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CR 2018/23

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Tuesday 4 September 2018, at 3 p.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 mardi 4 septembre 2018, à 15 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

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.

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.

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.

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.

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.

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.

The PRESIDENT: Please be seated. The sitting is open. The Court meets this afternoon to hear Belize, Botswana, Brazil and Cyprus on the questions submitted to it by the United Nations General Assembly. Each delegation has been allocated 40 minutes to make its statement. I hope that no delegation will exceed that time.

In the interest of conducting these proceedings in an efficient and expeditious manner, I shall introduce only the first speaker of each delegation, in case a delegation is composed of more than one speaker. I will leave it to the first speaker to invite the other speakers to the podium.

The Court will observe a short break after the presentation of Botswana. I will now give the floor to the representative of Belize. Mr. Juratowitch will speak on behalf of Belize. You have the floor.

Mr. JURATOWITCH:

I. Introduction

1. Mr. President, Madam Vice-President, Members of the Court, I have the honour to appear before you this afternoon and to do so on behalf of Belize.

2. Belize first appeared before the Court in the advisory proceedings concerning the legal consequences of the construction of a wall in the Occupied Palestinian Territory, which also involved important issues concerning self-determination.

3. In the present proceedings the right to self-determination is before the Court in the context of decolonization. As the Court knows well, in 1965 the United Kingdom separated the Chagos Archipelago from the colony of Mauritius, so that the archipelago, emptied of its population, would remain available to serve the purposes of the administering State, while the remainder of Mauritius became independent.

4. The crucial question for the Court is whether that separation was lawful under customary international law as it stood in 1965.

5. If the peoples of non-self-governing territories had a right to self-determination in 1965, then administering States had a correlative obligation to respect all aspects of that right and to enable the peoples of the relevant territories fully to exercise that right. If the people of a colony

were wrongfully prevented from fully exercising their right to self-determination, then the process of decolonization would not have lawfully been completed.

6. Belize limits its submissions today to three points.

(a) The first is whether in 1965 customary international law conferred on the peoples of colonized territories a right to self-determination.

(b) The second is the content of that right.

(c) The third is the consequences under international law if the decolonization of Mauritius was not lawfully completed in 1968.

II. The peoples of colonized territories had a right to self-determination under customary international law in 1965

7. Belize's submission on the first point responds to the Court being asked by a small number of States to proceed on the basis that in 1965 States were free as a matter of law to prevent the self-determination of the peoples of their colonies.

8. These States ask the Court to proceed on the basis that the peoples of dozens of States that achieved independence throughout the 1960s[1] did so not pursuant to a legal right to self-determination, but at the discretionary gift of the colonial Powers.

9. The correct position is that the 1960 Colonial Declaration[2] crystallized a rule of customary international law conferring on the peoples of colonial territories the right to self-determination[3], and the process of decolonization was from that time governed by that rule.

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

[2] UNGA res. 1514 (XV), ***D***eclaration on the granting of independence to colonial countries and peoples, doc. A/RES/1514 (XV), 14 Dec. 1960 (UN dossier No. 55)

[3] See M. Villager, *Customary International Law and Treaties* (1985), pp. 144-145: "the 'law-making' or 'law-declaring' resolutions, a selection of which has been compiled in Table No. 2", which table lists "Declaration on the granting of independence to colonial countries and peoples, Res 1514 (XV) of 14.12.1960"; J. Crawford, *Brownlie's Principles of Public International Law* (8th ed., 2012), p. 42: "Even when resolutions are framed as general principles, they can provide a basis for the progressive development of the law and, if substantially unanimous, for the speedy consolidation of customary rules. Examples of important 'law-making' resolutions include … the Declaration on the Granting of Independence to Colonial Countries and Peoples". See also R. Higgins, *Development of International Law through the Political Organs of the United Nations* (1963), p. 177: "In it [the Colonial Declaration] the right of self-determination is regarded not as a right enforceable at some future stage under indefinite circumstances, but as a right enforceable here and now"; and P. Daillier, M. Forteau et A. Pellet, *Droit international public* (8th ed., 2009), pp. 357-358.

