribunal arbitral dans l'affaire de l'*Aire marine protégée des Chagos* et remettrait en cause le principe de l'autorité de la chose jugée.

Certaines objections plus spécifiques ont également été formulées quant aux limites qui s'imposeraient à la Cour dans sa réponse à la seconde des questions que lui a adressées l'Assemblée générale ; ces objections seront traitées en détail par mon collègue Paul Reichler plus tard ce matin.

4. Quant à moi, ce sont donc les quatre arguments susmentionnés que je voudrais éprouver avec vous dans la suite de cette plaidoirie. Mais pas sans avoir rappelé à titre liminaire que la Cour n'a *jamais*, dans ses soixante-treize années d'existence, estimé ne pas être en mesure, pour des raisons de cet ordre, de rendre l'avis consultatif qui lui était demandé. Etait-ce parce que l'opportunité d'apporter cette réponse n'a jamais été contestée ? Certainement pas. Elle l'a été, et de façon parfois virulente, par les mêmes Etats d'ailleurs que ceux qui veulent vous convaincre aujourd'hui que la Cour devrait s'abstenir d'exercer sa compétence consultative. Leurs arguments n'avaient clairement pas convaincu la Cour, dans l'affaire de l'*Edification d'un mur*, en particulier. Mais cette fois, nous disent ces quelques Etats, c'est différent. Cette fois, il existerait des raisons vraiment décisives de ne pas répondre et l'on se trouverait en présence de circonstances que la Cour avait précisément identifiées comme rédhibitoires dans l'affaire du *Sahara occidental* et dans celle de l'*Edification d'un mur*, les plus parentes avec la présente espèce. Alors, qu'en est-il vraiment ?

A. La procédure consultative n'est pas utilisée ici pour contourner l'exigence du consentement au règlement juridictionnel des différends

5. Le premier argument est donc celui du détournement de procédure : sous couvert d'une demande d'avis consultatif, c'est en fait un différend strictement interétatique qui serait soumis aujourd'hui à la Cour. Cette perspective a d'ailleurs fait naître des craintes auprès de quelques Etats comme la Chine, la Corée du Sud et la Russie, qui ont également fait valoir leurs préoccupations à cet égard, sans pour autant conclure que de telles raisons décisives seraient présentes en l'espèce et devraient nécessairement amener la Cour à refuser de se prononcer[18]. Ce qui a conduit ces Etats à exprimer leurs craintes, c'est avant tout le risque que la Cour en vienne à brouiller la distinction bien établie entre compétence contentieuse et compétence consultative ; qu'elle se retrouve en position de trancher un litige entre deux Etats sans que les conditions traditionnellement requises — et avant tout celle du consentement des Etats au règlement juridictionnel de leurs différends — soient réunies. Sommes-nous ici face à un pareil cas de figure ? C'est ce qu'une petite minorité des participants à cette procédure, dont font partie l'Australie, les Etats-Unis, Israël et le Royaume-Uni, veulent à l'évidence vous faire croire. C'est une vision que ne partagent par contre manifestement pas la très grande majorité de ceux qui se sont exprimés sur ce point, y compris Maurice. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, personne, pour autant, ne vous invite à remettre en cause cette ligne rouge entre fonctions contentieuse et consultative, à remettre en question l'importance fondamentale du consentement pour le règlement juridictionnel des différends.

6. Existe-t-il un différend entre Maurice et la puissance administrante ? Oui, évidemment ; personne ne le nie, je crois, et certainement pas Maurice elle-même. Mais cela, en soi, ne fait en rien obstacle à l'exercice par la Cour de sa compétence consultative[19]. Ainsi que la jurisprudence de la Cour l'indique, le tout est qu'il ne s'agisse pas d'un différend «né … indépendamment, dans le cadre de relations bilatérales»[20] et que ce différend s'inscrive dans un cadre de référence plus

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[18] Voir en particulier exposé écrit de la République populaire de Chine (1er mars 2018) (ci-après «EéCN») ; exposé écrit du Gouvernement de la République de Corée (28 février 2018) (ci-après «EéKR») ; exposé écrit de la Fédération de Russie (27 février 2018) (ci-après «EéRU»).

[19] Voir notamment les paragraphes 2 et 3 de l'article 102 du Règlement de la Cour.

[20] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975* (ci-après «*Sahara occidental (avis consultatif)*»), p. 25, par. 34 ; *Edification d'un mur (avis consultatif)*, p. 158, par. 47.

large[21]. Tel ne serait pas le cas selon les quelques Etats qui estiment que la Cour devrait s'abstenir de répondre aux questions qui lui sont posées. Plusieurs d'entre eux ont caractérisé le différend qui oppose Maurice et la puissance administrante comme — et je cite ici successivement Israël, les Etats-Unis et le Royaume-Uni — un «différend territorial bilatéral»[22], un différend «remettant en cause des frontières établies il y a plus de cinquante ans»[23], ou encore un différend qui se serait «fait jour indépendamment dans les relations bilatérales»[24]. Selon la chronologie proposée par ces Etats, ce différend se serait noué au début des années 1980, plus d'une décennie après l'accession de Maurice à l'indépendance[25].

7. Mais cette chronologie elle-même remet fondamentalement en cause l'argument des Etats qui s'opposent à l'exercice de sa compétence par la Cour. Comment affirmer, en effet, que l'on se trouve ici en présence d'un différend territorial qui se serait fait jour indépendamment dans les relations bilatérales entre Maurice et la puissance administrante au début des années 1980, alors que la question de l'excision des Chagos a fait l'objet de résolutions de l'Assemblée générale dès 1965 ? Les Etats qui estiment que la Cour ne devrait pas répondre à la demande d'avis n'ont pas grand-chose à dire sur ces textes. Et on les comprend, quand on regarde ces résolutions de plus près. Que disent-elles ? La résolution 2066 (XX), tout d'abord, [début de la projection] traite de cette question sous un angle et un angle seulement : celui du droit à l'autodétermination, à l'égard duquel l'Assemblée générale est évidemment pleinement compétente. L'Assemblée y fait-elle référence à un quelconque contentieux territorial, ou à un problème de frontières ? [Projection suivante] Absolument pas ; elle se limite à y inviter la puissance administrante «à prendre des mesures efficaces en vue de la mise en œuvre immédiate et complète de la résolution 1514 (XV)» et «à ne prendre aucune mesure qui démembrerait le territoire de l'île Maurice et violerait son intégrité territoriale»[26]. Autodétermination, maintien de l'intégrité territoriale dans le cadre de la

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[21] *Sahara occidental (avis consultatif)*, p. 26, par. 38 ; *Edification d'un mur (avis consultatif)*, p. 159, par. 50.

[22] EéIL, par. 1.2 ; observations écrites des Etats-Unis d'Amérique (15 mai 2018) (ci-après «OéUS»), par. 1.5.

[23] EéUS, par. 3.31.

[24] EéGB, par. 1.16.

[25] EéUS, par. 2.5 ; observations écrites du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord (14 mai 2018) (ci-après «OéGB»), par. 3.10.

[26] Nations Unies, *Assemblée générale, vingtième session*, Question de l'île Maurice, doc. A/RES/2066 (XX) du 16 décembre 1965, par. 3, 4 (dossier des juges, onglet n° 146).

décolonisation, c'est certainement ce qu'on peut appeler un cadre de référence plus large [fin des projections]. Nous sommes alors, je le rappelle, en 1965, au moins 15 ans avant le début du différend territorial qui se serait prétendument fait jour indépendamment dans les relations bilatérales entre Maurice et la puissance administrante.

8. Les résolutions 2232 (XXI) et 2357 (XXII), adoptées respectivement en 1966 et 1967, confirment de manière éclatante l'existence de ce cadre de référence plus large. Les principes juridiques qui y sont invoqués sont les mêmes qu'en 1965 : autodétermination et maintien de l'intégrité territoriale. [Début de la projection] L'Assemblée y

> «réitère sa déclaration selon laquelle toute tentative visant à détruire partiellement ou totalement l'unité nationale et l'intégrité territoriale et à établir des bases et installations militaires dans ces territoires est incompatible avec les buts et principes de la Charte des Nations Unies et de la résolution 1514 (XV) de l'Assemblée générale»[27].

[Fin de la projection]

Mais ce qu'il y a de plus remarquable pour ce qui nous concerne dans ces textes, c'est le fait que la situation de Maurice y est abordée conjointement avec pas moins de 24 autres situations du même ordre — et même 26 en 1967, situations à l'égard desquelles l'Assemblée générale exprime les mêmes préoccupations. Vingt-quatre, puis vingt-six, autres situations du même ordre ; on est décidément très loin, Monsieur le président, Mesdames et Messieurs les Membres de la Cour, du simple différend territorial bilatéral dont parlent certains Etats participant à cette procédure et qui serait né indépendamment dans les relations entre Maurice et la puissance administrante. Tout au contraire, il est sans doute difficile de trouver une confirmation plus manifeste du fait que le différend qui constitue la toile de fond de la présente instance s'inscrit dans un cadre de référence plus large.

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[27] Nations Unies, *Assemblée générale, vingt et unième session*, Question d'Antigua, des Bahamas, des Bermudes, de la Dominique, de la Grenade, de Guam, des îles Caïmanes, des îles Cocos (Keeling), des îles Gilbert-et-Ellice, de l'île Maurice, des îles Salomon, des îles Samoa américaines, des îles Turks et Caïques, des îles Vierges britanniques, de Montserrat, de Nioné, des Nouvelles-Hébrides, de Pitcairn, de Saint-Christophe-et-Nièves et Anguilla, de Sainte-Hélène, de Sainte-Lucie et de Saint-Vincent, doc. A/RES/2232 (XXI) du 20 décembre 1966, par. 4 (dossier des juges, onglet n° 171) ; Nations Unies, *Assemblée générale, vingt-deuxième session*, Question d'Antigua, des Bahamas, des Bermudes, de la Dominique, de la Grenade, de Guam, des îles Caïmanes, des îles Cocos (Keeling), des îles Gilbert-et-Ellice, de l'île Maurice, des îles Salomon, des îles Samoa américaines, des îles Seychelles, des îles Tokélaou, des îles Turkes et Caïques, des îles Vierges américaines, des îles Vierges britanniques, de Montserrat, de Nioué, des Nouvelles-Hébrides, de Pitcairn, de Saint-Christophe-et-Nièves et Anguilla, de Sainte-Hélène, de Sainte-Lucie, de Saint-Vincent, et du Souaziland, doc. A/RES/2357 (XXII) du 19 décembre 1967), par. 4 (dossier des juges, onglet n° 198).

9. Les éléments que je viens d'évoquer montrent que la réponse à la question de savoir si nous sommes ici en présence d'un différend «purement territorial», que la Cour serait invitée à trancher sous couvert d'une procédure consultative, ne peut être que négative. Le différend qui oppose aujourd'hui le Royaume-Uni et Maurice se résume et s'épuise en une seule question : la décolonisation de Maurice a-t-elle été validement menée à bien en dépit de l'excision du territoire mauricien de l'archipel des Chagos en 1965 ? Monsieur le président, Mesdames et Messieurs les Membres de la Cour, si l'on soustrait la composante «décolonisation» de l'équation, le différend n'existe tout simplement pas. [Début de la projection] Pour reprendre les termes de M. le juge Gros, dans sa déclaration jointe à l'avis de 1975 sur le *Sahara occidental*, «[i]l n'y a pas de différend bilatéral détachable du débat sur la décolonisation aux Nations Unies»[28] [fin de la projection]. Contrairement à ce qu'a par exemple affirmé Israël dans le cadre de la présente procédure[29], il n'est aucunement demandé à la Cour d'apprécier le poids respectif des titres de souveraineté que feraient valoir ces deux Etats, comme dans n'importe quel différend territorial dont la Cour est régulièrement saisie. Il lui est simplement demandé d'indiquer si les mesures prises par la puissance administrante à l'égard des Chagos en 1965 étaient conformes ou non aux règles de droit international applicables à l'époque. C'est cette question, et cette question seulement, qui est aujourd'hui soumise à la Cour. C'est cela, le cadre de référence plus large, qui justifie que la Cour réponde à la demande d'avis. Il n'y a donc ici aucun détournement de procédure, pas plus que de remise en cause de l'exigence du consentement pour le règlement juridictionnel des litiges.

10. Enfin, permettez-moi de dire quelques mots d'un dernier argument que tentent de faire valoir les Etats qui estiment que la Cour devrait décliner sa compétence dans la présente affaire en raison de l'existence d'un différend sous-jacent. Ces Etats relèvent en effet que si la Cour a accepté de rendre un avis dans l'affaire du *Sahara occidental* alors même qu'il existait un différend relatif à ce territoire entre l'Espagne et le Maroc, c'est parce que, comme la Cour l'a relevé, les droits actuels de l'Espagne en tant que puissance administrante ne seraient pas affectés par l'avis[30]. Tel ne

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[28] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, déclaration de M. le juge Gros, p. 71, par. 2.

[29] Voir en particulier EéIL, par. 3.9.

[30] *Sahara occidental (avis consultatif)*, p. 27, par. 42.

serait pas le cas dans la présente affaire, où les droits actuels du Royaume-Uni en tant que puissance administrante des Chagos seraient forcément affectés si la Cour en venait à conclure que le processus de décolonisation de Maurice n'a pas été validement mené à bien[31]. Ce que les Etats en question oublient fort opportunément de mentionner c'est le fait que si les droits actuels de l'Espagne n'étaient pas en cause en 1975, c'est avant tout parce que l'Espagne ne revendiquait plus à ce moment-là une quelconque souveraineté sur le territoire du Sahara occidental et entendait proposer à la population du territoire un référendum d'autodétermination. [Début de la projection] L'Espagne présentait de façon très claire sa situation juridique dans son exposé écrit, en énonçant que

> «même les titres juridiques territoriaux de la puissance administrante sont affectés par le principe d'autodétermination des peuples malgré l'effectivité indiscutable de la Puissance administrante et malgré que ses titres juridiques fussent légitimes et valables au moment de sa constitution en accord avec le droit international traditionnel»[32].

[Fin de la projection]

Pas plus que l'Espagne en 1975, le Royaume-Uni ne peut donc prétendre aujourd'hui que ses «droits actuels» seraient remis en cause par l'avis que sollicite l'Assemblée générale car ces droits ont, eux aussi, été «affectés par le principe d'autodétermination des peuples».

B. La demande d'avis consultatif s'inscrit manifestement dans le cadre des fonctions de l'Assemblée générale en matière de décolonisation et l'avis lui sera utile pour l'exercice futur de ces fonctions

11. Comme on vient de le voir, l'implication des Nations Unies — et singulièrement de l'Assemblée générale — dans ce dossier, dès l'adoption par la puissance administrante de mesures visant à séparer l'archipel des Chagos de Maurice, ne fait donc aucun doute. Mais la poignée d'Etats qui s'opposent à l'exercice de sa compétence par la Cour fait valoir — et c'est leur deuxième objection — que cette implication ne fut que passagère et que l'Assemblée générale n'a plus exercé ses fonctions à l'égard de cette situation jusqu'à l'adoption de la résolution formulant la demande d'avis consultatif en 2017[33]. Il faudrait selon eux en déduire que la réponse qu'apporterait

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[31] OéUS, par. 2.12 ; OéGB, par. 3.11 et 3.18.

[32] *Sahara occidental*, requête pour avis consultatif, exposé écrit de *l'Espagne* (26 mars 1975), p. 211-212, par. 356.