10. In the Colonial Declaration ~~***[on screen 1]***~~ the General Assembly "*Declares* that", "All peoples have the *right* to self-determination." This declaration on bringing an end to colonialism made clear that self-determination of colonized peoples was regarded by the community of States as a *right*. ~~***[Screen off]***~~

11. The final paragraph declared that ~~***[on screen 2]***~~: "All States *shall* observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and *the present declaration* . . ." With that mandatory language, in that context, the Colonial Declaration involved States declaring law, not policy. ~~***[Screen off]***~~

12. States demonstrated their overwhelming acceptance of the right articulated in the Colonial Declaration by adopting the Declaration by a vote of 89 in favour, none against, and nine abstentions[4]. Dr Webb submitted yesterday that "abstentions are *often* evidence of non-acceptance as law of the content of a resolution"[5]. An abstention may be evidence of implicit rejection of the terms of a resolution, but it may also evidence tacit acceptance, or of a difficulty with a specific aspect of a resolution, but not the remainder. It of course depends on the context.

13. The explanation of the United Kingdom in 1960, for *its* abstention, which was shown yesterday[6], expressed the view that there were difficulties involved in *defining* the right to self-determination[7], but not a single State contested the existence of the right or its application to the peoples of non-self-governing territories[8].

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[4] United Nations, *Official Records of the General Assembly* (*UNGAOR*), Fifteenth Session (947th meeting), doc. A/PV.947 (14 Dec. 1960) (UN dossier No. 74), p. 1274, para. 34. See further p. 1279, para. 99 taking the number of States in favour to 90 of the 99 Member States of the United Nations at that time.

[5] CR 2018/21**, *p***. 48, para. 24 *(b)*, and see *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996*, p. 255, para. 71, in which for each resolution in a *series* of resolutions, there had been "*substantial* numbers of *negative* votes and abstentions" (Webb); emphasis added.

[6] United Kingdom, slide 2.

[7] See StUS, para. 4.46 and fn 137, relying on what had been said by the representative of the United Kingdom.

[8] Of the abstaining States, only the United Kingdom (see above), Portugal and the United States gave explanations of vote. Portugal did not contest the existence of the right to self-determination and the United States accepted the existence of the right. UN doc. A/PV.947 (14 Dec. 1960) (UN dossier No. 74), p. 1283, para. 145 (United States) ("One thing is clear, however. This resolution applies equally to all areas of the world which are not free … It proclaims that all people have the *right* to self-determination"; emphasis added). See, also e.g., UN doc. A/PV.933 (2 Dec. 1960) (UN dossier No. 64), p. 1093, para. 87 (Australia) ("The Prime Minister of Australia said in this very Assembly hall on 5 October 1960: 'we regard ourselves as having a *duty* to produce as soon as it is practicable an opportunity for complete self-determination for the people of Papua and New Guinea'"; emphasis added); UN doc. A/PV.946 (14 Dec. 1960) (UN dossier No. 73), p. 1266, para. 13 (Sweden) (accepting the "*unimpeachable* principle" that "all peoples have an inalienable *right* to complete freedom, the exercise of their sovereignty and the integrity of their national territory", but observing that its application could lead to controversy; emphasis added); UN doc. A/PV.947 (14 Dec. 1960) (UN dossier No. 74), p. 1276, para. 62 (Netherlands) (accepting the right to self-determination, questioning Indonesia's application of the right to Netherlands New Guinea).

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14. The overwhelming acceptance of the right to self-determination enunciated in 1960 in the Colonial Declaration came against the background of the right having emerged over the course of at least the preceding 15 years.

15. The United Nations Charter refers twice to self-determination, in English as a "principle" and in French as a *"droit"*[9]. The language of a "right" to self-determination was then adopted in the English language versions of General Assembly resolutions in 1950[10], 1952[11], 1953[12], 1954[13] and 1957[14], including specifically with respect to the peoples of non-self-governing territories. In 1952 the General Assembly described self-determination as a "fundamental human right"[15] and as "a prerequisite to the full enjoyment of all fundamental human rights"[16].

16. The resolutions from 1950 to 1957 were adopted by increasingly significant majorities[17], and by 1957 there were 65 votes in favour, not a single vote against, and 13 abstentions[18].

17. In the three years from 1957 to 1960 the peoples of 18 colonies had exercised the emergent right to self-determination, and the States they formed had taken their place among the

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[9] See Charter of the United Nations, Arts. 1 (2) and 55, and also Art. 73.

[10] UNGA res. 421D (V), Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights, doc. A/RES/421 (V), 4 Dec. 1950, para. 6.

[11] UNGA res. 545 (VI), Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, doc. A/RES/545 (VI), 5 Feb. 1952, recital 1; UNGA res. 637 (VII), The right of peoples and nations to self-determination, doc. A/RES/637 (VII), 16 Dec. 1952, Part A, recitals 1 and 4, and paras. 1 and 3; Part B, recital 1 and para. 1; Part C, recital 1 and para. 1.

[12] UNGA res. 738 (VIII), The right of peoples and nations to self-determination, doc. A/RES/738 (VIII), 28 Nov. 1953, recitals 1 and 3.

[13] UNGA res. 837 (IX), Recommendations concerning international respect for the right of peoples and nations to self-determination, doc. A/RES/837 (IX), 14 Dec. 1954, recital 4 and para. 1.

[14] UNGA res. 1188 (XII), Recommendations concerning international respect for the right of peoples and nations to self-determination, doc. A/RES/1188 (XII), 11 Dec. 1957, recitals 2 and 4, and para. 1 *(b)*.

[15] ***UN***GA res. 545 (VI), Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, doc. A/RES/545(VI), 5 Feb. 1952, recital 1.

[16] UNGA res. 637A (VII), The right of peoples and nations to self-determination, doc. A/RES/637 (VII), 16 Dec. 1952, recital 1.

[17] See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 255, para. 70: "a series of resolutions may show the gradua1 evolution of the *opinio juris* required for the establishment of a new rule".

[18] *UNGAOR*, Twelfth Session (727th meeting), doc. A/PV.727 (11 Dec. 1957), p. 575, para. 87.

membership of the United Nations, 16 of them in September 1960 alone[19]. Membership of the United Nations increased by almost 25 per cent in just those three years. That is significant because when the Colonial Declaration was made in December 1960, it was declaring a right that in its emergent form had just been exercised many times over.

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18. That the adoption of the Colonial Declaration in 1960 crystallized customary international law is confirmed by numerous resolutions that followed it, in particular those that denounced breaches of it and called for its strict implementation[20].

19. Notable among these was resolution 2066 of 1965 specifically on Mauritius[21], which ~~***[on screen 3]***~~ referred to the "*contravention* of the [Colonial] Declaration", in the French, *"violation"*, constituted by the detachment of certain islands from the territory of Mauritius.

20. Resolution 2066 was also carried by 89 votes and also had not a single vote against it, with 18 States abstaining. In the Fourth Committee, the United Kingdom explained that it abstained on the basis that it did not believe that, on the facts, the detachment was a "contravention" of the Colonial Declaration[22], ~~***[screen off]***~~ but neither it nor any other State took a position that self-determination did not form part of international law.

21. Also in 1965 the General Assembly adopted a resolution on Namibia, ~~***[on screen 4]***~~ in which it stated that "any attempt to partition the Territory . . . constitutes *a violation of* . . . resolution 1514 (XV)"[23]. This was adopted by 85 votes in favour, two against with 19 abstentions[24].

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[19] Cameroon, Central African Republic, Chad, Congo (Brazzaville) (Republic of the Congo), Congo (Leopoldville) (Democratic Republic of the Congo), Cyprus, Dahomey (Benin), Gabon, Guinea, Ivory Coast, Malagasy Republic (Madagascar), Mali, Niger, Nigeria, Senegal, Somalia, Togo and Upper Volta (Burkina Faso). See R. Higgins, *Development of International Law through the Political Organs of the United Nations* (1963), p. 177: "The lack of opposition to the resolution [1514], came about through a variety of reasons (high among them the fact of the admission of a large group of new emergent states to the United Nations at the fifteenth session . . .)."

[20] See StBZ, para. 3.6.

[21] UNGA res. 2066 (XX), Question of Mauritius, doc. A/RES/2066 (XX), 16 Dec. 1965 (UN dossier No. 146).