[33] EéAUS, par. 53-54 ; EéFR, par. 13 ; OéUS, par. 2.22 et suiv. ; OéGB, par. 1.7.

la Cour à la demande dont elle est aujourd'hui saisie ne présente aucun intérêt actuel pour l'Assemblée générale, ce qui viendrait confirmer que la procédure consultative serait ici détournée de son objet[34].

12. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est encore une fois une vision toute particulière de la chronologie que ces Etats vous proposent. En faisant ce bond de géant de cinquante ans entre 1967 et 2017, ils passent sous silence le fait que Maurice a, durant cet intervalle, soulevé la question de la séparation des Chagos à pas moins de 34 reprises dans le cadre des Nations Unies[35]. Ils passent sous silence le fait que cette question, et celle du traitement

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[34] EéUS, par. 3.24 ; EéGB, par. 7.18 ; OéGB, par. 3.21.

[35] Voir l'exposé écrit de Maurice (ci-après «EéMU»), annexe 100 : Statement by Sir Abdul Razack Mohamed at the 29th Session of the United Nations General Assembly (27 September 1974) ; Statement by Sir Seewoosagur Ramgoolam, Prime Minister, at the 35th Session of the United Nations General Assembly (9 October 1980) ; Statement by Hon. Anerood Jugnauth, Prime Minister, at the 37th Session of the United Nations General Assembly (15 October 1982) ; Statement by Hon. Anerood Jugnauth, Prime Minister, at the 38th Session of the United Nations General Assembly (27 September 1983) ; Statement by Sir Satcam Boolell QC, Minister of External Affairs and Emigration, at the 41st Session of the United Nations General Assembly (8 October 1986) ; Statement by Sir Satcam Boolell QC, Minister of External Affairs and Emigration, at the 42nd Session of the United Nations General Assembly (9 October 1987) ; Statement by Sir Anerood Jugnauth, Prime Minister, at the 43rd Session of the United Nations General Assembly (12 October 1988) ; Statement by Sir Satcam Boolell QC, Deputy Prime Minister and Minister of External Affairs and Emigration, at the 44th Session of the United Nations General Assembly (27 September 1989) ; Statement by Hon. Jean-Claude de L'Estrac, Minister of External Affairs, at the 45th Session of the United Nations General Assembly (9 October 1990) ; Statement by Hon. Paul Bérenger, Minister of External Affairs, at the 46th Session of the United Nations General Assembly (10 October 1991) ; Statement by Hon. Paul Bérenger, Minister of External Affairs, at the 47th Session of the United Nations General Assembly (1 October 1992) ; Statement by Dr the Hon. A.S. Kasenally, Minister of External Affairs, at the 48th Session of the United Nations General Assembly (30 September 1993) ; Statement by Sir Anerood Jugnauth, Prime Minister, at the 49th Session of the United Nations General Assembly (5 October 1994) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 51st Session of the United Nations General Assembly (10 October 1996) ; Statement by Hon. R. Purryag, Deputy Prime Minister, Minister of Foreign Affairs and International Trade, at the 52nd Session of the United Nations General Assembly (30 September 1997) ; Statement by Dr the Hon. Navinchandra Ramgoolam, Prime Minister, at the 53rd Session of the United Nations General Assembly (23 September 1998) ; Statement by Hon. R. Purryag, Deputy Prime Minister, Minister of Foreign Affairs and International Trade, at the 54th Session of the United Nations General Assembly (30 September 1999) ; Statement by Hon. A.K. Gayan, Minister of Foreign Affairs and Regional Cooperation, at the 55th Session of the United Nations General Assembly (22 September 2000) ; Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 56th Session of the United Nations General Assembly (11 November 2001) ; Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 57th Session of the United Nations General Assembly (13 September 2002) ; Statement by the Rt. Hon. Sir Anerood Jugnauth, KCMG, PC, QC, Prime Minister, at the 58th Session of the United Nations General Assembly (24 September 2003) ; Statement by Hon. Jaya Krishna Cuttaree, Minister of Foreign Affairs, International Trade and Regional Cooperation, at the 59th Session of the United Nations General Assembly (28 September 2004) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 60th Session of the United Nations General Assembly (19 September 2005) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 61st Session of the United Nations General Assembly (22 September 2006) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, Prime Minister, at the 62nd Session of the United Nations General Assembly (28 September 2007) ; Statement by H.E. Mr. S. Soborun, Permanent Representative of Mauritius to the UN, at the 63rd Session of the United Nations General Assembly (29 September 2008) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 64th Session of the United Nations General Assembly (25 September 2009) ; Statement by Dr. the Hon. Arvin Boolell, Minister of Foreign Affairs, Regional Integration and International Trade, at the 65th Session of the United Nations General Assembly (28 September 2010) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 66th Session of the United Nations General Assembly (24 September 2011) ; Statement by Dr. the Hon. Arvin Boolell, GOSK, Minister of Foreign Affairs, Regional Integration and International Trade, at the 67th Session of the United Nations General Assembly (1 October 2012) ; Statement by Dr. the Hon. Navinchandra Ramgoolam, GCSK, FRCP, Prime Minister, at the 68th Session of the United Nations General Assembly (28 September 2013) ; Statement by H.E. Dr. Milan J.N. Meetarbhan, Permanent Representative of

réservé aux Chagossiens, ont été abordées de manière régulière au sein de divers organes de l'ONU, tels que le Comité spécial créé par l'Assemblée générale pour étudier l'application de la résolution 1514 (XV) (dit aussi Comité des 24) ou le Comité des droits de l'homme. Je me permets de vous renvoyer à cet égard à la liste de rapports et d'évocations de la question des Chagos et de leur population au sein de ces organes entre 1969 et 2000, qui est reprise dans l'exposé écrit de Maurice[36]. Cette liste, je m'empresse de l'ajouter, n'est pas exhaustive, et le dossier soumis par le Secrétariat des Nations Unies contient encore de très nombreux autres documents du même ordre. Dans leurs observations écrites, les Etats qui s'opposent à l'exercice par la Cour de sa compétence dans la présente affaire n'ont pas eu un mot à dire sur tous ces documents. Ils se sont cramponnés à l'affirmation péremptoire — et, on vient de le voir, manifestement démentie par le dossier lui-même, selon laquelle la question des Chagos n'avait pas retenu l'attention de l'Assemblée générale durant des décennies. Il paraît pourtant difficile, dans de telles circonstances, de parler d'un intérêt passager — voire même inexistant — de l'ONU pour la problématique qui est maintenant soumise à la Cour.

13. Il paraît d'ailleurs tout aussi étrange d'affirmer, en se tournant cette fois vers l'avenir, que l'avis ne présenterait aucun intérêt pour l'Assemblée générale dans l'exercice futur de ses fonctions. Comme le montrent plusieurs résolutions récentes, l'éradication du colonialisme et la mise en œuvre de la Déclaration sur l'octroi de l'indépendance aux peuples et aux pays coloniaux continuent à figurer parmi les préoccupations centrales de l'Assemblée générale[37]. Et plusieurs Etats, comme la Chine, la Corée du Sud et la Russie, dont j'ai évoqué plus tôt certaines préoccupations quant au fait que la procédure consultative ne soit pas détournée de son objet en portant sur des questions strictement bilatérales, ont expressément reconnu que l'Assemblée

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Mauritius to the UN, at the 69th Session of the United Nations General Assembly (30 September 2014) ; Statement by the Rt. Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC, Prime Minister, at the 70th Session of the United Nations General Assembly (2 October 2015) ; Statement by the Rt. Hon. Sir Anerood Jugnauth, GCSK, KCMG, QC, Prime Minister, at the 71st Session of the United Nations General Assembly (23 September 2016) ; Statement by Hon. Pravind Kumar Jugnauth, Prime Minister, at the 72nd Session of the United Nations General Assembly (21 September 2017).

[36] EéMU, par. 4.40.

[37] Voir en particulier, Nations Unies, *Assemblée générale, soixante-cinquième session*, Cinquantième anniversaire de la Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux, doc. A/RES/65/118 du 10 décembre 2010 ; *ibid.*, Troisième Décennie internationale de l'élimination du colonialisme, doc. A/RES/65/119 du 10 décembre 2010 ; Nations Unies, *Assemblée générale*, Application de la Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux, doc. 71/122 du 6 décembre 2016.

générale possédait un intérêt institutionnel indéniable pour les questions de décolonisation[38] et était pleinement fondée à solliciter une guidance juridique de la part de la Cour sur ces questions[39]. Il est aussi révélateur, à cet égard, que l'inscription à l'ordre du jour de l'Assemblée de la demande d'avis consultatif relative aux Chagos se soit faite par consensus, sans qu'aucun Etat ne soulève d'objection sur ce point. Dans un tel contexte, il ne fait pas de doute que l'avis rendu par la Cour présentera un intérêt manifeste pour l'Assemblée générale et ses organes subsidiaires. En fonction de la réponse que la Cour apportera à la première question, l'avis validera — ou pas — la pertinence et la légitimité de l'intervention de l'Assemblée et de ses organes subsidiaires dans le dossier des Chagos. Si la Cour venait à conclure que le processus de décolonisation de Maurice n'a pas été mené à bien, les réponses apportées par la Cour à la seconde question guideront à l'évidence l'Assemblée générale dans le choix des mesures qu'elle pourra inviter les Etats et les organes et organisations composant le système des Nations Unies à adopter pour que ce processus puisse être mené à son terme.

C. La demande d'avis consultatif ne met pas en cause des questions de fait et de preuve d'une complexité telle qu'elles ne pourraient être réglées dans un tel cadre

14. En troisième lieu, les quelques Etats qui estiment que la Cour devrait refuser de répondre à la demande d'avis font valoir que la procédure consultative ne se prête pas au traitement des questions de fait et de preuve qui seraient particulièrement complexes dans un dossier comme celui-ci[40]. L'argument, encore une fois, n'est pas nouveau et avait entre autres été évoqué dans l'affaire de l'*Edification d'un mur*, où il avait été écarté par la Cour[41]. Il n'est pas plus convaincant aujourd'hui. D'une part, les faits qui sont en cause dans la présente instance n'ont rien de particulièrement complexe. Les pièces de procédure écrite montrent que leur existence n'est guère contestée en elle-même, et que les Etats qui se sont exprimés à ce sujet s'opposent plutôt sur l'interprétation qu'il convient de leur donner. D'autre part, les Etats les plus directement intéressés,

[38] EéKR, par. 2 ; EéRU, par. 25.

[39] EéCN, par. 13 ; EéKR, par. 6.

[40] EéAUS, par. 55 ; EéIL, par. 3.21-3.23 ; OéGB, par. 3.24.

[41] *Edification d'un mur (avis consultatif)*, p. 161-162, par. 57-58.

mais aussi d'autres Etats participant à la présente procédure[42] et l'Union africaine ont annexé à leurs exposés et observations écrits des centaines de documents de tous ordres. S'y ajoutent les très nombreuses pièces assemblées par le Secrétariat des Nations Unies et soumises à la Cour sous la forme d'un dossier remarquablement complet et structuré. C'est d'ailleurs précisément parce qu'elle disposait du même type de documentation, y compris sous la forme d'un dossier préparé par le Secrétariat des Nations Unies, que la Cour a écarté cette objection dans l'affaire de l'*Edification d'un mur*[43]. On voit mal, dans les présentes circonstances, quels matériaux documentaires ou quels éléments de preuve feraient encore défaut et empêcheraient la Cour de se prononcer en toute connaissance de cause sur les questions qui lui sont soumises.

D. L'avis consultatif rendu par la Cour ne remettrait pas en cause le principe de l'autorité de la chose jugée

15. Enfin, il me faut encore évoquer brièvement la quatrième objection faite à l'encontre de l'exercice par la Cour de sa compétence dans la présente affaire. Selon une poignée d'Etats, la Cour, en se prononçant sur la demande dont elle est saisie, serait conduite à revenir sur des questions tranchées dans la sentence arbitrale rendue en 2015 dans l'affaire de l'*Aire marine protégée des Chagos*. De manière plus particulière, le principe de l'autorité de la chose jugée empêcherait la Cour de remettre en cause la validité de l'accord de 1965 que les arbitres auraient déclaré — toujours selon ces Etats — s'imposer à Maurice[44]. Mes observations sur ce point seront brèves. D'une part, comme la Cour l'a exposé, le principe de l'autorité de la chose jugée ne s'applique que dans le cas où les mêmes parties sollicitent un règlement pour une même question qui «a déjà été réglée définitivement» entre elles dans le cadre d'une affaire antérieure[45]. Tel n'est évidemment pas le cas ici, à la fois pour ce qui est des intervenants à l'instance et des questions juridiques en cause qui vont bien au-delà des prononcés du tribunal arbitral. D'autre part, l'affirmation selon laquelle les arbitres auraient tranché en 2015 la question de la validité juridique

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[42] Voir, entre autres, EéAUS ; exposé du Belize (30 janvier 2018) ; exposé écrit de la République du Guatemala (mars 2018) ; exposé écrit de la République de l'Inde (28 février 2018).

[43] *Edification d'un mur (avis consultatif)*, p. 161-162, par. 57.

[44] EéGB, par. 7.11, 9.5 ; EéAUS, par. 39 ; EéFR, par. 17 ; EéUS, par. 2.10-2.14.

[45] *Question de la délimitation du plateau continental entre le Nicaragua et la Colombie au-delà de 200 milles marins de la côte nicaraguayenne (Nicaragua c. Colombie), exceptions préliminaires, arrêt, C.I.J. Recueil 2016 (I)*, p. 126, par. 59 ; *Application de la convention pour la prévention et la répression du crime de génocide (Croatie c. Serbie), exceptions préliminaires, arrêt, C.I.J. Recueil 2008*, p. 437, par. 76.

de l'accord de 1965 à l'égard de Maurice est inexacte. Le Tribunal s'est en effet contenté de conclure que cet accord était devenu par la suite une «question de droit international» («a matter of international law») et que comme tel, il consignait des engagements unilatéraux contraignants pour le Royaume-Uni[46]. Rien n'a été dit par le Tribunal quant à la validité ou à l'invalidité du consentement de Maurice à cet égard et les deux arbitres qui se sont prononcés sur ce point dans une opinion séparée ont conclu à l'absence de consentement de Maurice au détachement des Chagos[47]. Pas plus que les autres arguments dont je viens de traiter, celui fondé sur l'autorité de la chose jugée n'est donc de nature à faire obstacle à l'exercice par la Cour de sa compétence dans la présente affaire.

16. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, les Etats qui veulent vous convaincre d'abdiquer votre compétence consultative dans la présente affaire vous resservent en réalité des arguments bien connus qui ont, à chaque fois dans le passé, échoué à séduire la Cour. Ces arguments n'étaient pas convaincants en 1975 dans l'affaire du *Sahara occidental* ou en 2004 dans celle de l'***E****dification d'un mur* ; ils ne le sont pas davantage aujourd'hui, même si chaque cas doit bien sûr être apprécié sur la base de ses propres mérites. Et s'ils ne le sont pas, c'est avant tout parce que, comme en 1975, comme en 2004, les questions qui vous sont posées s'inscrivent dans un cadre de référence plus large que celui d'un simple contentieux entre deux Etats. Il n'existe ici, pas plus qu'en 1975 ou en 2004, d'atteinte au principe selon lequel le consentement des Etats est requis pour que les différends qui les concernent soient soumis à la Cour. Les questions en cause renvoient à des principes juridiques qui relèvent pleinement des champs de compétence de l'Assemblée générale, et l'incertitude qui continue à entourer leur application dans notre cas d'espèce fait que l'Assemblée a manifestement un intérêt à voir ces incertitudes levées, une fois pour toutes. C'est ce qu'a cherché l'Assemblée générale en vous soumettant la présente demande d'avis, et il n'existe aucune raison de refuser d'y donner suite.