[22] StGB, para. 8.53. See also ***UNGAOR***, Twentieth Session, Fourth Committee (1570th meeting), doc. A/C.4/SR.1570 (26 Nov. 1965) (UN dossier No. 154), p. 319, para. 18; *UNGAOR*, Twentieth Session, Fourth Committee (1558th meeting), doc. A/C.4/SR.1558 (16 Nov. 1965), p. 240, para. 80. UN dossier No. 152 is an extract of this document, but the relevant page is not included in that dossier extract.

[23] UNGA res. 2074 (XX), Question of South West Africa, doc. A/RES/2074 (XX), 17 Dec. 1965, para. 5; emphasis added and see also para. 10.

[24] *UNGAOR*, Twentieth Session (1400th meeting), doc. A/PV.1400 (17 Dec. 1965), p. 3, para. 26.

It was a non-recorded vote, but in the Fourth Committee the vote on this paragraph had been recorded, and the only two States voting against it were South Africa and Portugal[25]. ~~***[Screen off]***~~

22. Noting a "contravention" or a "violation" of the Colonial Declaration is language that provides one indication among others that States regarded it as reflecting an international obligation.

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23. The Court has recognized, both in the *Nicaragua* case[26] and in *North Sea Continental Shelf*[27] that a treaty text could crystallize what had until then been an emergent rule of customary international law.

24. Nothing turns on whether such a crystallization occurs through the text of a treaty or the text of a resolution of the General Assembly, since neither is itself constitutive of a rule of customary international law. The question is whether, in the context of what has preceded it, the content of the resolution, coupled with the circumstances in which it was adopted, notably its voting record, constitute sufficient additional State practice and *opinio~~n~~ juris* to demonstrate the crystallization of a rule of customary international law[28]. As the Court knows well, the source of law is custom. The terms of the resolution and States' acceptance of those terms are evidence of that custom[29].

25. In *North Sea Continental Shelf* the Court found that the equidistance principle did not crystallize as a rule of customary international law in Article 6 of the Continental Shelf Convention because the International Law Commission had proposed the treaty text ~~***[on screen 5]***~~ "with

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[25] *UNGAOR*, Twentieth Session, Fourth Committee (1582nd meeting), doc. A/C.4/SR.1582 (9 Dec. 1965), p. 424; Report of the Fourth Committee, Twentieth Session (13 Dec. 1965), doc. A/6161, p. 6.

[26] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 95, para. 177.

[27] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, pp. 38-39, paras. 61-63.

[28] See *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996*, pp. 254-255, para. 70.

[29] *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 100, para. 188.

considerable hesitation, somewhat on an experimental basis, at most *de lege ferenda* and not at all as an emerging rule of customary international law"[30].

26. The adoption of the Colonial Declaration by the General Assembly was very different indeed. ~~***[Screen off]***~~ The right to self-determination had already been widely recognized and exercised over the 15 years since 1945, and a crescendo was reached when in the Colonial Declaration the General Assembly robustly declared the existence of the right to self-determination.

27. The crystallization of the position in the Colonial Declaration was such that the United Kingdom stated to the Court in 2009 in the *Kosovo* proceedings that ***[on screen 6]***: "The principle of self-determination was articulated as *a right of all colonial countries and peoples* by General Assembly resolution 1514 (XV)."[31] That submission was correct, and it accurately reflects the Court's approach to the Colonial Declaration in the *Western Sahara* Advisory Opinion[32]. ~~***[Screen off]***~~

28. I turn now to my second point, which is the content of the right to self-determination.

III. The content of the right to self-determination

A. Territorial integrity

29. In the context of a non-self-governing territory, the right to self-determination inheres in the people of that territory. The right is held by a people, but it is held in respect of a territory.

30. The centrality of territory to self-determination is such that the preservation of territorial integrity forms part of the right to self-determination. It is a necessary element for the right to be effective. It is not an "associated right"[33]. A right to self-determination is held by the people of a

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[30] *North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 38, para. 62.

[31] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, p. 403; ~~***StGB***~~ ***Written Statement of the United Kingdom, 17 April 2009,*** para. 5.21***; emphasis added***.