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[46] Arbitrage concernant l'*Aire marine protégée des Chagos (Maurice c. Royaume-Uni)*, sentence du 18 mars 2015, Tribunal constitué conformément à l'annexe VII de la CNUDM, par. 448 (dossier des juges, onglet n° 409).

[47] Arbitrage concernant l'*Aire marine protégée des Chagos*, opinion individuelle et dissidente du 18 mars 2015, par. 77, entre autres (dossier des juges, onglet n° 409).

17. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, je vous remercie pour votre écoute attentive et je vous demanderai, Monsieur le président, de bien vouloir maintenant passer la parole à ma collègue, M[e] Alison Macdonald.

The PRESIDENT: I thank Professor Klein and I give the floor to Ms Macdonald. You have the floor, Madam.

Ms MACDONALD:

THE DECOLONIZATION OF MAURITIUS WAS NOT LAWFULLY COMPLETED IN 1968

1. Mr. President, Madam Vice-President, Members of the Court, it is my honour to continue Mauritius' oral submissions. I will make a start now, and if convenient for the Court, I will pause around 11.20 for the break.

2. Professor Klein has just explained why both of the questions referred by the General Assembly *can* and *should* be answered. And I will now address the substance of the first question. [Screen on]

3. My submissions will be in two parts. *Firstly*, I will look at the law of decolonization as it stood when Mauritius was dismembered in 1965, and when it gained its independence in 1968. And *Secondly*, I will apply the law to the facts, and, in particular, to the colonial Power's claim that the people of Mauritius *agreed* to the excision of the Chagos Archipelago. [Screen off]

4. *In summary*, Mauritius submits that the excision was carried out in total disregard of the right of self-determination and territorial integrity. And, as Mr. Reichler will explain after me, this created an internationally wrongful situation which continues to this day, and which should be brought to an immediate end.

I. The legal framework

a. The right to self-determination was clearly established by 1965

5. Starting with the legal framework, there can be no doubt that self-determination is one of the most fundamental principles of international law. It also lies at the heart of the modern law of human rights. And this Court has played a vital role in applying the principle, describing it in the

East Timor case as an *erga omnes* norm[48], and in the *Kosovo* Advisory Opinion as "one of the major developments of international law during the second half of the twentieth century"[49].

6. But two States, the United Kingdom and the United States, will try to convince you that, conveniently enough, this fundamental norm did not exist until two years after Mauritius' independence. At the time of the dismemberment in 1965, they say, self-determination was merely an aspirational principle: fine words, but of no legal consequence for colonial Powers, and giving no legal rights to colonized peoples[50].

7. It is striking, Mr. President, that it is *only* the administering Power, and the State to whom the excised territory was made available, who have asked you to draw such an extreme conclusion. As you will have seen from the Written Statements and Comments, every other State which has expressed its views on this question, along with the African Union, has no doubt that the right to self-determination was firmly established by the time that Mauritius was dismembered.

8. In its written pleadings, Mauritius has carefully traced the history of the right of self-determination, from the Mandate system and the Covenant of the League of Nations to the United Nations Charter, where it plays a central part in the mission of the United Nations[51]. As we have shown, State practice in the General Assembly and the Security Council throughout the 1950s marks the emergence of self-determination as a fully-fledged right which provided the legal underpinning for the decolonization process[52].

9. And then, in December 1960, the General Assembly passed resolution 1514 (XV), the "Colonial Declaration"[53]. While this powerful declaration has been of deep and lasting importance in the process of ending colonialism, it did not come out of the blue. On the contrary, it was the product of a decade and a half of United Nations practice. The Declaration *reflected* customary international law — it did not *create* it. And the fact that it contained nothing revolutionary can be

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[48] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29.

[49] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 438, para. 82.

[50] StGB, 15 Feb. 2018, paras. 8.55-8.77; Written Statement of the United States of America (1 Mar. 2018), (hereinafter "StUS"), paras. 4.30-4.72.

[51] StMU, 1 Mar. 2018, paras. 6.4-6.61; CoMU, 15 May 2018, paras. 3.7-3.41.

[52] *Ibid.*

[53] UNGA, 15th Session, *Declaration on the granting of independence to colonial countries and peoples*, UN doc. A/RES/1514(XV), 14 Dec. 1960; judges' folders, tab 55.

seen from the voting record — it was adopted by 89 votes, with only nine abstentions, and no vote against.

10. And yet the administering Power would have you believe that, legally speaking, the Colonial Declaration meant nothing. *It* claims that in 1960, and for another decade, colonial Powers had the unfettered right to dispose of territories as they wished. But just look at what was happening at that time. In the General Assembly debate at which the Colonial Declaration was passed, the United States representative noted that "[s]ome thirty-four countries, containing over 775 million people, have attained independence since 1946. Nearly all are Members of the United Nations with representatives in this hall. In Africa alone no less than twenty-one States have made this transition, until two thirds of the whole of Africa is free and independent."[54]

11. If the United Kingdom is right, these vast territories were simply given away out of a sense of *noblesse oblige*, unfettered by any legal obligation. Mr. President, Mauritius considers that this position is both condescending to the peoples who gained their independence in that period, and legally untenable[55].

12. Whether one looks to 1965 or to 1968, the right of self-determination was firmly established in international law. The evidence to this effect is overwhelming. Colonial territories were gaining their independence on the basis of a binding legal right which, by then, was a fundamental part of the post-war legal order.

13. Perhaps recognizing the weight of the evidence, the United Kingdom goes on to suggest that, if the right *did* indeed exist in the 1960s, then the United Kingdom was a persistent objector to it[56]. I can deal very briefly with this point.

(1) *Firstly*, and most fundamentally, if the doctrine of persistent objection exists, then it can *never* apply to a peremptory norm, of which self-determination has long been regarded as a leading

[54] UNGA, 15th Session, 937th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, UN doc. A/PV.937 (6 Dec. 1960), p. 1158, para. 15; judges' folders, tab 68. See also CoMU, para. 3.36.

[55] See StMU, paras. 6.20-6.39. See also Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963), p. 104; Ann. 19; Thomas Mensah, *Self-Determination Under United Nations' Auspices: The role of the United Nations in the application of the principle of self-determination for nations and peoples* (1968), pp. 23-30; Ann. 94.

[56] StGB, paras. 8.59-8.61.

example[57]. It is no more possible to be a persistent objector to self-determination than to the prohibition of genocide, torture, or aggression.

(2) And *secondly*, in any event, when one looks at the record from the 1960s, one sees that the United Kingdom was *no objector* to self-determination, let alone a persistent one[58]. In fact, it was a *supporter* of the right, invoking it itself, for example, in discussions on Gibraltar, and voting without comment or reservation in favour of resolutions which referred to the right[59]. The most that could be said is that it occasionally expressed hesitation about whether self-determination required *immediate* independence for non-self-governing territories. But as to the *existence* of a binding legal right, the administering Power *itself* took the view in 1964, the year before it dismembered Mauritius, that [screen on] "[t]here could be no doubt about the meaning of paragraph 6" of the Colonial Declaration. "The paragraph in question was clearly aimed at protecting colonial territories or countries which had recently become independent against attempts to divide them or encroach on their territorial integrity at a time when they were least able to defend themselves because of the stresses and strains of approaching or newly achieved independence."[60] It would be difficult to put it more clearly. [Screen off]

b. What the right of self-determination required in practice

14. So, given that the colonial Power was bound to respect Mauritius' right of self-determination, the next question is — what did that mean in practice? I would point to *two* things in particular.

15. *Firstly*, the colonial power was under an obligation to respect the *territorial integrity* of the non-self-governing territory. What this meant in practice was that the right to self-determination had to be exercised by the entire population of the existing territorial unit. The colonial Power was not permitted to undermine the process of self-determination by changing the boundaries of the territorial unit before its people had had a chance to express their wishes. [Screen on] This principle

[57] CoMU, 3.42-3.44.

[58] See *ibid*., paras. 3.42-3.55.

[59] *Ibid.*, paras. 3.47-3.55.

[60] UNGA, 19th Session, *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*, UN doc. A/5800/Rev.1 (1964-1965), para. 148; judges' folders, tab 251.

was, of course, elegantly expressed in paragraph 6 of the Colonial Declaration — "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." But even *before* that, its wide acceptance can be seen throughout the 1950s, in the strong condemnation of various proposals to dismember non-self-governing territories[61].

16. And if a territory *were* to be divided, this would have to be by the agreement of the people of the *whole* territorial unit. By 1968, United Nations-supervised plebiscites had been used on *many* occasions to allow the people of a colony to express their will as to the potential merger or division of the colony[62].

17. *Secondly*, the colonial Powers had to move swiftly to grant independence to all territories which wished it. [Next slide] Paragraph 5 of the Colonial Declaration made clear that this process of moving towards independence had to be carried out "in accordance with [the] freely expressed will and desire . . ." of the people concerned. As this Court explained in *Western Sahara*, paragraph 5 confirms that "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned"[63].

Mr. President, would that be a convenient moment for the Court to take the break?

The PRESIDENT: I think you can continue and bring to an end your intervention.

Ms MACDONALD: Mr. President, I probably have 15 minutes to go, which would take us to 11.35 a.m. I do not want the Court to delay its break if it would prefer to have one now.

The PRESIDENT: Please go ahead.

Ms MACDONALD:

II. The facts

18. Mr. President, with that legal framework in mind, I can now turn to the facts. There are three issues for the Court to consider:

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[61] See StMU, paras. 6.51-6.61.

[62] See *ibid*, paras. 6.59-6.60.

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

(a) firstly, the colonial Power's argument that the Chagos Archipelago was never part of Mauritius in the first place;

(b) secondly, the argument that the requirements of self-determination were met by the so-called "agreement" of Mauritian representatives to the excision;

(c) And *thirdly*, the argument that the Mauritian people *also* agreed to the excision at the General Election in 1967.

a. The unit of self-determination

19. Dealing with the *first* point, the United Kingdom argues that the Chagos Archipelago never formed part of Mauritius *at all*, being only administered as a part of Mauritius "for convenience". But this ignores the overwhelming historical facts. The evidence — much of which the United Kingdom remains silent about — makes it plain that the Chagos Archipelago was an integral part of Mauritius, and indeed the colonial Power readily acknowledged that at the time[64].

20. And the United Kingdom's argument makes its behaviour at the time of dismemberment completely inexplicable. Why was the British Governor told to explain that the Chagos Archipelago would be "constitutionally separated" from Mauritius?[65] Why all the talk of "detachment" if the Archipelago was not attached in the first place?

b. The acquiescence of the Mauritian representatives in 1965 did not amount to the free and fair expression of the will of the people

21. So, on the basis that the self-determination unit clearly *did* include the Chagos Archipelago, I turn next to the argument that the Mauritian representatives *agreed* to the excision.

22. On this point, the colonial Power stands alone. Every State which has made submissions on this aspect of the facts, along with the African Union, concludes that the colonial Power's conduct seriously violated the right of self-determination.

23. Mauritius considers that the record can be boiled down to two simple facts. In 1965, the colonial Power made clear to the Mauritian representatives, in no uncertain terms, that:

(1) *firstly*, their consent to excision was the price for independence; and

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[64] See StMU, paras. 2.15-2.47; CoMU, paras. 3.69-3.75.

[65] Telegram from the Secretary of State for the Colonies to Mauritius & Seychelles, Nos. 198 and 219, FO 371/184526 (19 July 1965), para. 8 (Ann. 37).

(2) *secondly*, the excision would go ahead *whether or not* they consented.

24. So the choice facing the Mauritian representatives was not, in reality, between retaining or losing the Chagos Archipelago, but between gaining independence and remaining a colony. Either way, it was clear, the colonial Power had already decided that the Archipelago was to be removed.

25. As the record shows, in May 1964 the colonial Power had secretly and irrevocably decided to excise the Chagos Archipelago[66]. At no point after that was the plan open to change.

26. This fundamentally undermines any attempt to argue that the excision was compatible with the right of self-determination. Because to act lawfully, the colonial Power would have had to ask the Mauritian people the following question: "Do you wish Mauritius to become independent and, if so, do you wish independence to apply to the whole territory, or do you agree to the Chagos Archipelago being excised, turned into a new colony, and all of its inhabitants removed?" *That* is the question which self-determination required — and it is not difficult to imagine how it would have been answered.

27. So the problem which the administering Power faces is that, on no possible interpretation of the historical record, did it *ever* give the Mauritian people the option of retaining the Archipelago. As we see, in preparing for the Lancaster House talks, the colonial Power took the view that: [screen on]

> "If Mauritius Ministers refuse this offer, they should be told that, in that case, HMG [Her Majesty's Government] will have to consider any proposals for the future status of Mauritius without the Chagos Archipelago, and will exercise their right to transfer Chagos to permanent British sovereignty under order-in-council, financial compensation as above being paid to the Mauritius Government."[67]

28. So excision was *inevitable* even before the Lancaster House talks began in September 1965. [Screen off] Turning to the talks themselves, the record shows that this foregone conclusion was imposed upon a small subgroup of Mauritian representatives in circumstances of coercion and duress.

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[66] United Kingdom, "*British Indian Ocean Territory 1964-1968: Chronological Summary of Events relating to the Establishment of the B.I.O.T. in November 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes*" FCO 32/484 (1964-1968), item No. 11 (Ann. 23).

[67] Memorandum by the UK Deputy Secretary for Defence and the Parliamentary Under-Secretary of State for Foreign Affairs on Defence Facilities in the Indian Ocean OPD (65)124 (26 Aug. 1965), para. 6d (Ann. 48).

29. Here I pause for a moment to clear up a misconception about the term "duress". The administering Power argues that the circumstances in Lancaster House did not meet the requirements of Articles 51 and 52 of the Vienna Convention[68]. But Mauritius has never invoked these provisions. However brutal the behaviour of the colonial Power in those talks, nobody actually held a gun to the heads of the Mauritian representatives. But more fundamentally, whatever emerged from Lancaster House, it was not a treaty: the document was one between a colonial Power and a colony under its control.

30. The law of treaties is simply inapplicable here. The Court is dealing with a situation of decolonization, and it is the right of *self-determination* which provides the necessary legal framework. The question for the Court is whether at any stage the Mauritian people agreed to the excision on the basis of a free and fair expression of their will. Mauritius considers that the events of 1965 amounted to coercion and duress within the everyday meaning of those words — the very opposite of the "free and fair" consent that self-determination required.

31. Mauritius has analysed the historical record in detail in its Written Statement and Comments, and there is time today to look only briefly at a few of the key documents.

32. You will recall, of course, that the Mauritian representatives had expressed considerable resistance to the excision, to the point where the British Prime Minister, Sir Harold Wilson, resolved to have "a private word" with Premier Ramgoolam[69]. A meeting was arranged for 10 a.m. on 23 September 1965, at 10 Downing Street. The objective of this "private word" was spelled out in advance by the Prime Minister's private secretary: [screen on]

> "Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago. I attach a brief prepared by the Colonial Office, with which the Ministry of Defence and the Foreign Office are on the whole content. The key sentence in the brief is the last sentence of it on page three."[70]

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[68] StGB, paras. 8.17-8.18; CoGB, para. 4.13.

[69] United Kingdom, *Note for the Record relating to a Meeting held at No. 10 Downing Street on 20 September 1965 between the U.K. Prime Minister, the Colonial Secretary and the Defence Secretary* (20 Sep. 1965), paras. 1-2 (Ann. 58).

[70] UK Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965), p. 1 (Ann. 59).

33. Turning to that brief to which the private secretary referred, the "key sentence" states that [next slide]:

> "The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, *without* Mauritius consent, but this would be a grave step."[71]

34. And what did the Prime Minister say to the Premier when they met? He: [next slide]

> "went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by consent, although he could not of course commit the Colonial Secretary at this point."[72]

35. The Prime Minister could hardly have been clearer. His words leave no room for ambiguity: the Chagos Archipelago was to be detached, with or without consent. Premier Ramgoolam himself recognized this as a "threat", as he later made clear. And this was openly acknowledged within the Government of the colonial Power. For example, [next slide] in 1967, the Commonwealth Secretary stated at a cabinet meeting — attended by Prime Minister Wilson — that in 1965 the Mauritian ministers had been told that "unless they accepted our proposals we should not proceed with the arrangements for the grant to them of independence"[73].

36. [Next slide] And a Foreign Office memorandum of 1983 notes that "The Prime Minister did, however, implicitly *threaten* Ramgoolam with detachment by Order in Council if agreement were not forthcoming . . ."[74] [screen off].

37. In its written pleadings, Mauritius has referred to *16* documents from the publicly available records of the colonial Power, which *expressly* recognize that independence was conditional on the Mauritian ministers' acquiescence to detachment. All of those documents are

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[71] UK Colonial Office, *Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius*, PREM 13/3320 (22 Sept. 1965), p. 5.

[72] UK Foreign Office, *Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 a.m. on Thursday, September 23, 1965*, FO 371/184528 (23 Sept. 1965), p. 3 (Ann. 60).

[73] UK Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1., on Thursday, 25th May 1967 at 9:45 a.m.*, OPD (67) (25 May 1967), p. 2 (Ann. 90).

[74] Letter from M. Walawalkar of the African Section Research Department to P. Hunt of the East African Department on the Mauritian Agreement to Detachment of Chagos, FCO 31/3834 (9 Mar. 1983), para. 2 (Ann. 127).

annexed to Mauritius' pleadings, and a footnote in the transcript will guide you to them[75]. The administering Power says that all these documents are just "the words of a couple of officials"[76]. But that rather glosses over the fact that these "officials" include the Colonial Secretary himself. And even a former "Commissioner" of the so-called "BIOT" has publicly acknowledged that independence was made conditional on acquiescence to detachment[77]. The documents make the situation so clear that there is just no way of avoiding the obvious conclusion.

c. The 1967 General Election

38. So if the events of 1965 did not fulfil the requirements of self-determination, the United Kingdom falls back on the 1967 General Election. Of course, the question of independence *has* sometimes been dealt with through a general election. This makes perfect sense where there are two options — independence or not — and different political parties offering a different position.

39. But what makes this argument rather surprising *here* is that, by the time the election was held in 1967, the excision had already been carried out two years earlier, and the colonial Power had entered into an agreement to make the Archipelago available to a third State as a military base

[75] See UK Foreign Office, *Minute from E. H. Peck to Mr. Graham: Indian Ocean Islands*, FO 371/184527 (3 Sept. 1965), p. 2, paras. 1-2 (Ann. 52); United Kingdom, *Secretary of State's Private Discussion with the Secretary of State for Defence on 15 September: Indian Ocean Islands*, FO 371/184528 (15 Sept. 1965), para. 1 (Ann. 55); United Kingdom, Record of UK-US Talks on *Defence Facilities in the Indian Ocean*, FO 371/184529 (23-24 Sept. 1965), Record of a Meeting with an American Delegation headed by Mr. Kitchen, on 23 September, 1965, Mr. Peck in the chair (Ann. 62); United Kingdom, *Minute from M. Z. Terry to Mr. Fairclough - Mauritius: Independence Commitment*, FCO 32/268 (14 Feb. 1967), para. 4 (Ann. 86); UK Colonial Office, *Minute from A. J. Fairclough of the Colonial Office to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary*, FCO 16/226 (22 May 1967), para. 7 (Ann. 89); UK Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1., on Thursday, 25th May 1967 at 9:45 a.m.*, OPD (67) (25 May 1967), p. 2 (Ann. 90); Letter from J. N. Allan of the British High Commission in Port Louis to P. Hunt of the East African Department, FCO 31/3834 (4 Mar. 1983), para. 2 *(a)* (Ann. 126); Letter from M. Walawalkar of the African Section Research Department to P. Hunt of the East African Department on the Mauritian Agreement to Detachment of Chagos, FCO 31/3834 (9 Mar. 1983), para. 2 (Ann. 127); United Kingdom, OPD Paper, *Mauritius Defence Agreement* (undated), para. 9 (Ann. 201); United Kingdom, Draft OPD Paper, *Mauritius Defence Agreement* (including handwritten annotations) (undated), para. 9 (Ann. 202); UK Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Wednesday, 2nd June, 1965, at 10:30 a.m.*, OPD (65) 28th Meeting (2 June 1965), p. 10 (Ann. 207); UK Defence and Oversea Policy Committee, *Minutes of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 23rd September, 1965, at 4 p.m.*, OPD (65) 41st Meeting (23 Sept. 1965), pp. 5-6 (Ann. 209); Letter from J. Rennie, Governor of Mauritius, to A. Greenwood, UK Secretary of State for the Colonies, CO 1036/1253 (15 Nov. 1965), p. 2 (Ann. 211); Report from J. Rennie, Governor of Mauritius, to H. Bowden, Secretary of State for Commonwealth Affairs (23 Jan. 1967), para. 8 (Ann. 213); Note from T. Smith to Sir Arthur Galsworthy (14 Feb. 1967) (Ann. 215); UK House of Lords, Debate, *Diego Garcia: Minority Rights Group* Report, Vol. 436, cc397-413 (11 Nov. 1982), p. 1 (Ann. 225).

[76] StGB, paras. 2.47-2.48.

[77] N. Wenban-Smith & M. Carter, *Chagos: A History — Exploration, Exploitation, Expulsion* (2016), p. 473 (Ann. 235).

for a minimum of 50 years. The whole thing, by 1967, was a done deal. And there was absolutely *no* offer by the colonial Power to reverse the excision if the Mauritian electorate wished it.

40. So the choice faced by the Mauritian people in 1967 was exactly the same as had faced the Mauritian representatives in 1965 — independence without the Archipelago, or remaining a colony without the Archipelago. Which was not, we say, really a choice at all.

d. The excision and the reaction of the international community

41. Resuming the story in 1965, the Chagos Archipelago was hastily detached on 8 November. The Colonial Secretary explained the need for rapid action in a document which merits reading in full [screen on] — but for brevity I will simply read the parts highlighted on your screen:

(i) "From the United Nations point of view the timing is particularly awkward . . ."

(ii) "We shall be accused of creating a new colony in a period of decolonisation and of establishing new military bases when we should be getting out of the old ones . . ."

(iii) "The Fourth Committee of the United Nations has now reached the item on Miscellaneous Territories and may well discuss Mauritius and Seychelles next week . . ."

(iv) "It is therefore important that we should be able to present the U.N. with a *fait accompli*."[78] [Screen off]

42. The shock and anger which these events caused at the United Nations is palpable from the records, even 50 years later. The administering Power foresaw such a reaction when it determined to present the United Nations with a *"fait accompli"*. It contemplated desperate delaying tactics such as "prolongation of [the] Rhodesia debate or resumption of discussion on Aden"[79], and dreamed up arguments in order to, in its words, "direct attention from [the] status of the new territory"[80]. It even boasted, a year later, that: [slide on] "In last year's Fourth Committee

[78] UK Foreign Office, *Minute from Secretary of State for the Colonies to the Prime Minister* FO 371/184529 (5 Nov. 1965), para. 6 (Ann. 70).

[79] Telegram from the UK Mission to the UN to the UK Foreign Office, No. 2697 FO 371/184529 (28 Oct. 1965) (Ann. 69).

[80] Telegram from the UK Mission to the UN to the UK Foreign Office, No. 2837 (8 Nov. 1965), para. 7 (Ann. 77).

and General Assembly no cognisance was taken of the existence of B.I.O.T. as a separate entity and many delegations may not then have tumbled to the *fait accompli* of separation."[81]

43. But of course these attempts by the colonial Power to hide what it had done — attempts which hardly make it look confident that the excision was the lawful result of a free and fair process — ultimately failed. [Slide off] The United Nations, through the General Assembly and its Committees, has condemned the excision and stated on numerous occasions that it violated the rights of self-determination and territorial integrity[82]. The international community has said the same thing in many different fora, including the Organisation of African Unity, now the African Union, the Non-Aligned Movement, and the Group of 77 and China[83]. And the Court has before it the many Written Statements of the States which have participated in these proceedings. Not one of them makes submissions in support of the claim that the people of Mauritius consented to their country's dismemberment.

44. Mr. President, in conclusion, Mauritius gained independence in 1968 without the Chagos Archipelago, which had been excised three years before, in complete disregard of the right of self-determination. The people of Mauritius were given no choice. Their representatives in 1965 were faced with the stark fact that, if they resisted, the Chagos Archipelago would be removed anyway, and the rest of the country would be denied independence. That was *not* the free expression of the Mauritian people's right to self-determination.

45. As the United States said in 1960, during the debate at which the Colonial Declaration was adopted, [slide on] self-determination "means more than a ceremony in which the people are permitted to ratify a single predetermined decision. It means an actual choice among alternatives."[84] And it is precisely this "actual choice among alternatives" which the Mauritian people were denied. [Slide off] That is why, Mauritius respectfully submits that its decolonization was not lawfully completed in 1968, and remains incomplete to this day.

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[81] UK Foreign Office, "*Presentation of British Indian Ocean Territory in the United Nations*", IOC (66)136, FO 141/1415 (8 Sept. 1966), para. 13 (emphasis in the original) (Ann. 81).

[82] StMU, paras. 4.24-4.41.

[83] *Ibid*., paras. 4.42-4.48.

[84] UNGA, 15th Session, 937th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, UN doc. A/PV.937 (6 Dec. 1960), p. 1159, para. 27; judges' folders, tab. 68.

46. Mr. President, Madam Vice-President, Members of the Court, this concludes my presentation. I thank you for your patient attention, and after the break I ask you to call upon Mr. Reichler.

The PRESIDENT: I thank Ms Macdonald. I will invite the next speaker to take the floor after a coffee break of ten minutes. The hearing is suspended.

The Court adjourned from 11.35 a.m. to 11.50 a.m.

The PRESIDENT: Please be seated. The sitting is resumed. I will now give the floor to Mr. Reichler, who is already at the podium. You have the floor.

Mr. REICHLER:

THE LEGAL CONSEQUENCES OF A FINDING THAT DECOLONIZATION HAS NOT BEEN LAWFULLY COMPLETED

1. Mr. President, Members of the Court, good morning. It is an honour for me to appear before you in these proceedings, and a special privilege to present Mauritius' oral submissions on the second of the two questions from the General Assembly. [Screen on] That question is now on your screens.

2. Mr. President, in addition to Mauritius, 22 States plus the African Union have urged the Court, in their written statements, to answer this question, and to answer it in full, setting forth the legal consequences for United Nations Member States as well as United Nations organs.

3. Only one State, the United Kingdom, has said that the Court should not answer the question at all, even if it finds that the decolonization of Mauritius has not been lawfully completed.

4. One other State, Germany, has encouraged the Court to answer the question, but to do so narrowly, only in regard to the consequences for the General Assembly and not in regard to the consequences for Member States.

5. And finally, in the event the Court answers the second question, only the United States and the United Kingdom have taken issue with Mauritius' views — which are shared by the great majority of States and the African Union — on what the specific legal consequences are.

6. My presentation is therefore in two parts. First, I will explain why the Court should answer the question in its entirety, and set out the legal consequences for all parties, including Member States of the United Nations.

7. Second, I will address the specific legal consequences that arise from a finding that the decolonization of Mauritius has not been lawfully completed.

I. What the question asks

8. I begin with the text. The Court is asked to identify the consequences under international law that follow from a finding, in response to the prior question, that the decolonization of Mauritius has not been lawfully completed. [Next slide]

9. This is plainly a legal question, as the very first words make clear: the Court is asked to opine on the *consequences under international law* that arise from the existence of a continuing colonial administration. The essential facts are not in issue. The colonial administration of the Chagos Archipelago has not ended. It continues to exist and there is no end in sight.

10. The question asks the Court to set out *all* the ~~***legal***~~ consequences under international law of this ongoing situation, not just *some* of them. This is because a request for *the* consequences is to be understood as comprehensive. The Court itself has said so. In the *Territorial Dispute* between Chad and Libya, the Court interpreted the words "the frontiers", in a provision of the Treaty of Friendship and Good Neighbourliness between France and Libya, to mean "*all* the frontiers between Libya and those neighbouring territories for whose international relations France was then responsible"[85]. The Court rejected Libya's contrary contention that the Treaty's reference to "*the* frontiers" meant less than all of them.

11. *The* legal consequences thus means *all* of them, including the consequences for Member States. [Next slide] This is confirmed by the second clause of the question, which makes clear that the consequences under international law include those in relation to the "obligations reflected in the above mentioned resolutions". [Next slide]

12. Those resolutions are:

[85] *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I.C.J. Reports 1994*, p. 24, para. 48; emphasis added.

— [Next slide] Resolution *1514*, which is addressed to "All *States*" and specifically refers to the Member States' obligation of "respect for . . . territorial integrity".

— [Next slide] Resolution *2066*, which refers explicitly to the obligations of the *United Kingdom* under resolution 1514 in respect of the Chagos Archipelago. It states that: "any step taken by the administering power to detach certain islands from the Territory of Mauritius for the purposes of establishing a military base would be in contravention of [Resolution 1514]". And,

— [Next slide] Resolutions *2232* and *2357*, both of which direct *"administering Powers"* to refrain from "the partial or total disruption of the . . . territorial integrity of colonial Territories". [Next slide]

13. Mr. President, it is hard to see on what basis this question — with its explicit reference to these resolutions — could be interpreted as *not* asking the Court to address the legal consequences for Member States, and we have not even finished reading it yet. [Next slide] [Next slide]

14. The third clause concerns consequences "arising from the continued administration by the [United Kingdom] of the Chagos Archipelago". This clause further confirms the intention of the General Assembly to seek an advisory opinion on the legal consequences for States, including, by name, the United Kingdom, as administering Power. [Screen off]

15. Beyond text, which is unambiguous, there is also context. The question was drafted with the Court's most recent advisory opinions in mind. The Court will appreciate that the questions here follow closely those in the *Wall* case. That request from the General Assembly did not mention, expressly, the consequences for Member States. Israel pointed this out and urged the Court not to opine on the consequences for States, including itself[86]. Jordan took a broader view, with which the Court agreed; and, in its opinion, the Court addressed the legal consequences for all relevant entities, including individual States[87]. The Court's logic was impeccable, and it is perfectly applicable in these proceedings.

[86] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004* (hereinafter "*Construction of a Wall (Advisory Opinion)*"), p. 152, para. 36.