[32] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 31, para. 55: "The principle of self-determination *as a right of peoples*, and its application for the purpose of bringing al1 colonial situations to a speedy end, were *enunciated* in the Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV)."; emphasis added.

[33] CR 2018/21, p. 50, para. 28 (Webb).

single territorial unit, and that right entitles them to determine the political future of the entirety of that single territorial unit[34].

31. In the penultimate recital of the Colonial Declaration ~~***[on screen 7]***~~, the General Assembly declared that it was "*[c]onvinced* that all people have an inalienable right to", among other things, "the integrity of their national territory"[35]. The right being declared was not one held by States with respect to the territory of States, but a right held by the peoples of colonial countries with respect to their "national territory". ~~***[Screen off]***~~

32. Even more explicitly, operative paragraph 4 ~~***[on screen 8]***~~ applied to "dependent peoples", not States, and provided that "the integrity of *their* national territory shall be respected"[36]. ~~***[Screen off]***~~

33. It is said by some States before you that the 1970 Declaration on Friendly Relations among States referred only to the territorial integrity *of States*. On that basis it is said that there could be no requirement to maintain the territorial integrity of colonies prior to independence, since they were not yet States[37].

34. The United Kingdom emphasized yesterday that the Friendly Relations Declaration was adopted by consensus after six years of negotiations and "extensive and in-depth deliberation"[38], but the comparison you were shown between it and the Colonial Declaration did not include a comparison between the crucial paragraph 6 of the Colonial Declaration and recital 14 of the Friendly Relations Declaration [~~***on screen, unnumbered, and not in the judges' folders]***~~. That comparison is now on your screens. At the top is the text of the Colonial Declaration. ~~***I regret that this slide did not make it into the judges' folders, but it is on your screens.***~~ Below is the text of the Friendly Relations Declaration, showing in black what was already in the Colonial Declaration and in red what was added. Nothing from paragraph 6 of the Colonial Declaration was deleted. The

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[34] See M. Shaw, *Title to Territory in Africa* (1986), p. 140; Report of the Special Rapporteur of the Commission on Human Rights, J. Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolution 1993/2 A, 8 Sept. 2003, doc. E/CN.4/2004/6, para. 15; J. Crawford, *The Creation of States in International Law* (2nd ed., 2006), p. 126.

[35] UNGA res. 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, doc. A/RES/1514 (XV), 14 Dec. 1960 (UN dossier No. 55), para. 7.

[36] UNGA res. 1514 (XV), Declaration on the granting of independence to colonial countries and peoples, doc. A/RES/1514 (XV), 14 Dec. 1960 (UN dossier No. 55), para. 4***; emphasis added***.

[37] See e.g. CR 2018/21, p. 49, para. 25 (Webb).

[38] CR 2018/21, p. 45, para. 14 (Webb).

reference to "a State" was added, but the reference to "country" from the Colonial Declaration was kept, and particular mention was made of threats to territorial integrity at independence. Those additions do not suggest any concern about paragraph 6 of the Colonial Declaration. The maintenance of the entirety of that paragraph 6 is reflective of it having been already customary international law. ~~***[Screen off]***~~

35. Consistently with its recital 14, the Friendly Relations Declaration states in Principle 5, paragraph 8, that ~~***[on screen, unnumbered and not in judges' folders]***~~ "[e]very State shall refrain from any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State *or country*."[39] ~~***[Screen off]***~~

36. The final point on the Friendly Relations Declaration arises from Principle 5, paragraph 6 ~~***[on screen 9]***~~, which Professor Kohen showed you this morning, and which refers at the end to the point when "the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles"[40].

37. Just like the references to "country" as well as "State", that reference to the "right of self-determination" of the people of a colony[41] and to the "purposes and principles" of the Charter ~~***[screen off]***~~ is ~~***[on screen 10]***~~ another link to the Colonial Declaration, and in particular its operative paragraph 6. ~~***[Screen off]***~~

38. In the drafting of the Colonial Declaration, numerous States made clear that paragraph 6 was referring to the territorial integrity of colonial countries yet to achieve independence, *as well as* former colonies that had newly become States[42]. This included comments by States on which the

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[39] Emphasis added.