[87] *Request for an Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Written Statement Submitted by the Hashemite Kingdom of Jordan* (30 Jan. 2004), p. 45, para. 5.36.

16. The United Kingdom argues that the question should not be answered at all, because it is not a legal question. The objection is without substance. The question asks the Court to identify "the consequences under international law" of the failure to lawfully complete the decolonization of Mauritius. How much more legal can a question be?

17. In contrast to the United Kingdom, Germany acknowledges that question two is a legal question and urges the Court to answer it. However, Germany suggests that the Court should limit its answer so that it avoids setting out the legal consequences for States. It makes three arguments in support of this proposition.

18. First, it argues that the Court should "limit[] the scope"[88] of question two by adopting a "narrow interpretation"[89] of it. Under Germany's approach, the Court should read the question as seeking only the legal consequences for the General Assembly. This is defended on the ground that the question makes no express reference to the consequences for States[90].

19. With respect, this is not a correct reading of the question. The question explicitly invokes the "obligations" referred to in the four specific General Assembly resolutions I have mentioned. These clearly set out obligations for States, including administering Powers, in relation to the right of self-determination, territorial integrity, and the need to complete decolonization as expeditiously as possible. ***One resolution*** explicitly addresses the obligations of the United Kingdom in regard to its separation of the Chagos Archipelago from Mauritius. Germany, in effect, invites the Court to depart from the express terms of the question in order to impose upon it a so-called "narrow interpretation" that is inconsistent with its text, and that contradicts the resolutions explicitly referred to in the text. There is no reason for the Court to do so.

20. Germany claims that its proposed interpretation is "what the General Assembly must have had in mind . . . as confirmed by the drafting history of the resolution"[91]. Yet its citations to the drafting history provide no support whatsoever for the "narrow interpretation" it advances, and they completely ignore the four resolutions cited in the text. We say: what the General Assembly

[88] Written Statement of Germany (hereinafter StDE), Jan. 2018, para. 137.

[89] *Ibid.*, paras. 125-126.

[90] *Ibid.*, paras. 102, 125-126.

[91] *Ibid.*, para. 126.

"must have had in mind" is best understood by reference to the text that it actually adopted. This, in fact, is what the Court itself has consistently said in its prior advisory opinions: "It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd."[92]

21. If recourse to the drafting history were appropriate, then the Court would find that the Explanatory Memorandum that accompanied General Assembly resolution 71/292 demonstrates that the drafters did seek the legal consequences for Member States. It explains that the Court's advisory opinion is necessary because *"Members of the United Nations"* would "benefit from the guidance of the principal judicial organ of the United Nations"[93] on whether the decolonization of Mauritius has been lawfully completed and, if it has not been, on the legal consequences of such a situation. The judges' folders includes many similar references to the expectation that the Court would set out the legal consequences *for Member States*[94].

22. Without finding support in the text or drafting history of this question, Germany turns to *precedent* to justify its "narrow interpretation". But it finds no support there, either. As mentioned, the General Assembly's resolution in the *Wall* case made no express reference to the legal consequences *for States*, yet the Court *did* set out those consequences. Germany seeks to distinguish the *Wall* case, arguing that the resolution cited one of the Geneva conventions, which included a "specific reference to obligations of third States"[95]. Yet that is the situation we have here as well, where there are *four* resolutions specifically cited in the question addressing the obligations

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[92] *Polish Postal Service in Danzig, Advisory Opinion, 1925, P.C.I.J. Series B, No. 11*, p. 39. See also *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 417, para. 33; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 237, para. 16; *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 87, para. 33.

[93] UN General Assembly, *Request for the inclusion of an item in the provisional agenda of the seventy-first session*, UN doc. A/71/142 (14 July 2016), para. 8; emphasis added; judges' folders, tab 1.

[94] See, e.g., *ibid.*, paras. 6-8. See also, e.g., UN General Assembly, verbatim record, 71st Session, 88th Plenary Meeting, Thursday 22 June 2017, 10 a.m. (A/71/PV.88), pp. 5, 7 (judges' folder, tab 6); Written Statement of the Argentine Republic (StAR), 1 Mar. 2018, para. 68 *(c)*; Statement of Belize (StBZ), 30 Jan. 2018, para. 4.5; Written Statement of the Federative Republic of Brazil (StBR), 1 Mar. 2018, para. 28 *(f)*; Written Submission of the Republic of Djibouti (StDJ), 1 Mar. 2018, para. 50; Written Statement of the Republic of Namibia (StNA), 1 Mar. 2018, p. 4; Written Statement of the Republic of Nicaragua (StNI), 1 Mar. 2018, para. 14; Written Statement by the Republic of Serbia (StSC), 27 Feb. 2018, para. 4; Written Statement Submitted by the Government of the Republic of South Africa (StZA), para. 92.

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

of States, including the obligations of administering Powers and explicitly including the obligations of the United Kingdom.

23. Germany's reliance on the *Kosovo* opinion is equally misplaced. There, the Court found that the question itself was "narrow and specific", asking only for the Court's opinion on whether or not the declaration of independence was in accordance with international law. The Court found that the question, that question, "does not ask about the legal consequences of that declaration". And this fully distinguishes the *Kosovo* case from the present one. Further, in *Kosovo*, the Court observed that when the General Assembly has "wanted the Court's opinion on the legal consequences of an action", it has "framed the question in such a way that this aspect is expressly stated"[96]. And that is exactly what the General Assembly has done in *this* case, in which it asked *expressly* for the legal consequences, the consequences under international law, of a failure to complete decolonization.

24. Germany's next argument is that, if the Court is unwilling to adopt a narrow interpretation of the second question, then it should be reformulated. But the Court's jurisprudence on reformulation is very clear. It has underscored that "it is for the [requesting organ] . . . to formulate the terms of a question that the [requesting organ] wishes to ask"[97]. The Court does not substitute its own questions for those submitted by a competent organ. To the contrary, it seeks to answer a question as *intended* by the requesting organ.

25. And for this reason, the Court has only reformulated questions in exceptional situations, such as where the wording did not, in the Court's view, clearly or logically reflect the ***real*** intentions of the requesting organ. This occurred, for example, in *Interpretation of the Greco-Turkish Agreement* and in *South-West Africa Voting Procedure*[98]. The Court has also reformulated where the initial question might lead to an answer that could be incomplete or misleading — as in *Interpretation of the Agreement between the WHO and Egypt*[99]. But, in doing

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[96] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 424, para. 51.

[97] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999*, p. 81, para. 36.

[98] *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, 1928, P.C.I.J., Series B, No. 16* (described in *Kosovo*, para. 50).

[99] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, I.C.J. Reports 1980*, p. 89, para. 35.

so, the Court has always emphasized that its purpose is to give effect to what it called "the true legal question", that is, the question that "really corresponds to the intentions of the [requesting organ] in seising the Court"[100].

26. In *Kosovo*, the Court found that "[t]he question posed by the General Assembly ***is*** clearly formulated", so that there was "no reason to reformulate ***it***"[101]. Here, too, the General Assembly's question is clearly formulated. Germany itself, in its Written Statement, does not complain that the question lacks clarity. There are no grounds for reformulating it.

27. The third and final argument is that "limiting the scope" of the question is necessary to avoid adjudication of a bilateral territorial dispute. But, as we showed in our Written Statements, and as Professor Klein made clear today, the Court is not called upon here to address a bilateral territorial dispute. It is difficult to see how Germany can even argue that question two, if interpreted as written, raises a bilateral territorial dispute, after it unambiguously accepts that the Court should answer question *one* without limitation, and give a complete opinion on whether the administering Power has lawfully completed the decolonization of Mauritius.

28. Logically, if, as Germany agrees, the Court is competent to answer question *one*, and to advise that the decolonization of Mauritius has not been lawfully completed, then it must be *equally* competent to address the legal consequences of that finding, including for Member States. A determination that the decolonization of Mauritius has not been lawfully completed necessarily has implications for individual States. Article 73 of the United Nations Charter lays down specific legal obligations of administering Powers — that is, individual Member States — where decolonization has not been completed. To adopt an arbitrarily "narrow interpretation" of question two in such circumstances — by excluding the legal consequences for States — would be wholly artificial. In fact, it would be a failure to discharge the Court's judicial function.

29. [Screen on] And this is what the Court itself said in *South-West Africa*, following its finding that South Africa's colonial administration was unlawful: "Once the Court is faced with such a situation, it would be failing in the discharge of its judicial functions if it did not declare that

[100] StDE, para. 84.

[101] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo Advisory Opinion*, p. 24, para. 51.

there is an obligation, *especially upon Members of the United Nations*, to bring that situation to an end"[102].

30. Mr. President, that is precisely the situation here. If decolonization has not been lawfully completed, there are, indisputably, legal consequences. Those consequences are incumbent upon Members of the United Nations, including especially those responsible for maintaining or abetting the continuation of the unlawful colonial administration. There is every reason for the Court, in its answer to the second question, to set out those consequences, and there is no reason not to do so. [Screen off]

31. Mr. President, it is understandable that well-meaning friends would propose what they see as compromise solutions, and we appreciate their good faith. But splitting the baby is not an option when the result is infanticide. Question two, like the proverbial child, cannot be sliced in half without killing it. Cutting the question short, to make it *not* ask for the legal consequences for States; or, notwithstanding the text, imposing on the General Assembly an imagined intention — nowhere evident in the extensive record — to seek only the consequences for United Nations organs, is not a viable solution here. It might have been offered to the Court as an easy way out. But, with all due respect, it ***is*** not an exit***. It*** is a trap.

32. First, it has not been the practice of this great Court to look for the easy way out. This Court does not shy away from answering legal questions, properly put to it by competent organs, merely because its answers — its reasoned opinions on the law — might be displeasing to some interested parties. This Court has always been a temple of justice, not a broker of deals. Second, self-determination and decolonization are peremptory norms of international law. They cannot be bargained, or sold at half-price. And third, an opinion that fails to set out the legal consequences for States, including the administering Power, would neither complete the decolonization of Mauritius nor hasten the end of an unlawful colonial administration; it would risk leaving the unlawful status quo in place not only for another 50 years, but indefinitely. That is why Mauritius, and the overwhelming majority of States, have urged you to answer the question in full, as it was written, and set out the legal consequences for Member States.

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[102] *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* (hereinafter *"South West Africa (Advisory Opinion)*"), p. 54, para. 117; emphasis added.

II. What the legal consequences are

33. I come now to the second part of my presentation. What *are* those consequences?

34. The first consequence is that the situation of unlawfulness must be brought to an end, and this must be done immediately. This means that the colonial administration of the Chagos Archipelago must be terminated as soon as possible.

35. The principle was articulated by the Court in the *Wall* case: "The obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation."[103] The rule is also reflected in Article 30 of the ILC's Articles on State Responsibility. The ILC Commentary, to Article 14 (2), provides that "maintenance by force of colonial domination" is an example of a "continuing wrongful act".

36. The rule is clear. What the United Kingdom disputes is the *timing* of its application. It argues that the Court may not call for the completion of decolonization "by a particular date"[104]. Rather, it contends that the timing is for *it alone* to decide, and ~~***it has told us that***~~ it has already decided that its colonial administration will end only when *it* decides that "the Chagos Archipelago is no longer required for [its] defence purposes"[105].

37. Mr. President, this cannot be right. It cannot be the law that a colonial Power is free to decide, in its own self-interest, when to bring an unlawful colonial administration to an end.

38. In *South-West Africa*, after finding that South Africa's colonial mandate had terminated and that its continued presence in the territory was unlawful, the Court found that: "South Africa is under obligation to withdraw its administration from Namibia *immediately*, and thus put an end to its occupation of the Territory."[106]

39. The United Kingdom strains to distinguish this precedent. It suggests that the immediacy of the South African withdrawal was dictated by the fact that the Court's opinion was requested by the Security Council. But that is beside the point. The Court required an immediate end to the situation it found unlawful because that is what international law requires, not because the request

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[103] *Construction of a Wall (Advisory Opinion)*, p. 197, para. 150.

[104] CoGB, 14 May 2018, para. 5.6.

[105] CoGB, para. 5.13.

[106] *South West Africa (Advisory Opinion)*, p. 58, para. 133 (I); emphasis added.

came from one organ rather than the other. And this is perfectly logical. Requiring anything less than the immediate cessation of an ongoing unlawful act amounts to tolerance of the continued state of unlawfulness. The United Kingdom would wish that to be indefinite, or at least until it decides, in its unilateral discretion, that it no longer needs to maintain its colony. Oscar Wilde might call this a case of "conspicuous presumption". But it is not only outrageously presumptuous; it is contrary to fundamental international law.

40. The United States is not as presumptuous. It is, however, more forgetful. It argues that there is no rule on the time frame for decolonization. But this contradicts what the United States itself said during the General Assembly's consideration of resolution 1514. [Screen on] It said then: "the only colonial rule which can meet that test is that which energetically works to turn over full power to the indigenous people and thus seeks to bring itself to an end *as soon as possible*"[107]. This was right then; and it is right today. Those who aspire to make America great again, need only recall, and recommit to, the great and noble principles, like self-determination and decolonization, as soon as possible, that America long championed. [Screen off]

41. Mauritius agrees with what the United States said in 1960. Resolution 1514, by its terms, requires that colonization must be brought to a "speedy" end, not when the colonial Power decides to do so. State practice reflects this. Decolonization was completed in less than a year in situations far more complex than that of Mauritius. Examples cited in the written statements include: Seychelles[108], Equatorial Guinea[109], Somalia[110], Nauru[111], the Northern Cameroons[112] and Malta[113].

42. The situation in the Chagos Archipelago is far less complex than in any of those territories, and capable of far faster decolonization. The United Kingdom's actual administration of

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[107] UNGA, 15th Session, 937th Plenary Meeting, *Agenda Item 87: Declaration on the granting of independence to colonial countries and peoples*, UN doc. A/PV.937 (6 Dec. 1960), para. 19 (emphasis added); judges' folders, tab 68).

[108] UNGA, 30th Session *Question of the Seychelles*, UN doc. A/RES/3430(XXX) (8 Dec. 1975), Preamble.

[109] UNGA, 22nd Session *Question of Equatorial Guinea*, UN doc. A/RES/2355(XXII) (19 Dec. 1967), para. 4.

[110] UNGA, 14th Session, *Date of the Independence of the Trust Territory of Somaliland Under Italian Administration*, UN doc. A/RES/1418(XIV) (5 Dec. 1959), para. 5.

[111] UN Trusteeship Council, 13th Special Session, *1323rd Meeting*, UN doc. T.SR.1323 (22 Nov. 1967), para. 7.

[112] *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 1963*, p. 23 (citing UNGA, 15th Session, *The future of the Trust Territory of the Cameroons under United Kingdom administration*, UN doc. A/RES/1608(XV) (21 Apr. 1961).

[113] UNGA, 18th Session *Question of Malta*, UN doc. A/RES/1950(XVIII) (11 Dec. 1963); see United Nations International Covenant on Civil and Political Rights, Human Rights Committee, *Consideration of reports submitted by States parties under article 40 of the Covenant*, UN doc. CCPR/C/MLT/2 (7 Dec. 2012).

the so-called British Indian Ocean Territory is as minimal as it gets. It consists of a Commissioner, Deputy Commissioner and Administrator, all located in London, some 9,337 km away. The local representative is a lone navy commander, since the only significant presence on the islands is the military base on Diego Garcia. The total annual budget — during the last fiscal year for which data are available — was less than £500,000. The United Kingdom itself, in characteristic British understatement, acknowledges that its administration of the Archipelago is "unusually confined in nature"[114].

43. In the circumstances — taking account of the applicable law, State practice, and the reality of the current colonial administration — Mauritius invites the Court to set a limit of no more than six months for the termination of that administration and the assumption of administrative responsibility by Mauritius. This is needed because, given the view expressed by the United Kingdom, a failure by the Court to set out a strict time-limit will be taken as an opening to allow the present situation to continue indefinitely.

44. During the brief period, until colonial administration is fully and finally withdrawn, the administering Power is obligated by Article 73 of the Charter to regard the interests of Mauritius and its people as "paramount", and exercise its authority in "sacred trust" for their "well-being".

45. Only one written statement in these proceedings has argued that Article 73 is not applicable to the Chagos Archipelago. That is the statement of the colonial Power itself. Its position is based on the assertion that the decolonization of Mauritius was lawfully completed in 1968. If the Court finds otherwise, the argument against application of Article 73 disappears.

46.The colonial Power is not the only State subject to legal consequences during the interim period until the decolonization of Mauritius has been lawfully completed. *All* States are required to refrain from aiding, abetting or supporting the continuation of the unlawful colonial administration. This was recognized by the Court in *South West Africa* [screen on]:

> "States Members of the United Nations are under obligation to recognize the *illegality* of South Africa's presence in Namibia and the *invalidity* of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of, or lending support or assistance to, such presence and administration"[115].

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[114] StGB, 15 Feb. 2018, para. 9.4.

[115] *South West Africa (Advisory Opinion)*, p. 58, para. 133 (2); emphasis added.

47. The principle was reiterated in the *Wall* case[116]. After emphasizing that there is an affirmative duty to promote the right of self-determination of peoples[117], the Court made clear that the obligations of third States include "the obligation not to render aid or assistance in maintaining the situation created by such construction". [Screen off]

48. The same principle has been invoked in these proceedings by the Kingdom of the Netherlands. Its Written Statement underscores "the requirement for States not to recognize as lawful a situation created by a serious breach of a peremptory norm of international law", and "not to render aid or assistance in maintaining the situation created as a result of the serious breach" of the right of self-determination[118].

49. In respect of the right of the Mauritian people to self-determination, it is Mauritius' view that its people, including those of Chagossian origin, have the right to settle, or resettle, anywhere in their own territory, at any time. This is consistent with Article 13 of the Universal Declaration of Human Rights, which will shortly celebrate its seventieth anniversary. Lord Mance, in the 2008 decision of the Appellate Committee of the House of Lords, observed that "the freedom to return to one's homeland, however poor and barren the conditions of life" is "one of the most fundamental liberties known to human beings"[119]. The same year, the United Nations Human Rights Committee urged the administering Power to "ensure that the Chagos Islanders can exercise their right to return to their territory"[120].

50. Mr. President, it is of fundamental importance to Mauritius and its people, especially those of Chagossian origin, that it be able to begin implementing a programme — as a matter of urgency — for their voluntary resettlement on the islands at the earliest possible date. Many are elderly or infirm, and time is of the essence if they are to realize their dreams of returning to their homeland. You will soon hear from one of their representatives.

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[116] *Construction of a Wall (Advisory Opinion)*, pp. 201-202, para. 163.

[117] *Ibid.*, p. 197, para. 150.

[118] Written Statement of the Kingdom of the Netherlands (StNL), 27 Feb. 2018, para. 4.10.

[119] *R (on the application of Bancoult)* v. *Secretary of State for Foreign Commonwealth Affairs*, [2008] UKHL 61 (22 Oct. 2008), para. 172 (quoting *R (on the application of Bancoult)* v. *Secretary of State for Foreign and Commonwealth Affairs*, [2007] EWCA Civ 498 (23 May 2007), para. 71).

[120] *Concluding observations of the Human Rights Committee: United Kingdom and Northern Ireland* (30 July 2008), para. 22; judges' folder, tab 397.

51. Germany, in a single paragraph of its Written Statement, just before its final submissions, asks the Court to refrain from addressing this issue. It argues that the General Assembly cannot have had the return of the Chagossians in mind "when requesting the present advisory opinion"[121]. [Screen on] [Next slide] We ask: why then did the General Assembly ask the Court — expressly — to advise on Mauritius' inability to implement a resettlement programme for the Chagossians? Why isn't the exercise of the right of resettlement by Chagossians and other Mauritians not a fitting subject for the General Assembly's future work? The General Assembly has repeatedly addressed the plight of the Chagossians, in numerous resolutions, reports and statements, as well as the administering Power's refusal to allow their resettlement[122]. [Screen off]

[121] StDE, para. 147

[122] See, e.g., UNGA, 38th Session, 85th Plenary Meeting, *Agenda Item 18: Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN doc. A/38/PV.85 (6 Dec. 1983), para. 146 (judges' folder, tab 279). See also Letter from the Permanent Representative of Mauritius to the United Nations addressed to the President of the General Assembly, UN doc. A/38/711 (5 Dec. 1983), p. 1 (judges' folder, tab 280); UNGA, 42nd Session, Provisional Verbatim Record of the 32nd Meeting, *General Debate 9*, UN doc. A/42/PV.32 (9 Oct. 1987), pp. 48-50 (judges' folder, tab 282); UNGA, 43rd Session, Provisional Verbatim Record of the 28th Meeting, *General Debate 9*, UN doc. A/43/PV.28 (12 Oct. 1988), pp. 39-40 (judges' folder, tab 283); UNGA, 52nd Session, 17th Plenary Meeting, *Address by Mr. Emomali Rahmonov, President of the Republic of Tajikistan*, UN doc. A/52/PV.17 (30 Sep. 1997), p. 14 (addressing the need for assistance regarding the forced expulsion of Chagossians) (judges' folder, tab 289); UNGA, 53rd Session, 11th Plenary Meeting, *Hurricane in the Dominican Republic*, UN doc. A/53/PV.11 (23 Sep. 1998), p. 10 (noting the desire of the Chagossians to return) (judges' folder, tab 290); UNGA, 54th Session, 18th Plenary Meeting, *Agenda Item 9: General Debate*, UN doc. A/54/PV.18 (30 Sep. 1999), p. 12 (same) (judges' folder, tab 291); UNGA, 55th Session, 28th Plenary Meeting, *Agenda Item 9: General debate*, UN doc. A/55/PV.28 (22 Sep. 2000), p. 16 (same) (judges' folder, tab 293); UNGA, 56th Session, 46th Plenary Meeting, *Address by Mr. Glafcos Clerides, President of the Republic of Cyprus*, UN doc. A/56/PV.46 (11 Nov. 2001), p. 15 (noting the violation of fundamental rights of Chagossians) (judges' folder, tab 294); UNGA, 57th Session, 4th Plenary Meeting, *Agenda Item 119: Scale of assessments for the apportionment of the expenses of the United Nations*, UN doc. A/57/PV.4 (13 Sep. 2002), p. 21 (expressing support for Chagossians seeking redress) (judges' folder, tab 296); UNGA, 58th Session, 10th Plenary Meeting, *Address by Mr. Domitien Ndayizeye, President of the Republic of Burundi*, UN doc. A/58/PV.10 (24 Sep. 2003), p. 27 (same) (judges' folder, tab 298); UNGA, 59th Session, 14th Plenary Meeting, *Address by Mr. Anote Tong, President of the Republic of Kiribati*, UN doc. A/59/PV.14 (28 Sep. 2004), p. 19 (same) (judges' folder, tab 300); UNGA, 60th Session, 13th Plenary Meeting, *Address by Mr. Pierre Nkurunziza, President of the Republic of Burundi*, UN doc. A/60/PV.13 (19 Sep. 2005), p. 11 (same) (judges' folder, tab 302); UNGA, 61st Session, 16th Plenary Meeting, *Address by Mr. Mikheil Saakashvili, President of Georgia*, UN doc. A/61/PV.16 (22 Sep. 2006), p. 13 (same) (judges' folder, tab 304); UNGA, 63rd Session, 16th Plenary Meeting, *Agenda Item 8: General debate*, UN doc. A/63/PV.16 (29 Sep. 2008), p. 38 (same) (judges' folder, tab 308); UNGA, 64th Session, *Letter dated 28 September 2009 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly*, UN doc. A/64/480 (28 Sep. 2009), p. 2 (same) (judges' folder, tab 311); UNGA, 65th Session, 21st Plenary Meeting, *Agenda Item 8: General debate*, UN doc. A/65/PV.21 (28 Sep. 2010), p. 31 (referring to impediments to Chagossian resettlement) (judges' folder, tab 312); UNGA, 70th Session, 25th Plenary Meeting, *Agenda Item 8: General Debate*, UN doc. A/70/PV.25 (2 Oct. 2015), pp. 15-16 (judges' folder, tab 318); UNGA, 71st Session, 17th Plenary Meeting, *Address by Mr. Bujar Nishani, President of the Republic of Albania*, UN doc. A/71/PV.17 (23 Sep. 2016), p. 38 (same) (judges' folder, tab 320); UNGA, 71st Session, 88th Plenary Meeting, *Agenda item 87: 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*, UN doc. A/71/PV.88 (22 June 2017) (judges' folder, tab 6).

52. Mr. President, I come now, lastly and briefly, to the presence of the military base on Diego Garcia. Mauritius's position has been clear and constant: as it has set out in its written submissions, it accepts the future operation of the base in accordance with international law[123].

53. Mauritius has formally made this commitment. The United Kingdom and the United States claim that they are not satisfied. The United States cites, in particular, the special relationship that it shares with the United Kingdom, as "close and longstanding allies"[124]. Mauritius wishes to reaffirm that it fully respects and appreciates, and has no desire or intention to disturb, the "special relationship" between the United States and the United Kingdom.

54. It is unfortunate that the United Kingdom, in its Written Comments, asserts that: "Mauritius' attempted assurances on the facility's future under their sovereignty lack credibility". This is a regrettable remark. But Mauritius takes no offence because it does not believe that this reflects what the United Kingdom truly thinks. They know Mauritius well, and they know it better. Mauritius enjoys excellent relations with them, and with the United States, based on mutual respect and mutual trust. Mauritius will scrupulously honour the commitment it has made, including in its submissions to the Court, in respect of the military base.

55. We affirm this even though we consider it irrelevant to the questions that the Court has been called upon to answer. If the Court finds that the decolonization of Mauritius has not been lawfully completed and that, as a legal consequence, it must be completed immediately, the preferences of the colonial Power, or of a third State, to maintain a colonial administration — whether for military or other purposes — manifestly cannot justify the continuation of a situation the Court has determined to be unlawful.

56. The legal consequences, therefore, are these: the decolonization of Mauritius must be completed, and this must be done immediately. In the short period until decolonization is formally

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[123] See StMU, para. 1.30 and Chap. 7, Part III. B. 2. See also Letter from the Minister for Foreign Affairs and Regional Co-operation, Republic of Mauritius, to Secretary of State for Foreign & Commonwealth Affairs, United Kingdom (21 Dec. 2000) (Ann. 141); Letter from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (22 July 2004) (Ann. 147); Letter from the Minister of Foreign Affairs, International Trade and Regional Co-operation of the Republic of Mauritius to Secretary of State for Foreign and Commonwealth Affairs of the United Kingdom (22 Oct. 2004) (Ann. 148); Note Verbale from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014) (Ann. 168); Letter from the Prime Minister of the Republic of Mauritius to the President of the United States (11 July 2017) (Ann. 193).

[124] Written Comments of the United States of America (CoUS), 15 May 2018, para. 4.7.

completed, the colonial administration must act in the paramount interest of Mauritius and its people and must not obstruct the resettlement of Mauritians of Chagossian origin who wish to return to their homeland.

57. Mr. President, Members of the Court, this concludes my presentation. I thank you for your kind courtesy and patient attention. I invite you to call to the podium Mauritius' final speaker, my distinguished colleague, Professor Philippe Sands.

The PRESIDENT: I thank Mr. Reichler and I now invite Professor Sands to take the floor. You have the floor.

Mr. SANDS:

CLOSING REMARKS

1. Mr. President, Madam Vice-President, Members of the Court, it is a privilege to close the arguments of Mauritius, on so important a matter which raises issues on which this Court has played so significant a role in the past.

2. Mr. President, no country wishes to be a colony. The mere possibility engenders strong feelings. A recent British Foreign Secretary made that very clear, just a few weeks ago, [Screen on] in a resignation letter he wrote to his Prime Minister. He complained to the Prime Minister that she was adopting a path, in relation to Britain's possible departure from the European Union, that would turn the country into one, as he called it, "headed for the status of [a] colony"[125].

3. The irony of his words will not be lost on those in this Great Hall. The United Kingdom does not wish to be a colony, yet it stands before this Court to defend a status as colonizer of others, of Mauritius, a significant part of whose territory it still administers. Unlike Mauritius, the coming "colony" of the former British Foreign Secretary's imagination is not in danger of having its people forcibly removed and then prevented from returning. [Screen off]

4. Mr. President, Members of the Court, in that regard, may I record the presence in this Great Hall of three members of the Chagossian community, who have travelled a great distance

[125] *The Guardian*, Full *text of Boris Johnson's resignation letter and PM's reply*, available at https://www.theguardian.com/politics/2018/jul/09/full-text-of-boris-johnsons-resignation-letter-to-the-pm (last accessed on 2 Sept. 2018).

from Mauritius: Mme Marie Liseby Elysé and M. Louis Olivier Bancoult, both from Peros Banhos; and M. Louis Rosemond Saminaden from Salomon Islands. Also in the Peace Palace are Mme Marie Janine Sadrien and Mme Marie Rosemonde Berthin, both from Salomon Islands, Mme Marie Mimose Furcy from Peros Banhos and finally, from Diego Garcia, M. Louis Roger Alexis, Mme Marie Suzelle Baptiste and Mme Marie Nella Gaspard. You will have read the voices of the Chagossians in our written submissions[126], and we think it is appropriate that the Court should hear the voice of the Chagossians directly. Time is limited, so in accordance with the decision of the Court, for which we express our *deep* appreciation, we will play just a short video, that was communicated two weeks ago to the Court and to all Participants in these proceedings. The words of Madame Elysé, who sits in this Courtroom, are not offered as testimonial evidence, but simply as a member of the delegation of Mauritius — if you like — a statement of *impact*, what the continuation of colonialism really means for real people. [Play video]

Transcription de la déclaration de Mme Elysé

[Traduction française fournie par la République de Maurice]

Mon nom est Liseby Elysé. Je suis née le 24 juillet 1953 à Peros Banhos. Mon père est né à Six îles. Ma maman est née à Peros Banhos. Mes grands-parents sont aussi nés là-bas. Je fais partie de la délégation de Maurice. Je voudrais dire combien j'ai souffert depuis que j'ai été déracinée de mon île paradis. Je suis contente que la Cour internationale nous écoute aujourd'hui. Et je suis confiante que je retournerai sur l'île où je suis née.

Aux Chagos, chaque personne avait une occupation, sa famille et sa culture, on ne mangeait que des aliments frais. Les bateaux qui venaient de Maurice transportaient nos marchandises. On recevait nos vivres, on recevait tout ce dont on avait besoin, on ne manquait de rien. Aux Chagos, on vivait bien.

Mais, un jour, l'administrateur nous a annoncé que nous devions quitter notre île, quitter nos maisons et partir. Tout le monde était attristé. Nous étions en colère qu'on nous ait dit qu'il fallait partir. Mais on n'avait pas le choix. On ne nous a rien dit. Jusqu'à aujourd'hui on ne nous a pas dit pourquoi il fallait partir.

[126] See CoMU, 15 May 2018, para. 4.114.

Peu après, le bateau qui nous apportait de la nourriture a cessé de venir. Il n'y avait rien à manger. Pas de médicaments. Rien. Nous avons beaucoup souffert. Peu après, le navire *Nordvaer* est arrivé. L'administrateur nous a dit qu'il nous fallait embarquer, laisser nos bagages, laisser tout ce qu'on avait, prendre seulement nos vêtements et partir. Et pour cela, tout le monde était très en colère. Quand on a fait cela, on l'a fait dans le noir. On nous a embarqués dans le noir pour qu'on ne puisse pas voir notre île. On nous a embarqués dans la cale du bateau où les conditions étaient mauvaises. On était comme des animaux, des esclaves dans ce bateau. On mourait de chagrin dans ce bateau.

Et moi, à cette époque, j'étais enceinte de quatre mois. Le bateau a mis quatre jours pour arriver à Maurice. Mais quand on est arrivé, mon enfant est mort à sa naissance. Je me demande pourquoi mon enfant est mort. J'ai été traumatisée dans ce bateau-là. J'ai eu beaucoup d'angoisse. J'ai été bouleversée. C'est à cause de cela que mon enfant est mort. Moi, je dis : il ne faut pas perdre l'espoir. Il nous faut garder l'espoir qu'un jour nous retournerons à notre terre natale. Mon cœur souffre et mon cœur est toujours attaché à l'île où je suis née.

Personne n'aimerait être enlevée de l'île où elle est née, être déracinée comme un animal. Cela fait mal au cœur. Et je maintiens que la justice doit être faite. Et je dois retourner dans mon île où je suis née.

Vous ne croyez pas que cela fait mal au cœur quand une personne est déracinée de son île, comme un animal et sans savoir où on vous emmène ?

Et je suis encore très triste aujourd'hui, je ne sais même pas comment je suis sortie des Chagos. On nous a fait partir par la force. Je suis très chagrinée et je verse des larmes tous les jours. Je dois retourner dans mon île. Je dis que je dois retourner dans l'île où je suis née. Et je dois mourir là-bas. Là où mes grands-parents ont été enterrés, sur l'île où nous sommes nés.

Transcript of statement by Ms Eliysé

[English translation provided by the Republic of Mauritius]

My name is Liseby Elysé. I was born on 24 July 1953 in Peros Banhos. My father was born in Six Iles. My mother was born in Peros Banhos. My grandparents also were born there. I form

part of the Mauritius delegation. I am telling how I have suffered since I have been uprooted from my paradise island. I am happy that the International Court is listening to us today. And I am confident that I will return to the island where I was born.

In Chagos everyone had a job, his family and his culture. But all that we ate was fresh food. Ships which came from Mauritius brought all our goods. We received our groceries. We received all that we needed. We did not lack anything. In Chagos everyone lived a happy life.

But one day the administrator told us that we had to leave our island, leave our houses and go away. All persons were unhappy. They were angry that we were told to go away. But we had no choice. They did not give us any reason. Up to now we have not been told why we had to leave.

But afterwards ships which used to bring food stopped coming. We had nothing to eat. No medicine. Nothing at all. We suffered a lot. But then one day, a ship called Nordvaer came. The administrator told us we had to board the ship, leaving everything, leaving all our personal belongings behind except a few clothes and go. People were very angry about that and when this was done, it was done in the dark. We boarded the ship in the dark so that we could not see our island. And when we boarded the ship, conditions in the hull of the ship were bad. We were like animals and slaves in that ship. People were dying of sadness in that ship.

And as for me I was 4 months pregnant at that time. The ship took 4 days to reach Mauritius. After our arrival, my child was born and died. Why did my child die? For me, it was because I was traumatized on that ship, I was very worried. I was upset. This is why when my child was born, he died. I maintain we must not lose hope. We must think one day will come when we will return on the land where we were born. My heart is suffering, and my heart still belongs to the island where I was born.

But nobody would like to be uprooted from the island where he was born, to be uprooted like animals.

And it's heart breaking. And I maintain justice must be done. And I must return to the island where I was born.

Don't you feel that it is heart breaking when someone is uprooted from his island like an animal and he does not know where he is being brought?

And I am very sad. I still don't know how I left my Chagos. They expelled us by force. And I am very sad. My tears keep rolling every day. I keep thinking I must return to my island. I maintain I must return to the island where I was born and I must die there and where my grandparents have been buried. In the place where I took birth, and in my native island.

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[End of video]

5. Mr. President, Members of the Court, in Creole, you have heard what it means to be expelled from your home and to maintain the wish to return for five decades. After 50 years of waiting and hoping, it is perhaps understandable that there will be a deep sense of emotion. The Chagossians in this Peace Palace are representatives of a once thriving community; 1,500 men, women and children who were forcibly removed after 1967 by the colonial Power. The General Assembly's Request, pursuant to a resolution from the *entire* African continent, is not theoretical or abstract. It concerns real people, real lives, real facts, real continuing consequences. The desire to return, and the inability to do so, offer tangible evidence that the decolonization of Mauritius is yet to be completed.

6. Two years ago the idea of resettlement was put to the community, in a consultation conducted by the colonial Power. I should make clear that the Government of Mauritius decided not to participate in that consultation because it does not recognize the authority of the United Kingdom to determine the issue of the resettlement of the Chagossians[127]. *Ninety-eight percent* of Chagossian respondents expressed a desire to return to their homes[128]. The colonial Power now recognizes that it has "treated the Chagossians very badly", and that it acted in "callous disregard of their interests"[129]. Such sentiments cannot undo a harm which continues. This Court *can*.

7. The colonial Power says you can and should do nothing. They follow in the footsteps of South Africa, in 1971. The colonial Power says feasibility, cost and unspecified "defence and

[127] UK Foreign and Commonwealth Office, "*BIOT Resettlement Policy Review: Summary of Responses to Public Consultation*" (21 Jan. 2016), p. 5 (Ann. 178).

[128] *Ibid*., p. 3.

[129] StGB (15 Feb. 2018), paras. 1.5, 4.3.

security interests" prevent a return to the Chagos Archipelago[130]. [Screen on] Yet in 2015 its own study reported that resettlement *is* feasible, with no fundamental legal obstacles[131]. On costs, the figures it relies on are grossly overestimated and irrelevant[132]. On "defence and security" concerns, we look forward to an explanation, *any* explanation, because none has ever been given as to why the repopulation of islands, some of which are more than 200 km from Diego Garcia, should give rise to insurmountable concerns. [Screen off]

8. Instead of resettlement, the colonial Power proposes to fund what it calls "heritage visits", "*heritage* visits", as you can see on the screen[133]. [Screen on] These would allow a handful of former 'Man Fridays' — as some of the colonial documents refer to the former residents of the Chagos Archipelago — to visit their old homes, for a few hours. At the same time as this is going on, the colonial Power offers four-week permits for private yachts to be moored on the outer islands of the Chagos Archipelago, for a fee[134]. Mr. President, the right of self-determination is not a "heritage" issue. We are not in Africa in the middle of the nineteenth century, or early twentieth century. This is 3 September 2018, it is 47 years since the Advisory Opinion on Namibia. As Mme Berthin, a Chagossian born in Salomon Islands in 1954, put it: "I do not want to visit", she wants to go home. "It is my home…", she says.[135][Screen off]

Decolonization and the right to self-determination

9. So I turn to decolonization and the right to self-determination. I once heard a student of international law ask a judge of this Court: why hasn't the Court done more on human rights? Some questions are best answered with another question. Is any human right more important than

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[130] UK House of Lords, *"Written Statement: Update on the British Indian Ocean Territory"*, No. HLWS257 (16 Nov. 2016) (Ann. 185). See also United Kingdom, *"British Indian Ocean Territory: Autumn 2017 Heritage Visits", available at* https://biot.gov.io/biot-policy-review/heritage-visits/autumn-2017-hv/ (last accessed: 21 Aug. 2018).

[131] KPMG LLP, *"Feasibility study for the resettlement of the British Indian Ocean Territory"* (31 Jan. 2015), p. 20, available at http://qna.files.parliament.uk/ws-attachments/178757/original/Feasibility%20study%20for%20the%20-resettlement%20of%20the%20British%20Indian%20Ocean%20Territory%20Volume%201.pdf (last accessed: 10 July 2018).

[132] See CoMU, p. 189, fn. 571.

[133] See United Kingdom, "*British Indian Ocean Territory: Autumn 2017 Heritage Visits*", *available at* https://biot.gov.io/biot-policy-review/heritage-visits/autumn-2017-hv/ (last accessed: 21 Aug. 2018).

[134] As of 1 August 2018, the charges are £75 per week. See United Kingdom, *"British Indian Ocean Territory: How to apply for a mooring permit", available at* https://biot.gov.io/visiting/mooring-permits/ (last accessed: 1 Aug. 2018).

[135] See CoMU, p. 182 (Rosemonde Berthin).

that of self-determination? No. The ability of a community to freely determine its own destiny is as fundamental as any other human right. Has any court done more than this Court to protect and defend that right? No. This Court has handed down judgments and advisory opinions with real consequences for peoples and territories subject to colonial domination. In answering the two questions sent from the General Assembly, Mauritius asks no more than that the Court give effect to its own distinguished line of authorities. Follow your own jurisprudence, we say.

10. This Court's *South West Africa* decisions played a key role in facilitating Namibia's transition to independence[136]. The Court has long confirmed that the right to self-determination "is a right *erga omnes*"[137]. In 2004, you advised that Israel's construction of a wall breached the right of the Palestinian people to self-determination[138]. In 2010, the Court again invoked "the international law of self-determination"[139] as a "major development"[140]. Over six decades, this Court's judicial activity has transformed the world. It can now contribute to the completion of the decolonization of Africa, through the rule of law. Mauritius, the African Union and the overwhelming majority of States that have participated in these proceedings — from every major United Nations regional grouping — urge you to do so.

The Court's judicial function in advisory proceedings

11. Let me say something about the judicial function. An advisory opinion is not for resolving a dispute between States. We know that, and Mauritius does not ask you, this Court, to resolve such a dispute. What Mauritius asks the Court to do is to honour its judicial function by assisting the General Assembly and all its Members to complete the decolonization of Mauritius. As Professor Klein explained, with colonialism ended, the colonial Power's claim that this is a mere bilateral territorial dispute simply evaporates.

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[136] See, in particular, *International Status of South West Africa, Advisory Opinion, I.C.J. Reports 1950*; *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* (hereinafter "*South West Africa (Advisory Opinion)*").

[137] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29.

[138] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)* (hereinafter "*Construction of a Wall (Advisory Opinion)*"), p. 184, para. 122.

[139] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)* (hereinafter "*Declaration of Independence in respect of Kosovo (Advisory Opinion)*"), p. 438, para. 82.

[140] *Ibid.*

12. In overwhelming numbers, States expect the Court to give the advisory opinion requested. To decline to do so, whether for the reason invoked by Australia — whose argument, one is bound to say, given its own historical experience as a former colony, could be said to resemble a form of abused child syndrome, in which the victim becomes the oppressor — or as put forward by a tiny number of other States, would be a most unhappy first[141].

13. As Professor Klein made clear, the decolonization of Mauritius is not, and cannot logically be, a bilateral dispute between Mauritius and the administering Power. Decolonization is not about title to territory. Decolonization transcends any bilateral relationship. The General Assembly has no role on matters of title to territory. It *does* have a central role in eradicating colonization.

14. And so this Request goes to the heart of your judicial function, as a court of law, as the principal judicial organ of the United Nations[142]. Your discretion is simply not an option: absent "compelling reasons", the Court *must* give the opinion requested. What compelling reasons exist not to do so?[143] We see none.

15. And it is not for the colonial Power to "prevent the giving of an Advisory Opinion which the United Nations considers to be desirable"[144]. Nor, we respectfully submit, is it for the Court to second-guess resolution 71/292[145]. As the Court has said, the judicial function is to "identify the

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[141] *Construction of a Wall (Advisory Opinion)*, p. 156, para. 44. It is only in *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* that the Court declined to give its advisory opinion, on the ground that the request for an advisory opinion submitted by the World Health Organization did not relate to a question arising "within the scope of [the] activities" of that organization. See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)* (hereinafter "*Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*"), p. 233, para. 11.

[142] *Declaration of Independence in respect of Kosovo (Advisory Opinion)*, p. 416, para. 29. See also *Status of Eastern Carelia, Advisory Opinion, 1923, P.C.I.J., Series B, No. 5*, p. 29; *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, p. 175, para. 24; *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1982*, p. 334, para. 22; *Construction of a Wall (Advisory Opinion)*, pp. 156-157, paras. 44-45.

[143] *Declaration of Independence in respect of Kosovo (Advisory Opinion)*, p. 416, para. 30. See also *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13.

[144] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71.

[145] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 415, para. 27. See also *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter*), *Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61; *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13.

existing principles and rules, interpret them and apply them [to the relevant factual matrix], thus offering a reply to the question posed based on law"[146].

16. Mr. President, Members of the Court, just six States out of 32 participating argue that the Court should not answer the Request sent to you by a resolution adopted by an overwhelming majority. Of the six, just two filed Written Comments in the second round: the administering Power and the State to which a part of the Chagos Archipelago has been made available. An overwhelming majority — from around the world, small, large, north, south — favour the Court's exercise of jurisdiction, to fully answer both questions.

17. Yet, the colonial Power argues that four other States have somehow "expressed serious concern". Where are they? Of the four, three have chosen not to participate in these oral proceedings: China, Russia and South Korea[147].

18. We have read the Statements of China and Russia with the very great care they deserve. Neither says the Court *should not* answer the two questions put before it by the General Assembly. China recognizes the important role of the Court "in the performance of the United Nations' function of decolonization"[148]. And Russia accepts that the Court should answer the question if it thinks they will be of "assistance to it for the proper exercise of its functions concerning the decolonization of the territory"[149]. These are very important contributions. Neither State opposed the vote on the General Assembly resolution. Neither State filed a Written Statement inviting you not to answer one or both of the questions. And it is reasonable, we say, to conclude that neither objects to answering both questions fully, provided that the focused concern they have rightfully raised is taken into account.

19. As noted in our Written Comments, we agree that the concern can and should be taken into account, without limiting the ability of the Court to answer both questions, fully and completely. The concern, a legitimate concern raised by both States, is that a matter which is not about decolonization, but which is truly a dispute about territory, must not be the subject of a

[146] *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)*, p. 234, para. 13. See also *Construction of a Wall (Advisory Opinion)*, p. 153, para. 38.

[147] CoGB (14 May 2018), para. 1.4.

[148] Written Statement by the People's Republic of China (1 Mar. 2018), para. 9.

[149] Written Statement by the Russian Federation (27 Feb. 2018), para. 24.

request for an advisory opinion from the General Assembly. Mauritius agrees with that position. The position is correct.

20. In answering both questions, however, the Court will not trespass into any forbidden domain because the matter before you does not concern a dispute on title to territory. The only law to be applied is the law on self-determination, for decolonization, against dismemberment, for territorial integrity. In applying that law, you need say nothing — nothing — on the law on title to territory. And there are no competing claims to land or maritime territory in relation to the Chagos Archipelago. And so we agree with the positions taken by China and Russia. By acceding to the General Assembly's Request, this Court opens no door; it simply passes through a door opened in previous advisory opinions.

21. South Korea offers no support to the United Kingdom on the merits. On jurisdiction it submits that to deny the competence of the General Assembly "would run against well-established principles and long-standing judicial practice"[150]. Why that might be helpful to continued colonial administration is entirely unclear to this side of the room. As to Germany, it urges you to answer both questions.

22. France submitted a written statement, but it presents no oral arguments. It did not vote to oppose the Request from the General Assembly. Its own Written Statement offers no support whatsoever to the colonial Power on the merits of the two questions before you. Indeed, not a single written statement does, apart from that of the United States. We note, too, what French President Macron said on a visit, not so long ago, to Algeria, earlier this year: colonization is a "crime against humanity", he said. "Ça fait partie de ce passé que nous devons regarder en face en présentant aussi nos excuses à l'égard de celles et ceux envers lesquels nous avons commis ces gestes."[151]

23. This Court has never shirked from giving an advisory opinion in relation to a colonial territory against the wishes of the administering Power. In *South West Africa*, in 1971, the Court found no "compelling reasons" to decline the Request. Mr. John Stevenson, the very distinguished

[150] Written Statement by the Government of the Republic of Korea (28 Feb. 2018), para. 6.

[151] *Le Monde*, *En Algérie, Macron qualifie la colonisation de «crime contre l'humanité», tollé à droite*, available at https://www.lemonde.fr/election-presidentielle-2017/article/2017/02/15/macron-qualifie-la-colonisation-de-crime-contre-l-humanite-tolle-a-droite-et-au-front-national_5080331_4854003.html (15 Feb. 2017).

US State Department legal adviser, was the person to address the Court on behalf of the United States in this room, in this very room, on the morning of 9 March 1971, and he was actually assisted by a Professor Louis Sohn, of Lwów, Lviv and Lemberg. This is what he said [screen on] "South Africa argues . . . that the present case involves a 'dispute' between States and is, therefore, not properly a subject for an advisory opinion", he urged the Court to reject the argument, citing Article 96 of the Charter. And he went on "My Government believes that the Court should give an opinion on the important legal question submitted to it"[152]. And of course, the Court did. [Screen off]

24. In so doing, the Court underscored the significance of its "functions as 'the principal judicial organ of the United Nations'"[153], and the special character of the rights at stake. "The injured entity", the Court ruled, "is a people which must look to the international community for assistance"[154]. The very same words apply in relation to this matter.

25. In the Advisory Opinion on the *Western Sahara* case, Spain raised jurisdictional objections that are akin to those raised in these proceedings. It argued that the advisory proceedings were being used to circumvent the principle of consent; the Court said no they are not. Spain argued the questions related to territorial sovereignty; no, they are not, ruled the Court. Spain argued that the Court did not have sufficient information available to it to make a judicial pronouncement on the questions[155]. Yes, we do, said the Court and it did.

26. When this Great Hall has heard the pleas of the colonizers, it has always rejected them. This afternoon you will hear arguments that have all been made before, and have all been rejected before. It will be like listening to a broken record. [Screen on] Professor Klein reminded us of the words of Judge Gros, back in 1975: "[i]l n'y a pas de différend bilatéral détachable du débat sur la décolonisation aux Nations Unies"[156]. [Screen off]

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[152] *South West Africa, Advisory Opinion, Vol. II, Oral Statements and Correspondence*, p. 500.

[153] *South West Africa (Advisory Opinion)*, p. 27, para. 41.

[154] *Ibid.*, p. 56, para. 127.

[155] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 22, para. 25.

[156] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975* ; déclaration du juge Gros, p. 71, para. 2.

L'héritage et les conséquences juridiques du colonialisme

27. J'en viens maintenant aux deux questions qui vous sont posées. M[e] Macdonald a expliqué avec beaucoup de clarté pourquoi il n'existe qu'une seule réponse possible à la première question. Seuls deux Membres des Nations Unies pensent autrement. Si le pouvoir colonial a parcouru le monde en quête de soutien, il n'en a guère trouvé. [Début de la projection] Il a ignoré même les vues de celle qui fut sa propre juge à la Cour, la juge Rosalyn Higgins, qui écrivait déjà en 1963 : «there now exists a legal right of self-determination» — le droit à l'autodétermination faisait déjà partie intégrante du droit international [fin de la projection][157]. That was in 1963. Ce droit prohibait toute atteinte partielle ou totale à l'intégrité territoriale d'un pays[158]. Toute tentative de cet ordre était, aux termes de la résolution 1514, «incompatible avec les buts et principes de la Charte des Nations Unies»[159]. [Début de la projection] L'un des conseils du Maroc dans l'affaire du *Sahara occidental* l'exprimait à la perfection, lorsqu'il déclarait ici dans cette salle en 1975 que «le démembrement d'un peuple n'ét[ait] pas admissible»[160]. Il poursuivait en ces termes : «le sens de la déclaration 1514 (XV) est … clairement posé : la décolonisation partielle est condamnée. La libre détermination ne peut se réaliser que dans le respect de l'unité nationale du peuple concerné.»[161] Il avait raison à l'époque, et ce qu'il disait alors est toujours vrai aujourd'hui, quarante ans plus tard. Il suffit de treize mots pour répondre à la première question : le processus de décolonisation de Maurice n'a pas été validement mené à bien [fin de la projection].

28. M. Reichler a traité de manière très complète de la seconde question, avec sa concision habituelle. Si, comme elle doit le faire, la Cour conclut que le territoire de Maurice a été démembré en violation du droit à l'autodétermination, il lui revient alors de traiter, conformément à sa pratique, de l'ensemble des conséquences juridiques qui résultent de ce constat. Il n'y a aucune raison pour la Cour de ne pas se prononcer sur les conséquences pour les Etats. Elle l'a fait tant dans l'affaire de la *Namibie* que dans celle sur *l'Edification d'un mur*. La résolution 71/292 vise

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[157] Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations* (1963), p. 104 (annexe 19).

[158] Nations Unies, *Assemblée générale, quinzième session*, Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux, doc. A/RES/1514 (XV) du 14 décembre 1960, par. 6 (dossier des juges, onglet n° 55).

[159] Nations Unies, *Assemblée générale, quinzième session*, Déclaration sur l'octroi de l'indépendance aux pays et peuples coloniaux, doc. A/RES/1514 (XV) du 14 décembre 1960 (dossier des juges, onglet n° 55).

[160] *C.I.J. Mémoires, Sahara occidental*, vol. IV, p. 181.

[161] *Ibid.*, p. 182.

toutes les conséquences juridiques, pas seulement celles qui concernent l'Assemblée générale. La Cour n'a jamais reformulé ni interprété de façon étroite une question posée de façon aussi claire. Il n'y a aucune raison pour elle de s'écarter aujourd'hui de sa pratique constante.

29. Dans cette ère presque postcoloniale, les membres de la Cour sont bien conscients du legs du colonialisme. L'une des opinions individuelles jointes à l'avis sur le *Kosovo* reconnaissait ainsi que le droit à l'autodétermination n'est pas un concept juridique qui présenterait un intérêt purement historique ; il continue au contraire à jouer un rôle en droit international[162].

30. C'est seulement si elle répond de manière complète aux deux questions posées par l'Assemblée générale que la Cour contribuera à la «primauté de l'état de droit»[163]. En formulant vos réponses, vous ne sauriez «oublier l'objet en vue duquel l'avis est sollicité»[164]. Etre conscient du but de la présente procédure, c'est avant tout comprendre que l'Assemblée générale requiert un avis en vue de mettre fin immédiatement aux derniers vestiges britanniques du colonialisme en Afrique.

31. L'Allemagne vous invite à répondre aux deux questions, mais en faisant preuve de retenue pour ce qui est de la seconde question, en évitant d'aborder les conséquences juridiques pour les Etats à titre individuel[165]. Nous remercions l'Allemagne pour sa présence et pour son intervention cette semaine, mais pas sur ce point. Comme l'exposé écrit de Maurice et comme M. Reichler l'ont indiqué, l'avis de la Cour doit traiter de *toutes* les conséquences juridiques, y compris pour les Etats[166]. [Début de la projection] En 1971, la Cour a déclaré qu'elle «ne s'acquitterait pas de ses fonctions judiciaires si elle ne déclarait pas qu'il existe une obligation, pour les Membres des Nations Unies en particulier, de mettre fin à cette situation»[167]. Telle est l'approche que vous avez toujours suivie [fin de la projection].

32. Pour ce qui nous concerne, cela signifie que le processus de décolonisation doit être mené à terme immédiatement. Il est de la plus haute importance pour Maurice, pour l'Assemblée

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[162] *Conformité au droit international de la déclaration unilatérale d'indépendance relative au Kosovo, avis consultatif*, opinion individuelle de M. le juge Yusuf, *C.I.J. Recueil 2010 (II)*, p. 621, par. 8.

[163] *Ibid.*, opinion individuelle de M. le juge Cançado Trindade, *C.I.J. Recueil 2010 (II)*, p. 534, par. 25.

[164] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 67-68, par. 161.

[165] Exposé écrit de l'Allemagne (janvier 2018), par. 155.

[166] Exposé écrit de Maurice, par. 4.28-4.42.

[167] *Sahara occidental, avis consultatif, C.I.J. Recueil 1975*, p. 54, par. 117.

générale, et pour la communauté internationale dans son ensemble, que votre avis consultatif expose en détail les conséquences qui doivent en résulter, avec un calendrier précis. L'Assemblée générale et ses membres doivent, par exemple, savoir quand Maurice sera habilitée à déposer les coordonnées de sa zone économique exclusive et de son plateau continental auprès du Secrétaire général des Nations Unies, et quand elle pourra prendre les mesures pratiques en vue d'assurer le retour immédiat de Mme Elysé et des autres anciens habitants des Chagos. Passer cette question sous silence reviendrait à laisser les choses en jachère pour une période indéterminée. Cela s'écarterait de la pratique antérieure de la Cour.

33. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, cela fait maintenant *cinquante ans* que la décolonisation n'a pas été menée à son terme. Le Brésil, l'Inde, l'Afrique du Sud, l'Argentine, Chypre et 13 autres Etats sont ici pour demander qu'elle le soit. Ce jeudi, l'Union africaine prendra la parole au nom des peuples et des Etats du continent africain. [Début de la projection] En janvier dernier, la conférence des chefs d'Etat et de gouvernement des Etats membres a adopté à l'unanimité sa décision 684. Il y a ici moins de neuf mois. La conférence a décidé de «soutenir pleinement la République de Maurice par tous les moyens pour assurer l'achèvement de sa décolonisation et permettre à la République de Maurice d'exercer effectivement sa souveraineté sur l'archipel des Chagos, y compris Diego Garcia». La conférence a invité le Royaume-Uni «à mettre rapidement un terme à son occupation illégale de l'archipel des Chagos, en vertu des principes bien établis du droit international et des décisions pertinentes de l'OUA/UA ainsi que des décisions pertinentes des Nations Unies»[168]. [Projection suivante]

[168] Conférence de l'Union africaine, trentième session ordinaire, «Décision sur l'archipel de Chagos», doc. Assembly/AU/Dec.684(XXX) (28-29 janvier 2018), par. 7 et 9. Les 55 Etats membres de l'Union Africain sont : République algérienne démocratique et populaire, République d'Angola, République du Bénin, République du Botswana, Burkina Faso, République du Burundi, République du Cameroun, République de Cabo Verde, République centrafricaine, République du Tchad, Union des Comores, République du Congo, République de Côte d'Ivoire, République démocratique du Congo, République de Djibouti, République arabe d'Égypte, République de Guinée équatoriale, Etat d'Erythrée, République fédérale démocratique d'Éthiopie, République gabonaise, République de Gambie, République du Ghana, République de Guinée, République de Guinée-Bissau, République du Kenya, Royaume du Lesotho, République du Libéria, Libye, République de Madagascar, République du Malawi, République du Mali, République de Mauritanie, République de Maurice, Royaume du Maroc (rejoint le 31 janvier 2017), République du Mozambique, République de Namibie, République du Niger, République fédérale du Nigéria, République du Rwanda, République arabe sahraouie démocratique, République démocratique de Sao Tomé-et-Principe, République du Sénégal, République des Seychelles, République de Sierra Leone, République somalienne, République d'Afrique du Sud, République du Soudan du Sud, République du Soudan, République du Swaziland, République-Unie de Tanzanie, République togolaise, République tunisienne, République d'Ouganda, République de Zambie, République du Zimbabwe.

34. You also have in the dossier the Statement of 6 December 2017, just a few months ago, issued by the British Parliament's All-Party Parliamentary Group (APPG) on the Chagos Islands[169], which comprises Members of Parliament and peers from all main political parties at Westminster. The Members who adopted that Statement included distinguished former ministers, including at the Foreign Office, and the Leader of Her Majesty's current Opposition and the current recently-appointed Attorney General of the United Kingdom. The All-Party Parliamentary Group supports this Court giving an advisory opinion that answers both questions. The Court's opinion would, the APPG Statement makes clear, "contribute to the process of decolonization" and assist in bringing to an end what it calls "an urgent human rights tragedy". [Screen off]

35. This Court alone has the power to state the law on completing decolonization. We invite you to exercise your judicial function; we invite you to help bring to an immediate end this shameful situation, the Chagos archipelago as a twenty-first-century colony. We invite you to do no more than that which you have always done, which is to give effect to the rule of law. In so doing you will help bring to an end a last vestige of British colonial presence in Africa. And in so doing, you will reinforce respect for the fundamental principle of the territorial integrity of States.

36. Mr. President, no State wishes to be a colony, in whole or in part. Not the United Kingdom. Not Mauritius.

37. Mr. President, Members of the Court, on behalf of my colleagues, on behalf of the people of Mauritius, including those of Chagossian origin, may I thank you for your attention. May I thank also the Registrar and his colleagues, and the interpreters, for the exceptionally efficient and professional conduct of these proceedings. We express our gratitude also to all Participants in these proceedings, thereby contributing to the furtherance of the rule of law in international relations at these not so easy times. This brings to a close the oral submissions of Mauritius. We thank you very much, Mr. President, Members of the Court.

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[169] Chagos Islands (BIOT) All-Party Parliamentary Group, *Statement issued at its 65th meeting on 6 December 2017 by the Chagos Islands (BIOT) All-Party Parliamentary Group on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 to be considered by the International Court of Justice* (6 Dec. 2017) (Ann. 196).

The PRESIDENT: I thank Professor Sands. Before bringing the present sitting to a conclusion, I will give the floor to Judge Gaja who wishes to put a question to Mauritius. Judge Gaja, you have the floor.

Judge GAJA: Thank you, Mr. President. I wish to ask the Republic of Mauritius the following question:

> "In the process of decolonization relating to the Chagos Archipelago, what is the relevance of the will of the population of Chagossian origin?"

Thank you.

The PRESIDENT: I thank Judge Gaja. The text of the question will be communicated today in writing to all Participants who have taken part or will take part in the oral proceedings. The answer to this question should be provided to the Court in writing on Friday 7 September 2018 by 6 p.m. Any comments or observations by other Participants on the reply of Mauritius should be submitted to the Court in writing on Wednesday 12 September by 6 p.m. This concludes this morning's sitting. The oral proceedings will resume this afternoon at 3 p.m. in order for the United Kingdom to be heard on the questions submitted to the Court. The sitting is adjourned.

The Court rose at 1.15 p.m.

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