[40] UNGA res. 2625 (XXV), Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, doc. A/RES/25/2625(XXV), 24 Oct. 1970, The principle of equal rights and self-determination of peoples, para. 6.

[41] See also paras. 1 and 4 under the same heading.

[42] See e.g. the statements at *UNGAOR*, Fifteenth Session (925th-947th meetings), docs. A/PV.945 to A/PV.947 (1960) of Cyprus (A/PV.945 (UN dossier No. 72), paras. 92-93) ; Indonesia (A/PV.936 (UN dossier No. 67), para. 55 and A/PV.947 (UN dossier No. 74), paras. 9-10) ; Iraq (A/PV.937 (UN dossier No. 68), para. 134) ; Morocco (A/PV.945 (UN dossier No. 72), para. 71 and A/PV.947 (UN dossier No. 74), para. 158) ; Nepal (A/PV.935 (UN dossier No. 66), para. 74); Panama (A/PV.938 (UN dossier No. 69), paras. 71-72) and the United Arab Republic (now Egypt and Syria) (A/PV.929 (UN dossier No. 60), para. 178).

United Kingdom and the United States rely to attempt to show the opposite, notably Iran and Tunisia[43].

39. In 1964, the United Kingdom similarly recognized that paragraph 6 of the Colonial Declaration applied when a "colonial territory" was approaching independence, as well as following it. In that statement to the Special Committee on Decolonization, shown to you yesterday by Ms Macdonald[44], the United Kingdom observed that ~~***[on screen 11]***~~ there

> "could be no doubt about the meaning of paragraph 6 of resolution 1514 (XV), which . . . was clearly aimed at protecting *colonial territories* or countries which had recently become independent against attempts to divide them or to 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."[45] ~~***[Screen off]***~~

40. Having said, four years after the adoption of the Colonial Declaration, that there "could be no doubt about the meaning of paragraph 6", yesterday — 58 years after its adoption — it was said on behalf of the United Kingdom that the meaning of paragraph 6 was ambiguous and that there were "serious risks" in finding otherwise, as though doubt and risks have seeped into paragraph 6 since that statement was made in 1964[46].

41. It was also said that there was State practice indicating that territorial adjustments could be made by administering Powers, but the sole example referred to that followed 1960 involved the freely expressed will of the people to proceed to *independence* as two different States[47].

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[43] StGB, para. 8.41 and fn 372 (mistakenly referring to A/PV.36 instead of A/PV.26 in respect of Iran); StUS, para. 4.47 and fn. 138. Iran: UN doc. A/PV.926, 28 Nov. 1960 (UN dossier No. 57), para. 62 (recognizing that colonial peoples had an "inalienable right to complete independence and to the integrity of their national territory") and see also para. 66; Tunisia: UN doc. A/PV.929, 30 Nov. 1960 (UN dossier No. 60), paras. 107 and 119 (referring to Algeria, South Africa and South West Africa — all of which were shortly thereafter the subject of resolutions calling for respect of the territorial integrity of colonized peoples: see Statement of Belize (StBZ), para. 3.6) and paras. 128-133 (stating that it was a "fundamental principle" that any pre-independence agreements in which administering Powers extracted strategic concessions from colonized peoples "must be considered as vitiated from the start").

[44] CR 2018/20, p. 48, para. 13 (2) (Macdonald).

[45] 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, Nineteenth Session, 1964-1965, doc. A/5800/Rev.1, p. 307, para. 148; emphasis added. UN dossier No. 251 is an extract of this document, but the relevant page is not included in that dossier extract.

[46] CR 2018/21, p. 48, para. 24 *(a)*, p. 49, para. 24 *(d)* and p. 52, para. 33 (Webb).

[47] CR 2018/21, p. 51, paras. 29-30 (Webb), referring to the Cayman Islands, Turks and Caicos, the Cocos (Keeling) Islands and Christmas Island between 1955 and 1958, and referring to Ruanda-Urundi 1962. As regards Ruanda-Urundi, see A/RES/1746(XVI), 27 June 1962, recital 9 ("Taking note of the *desire of the Governments* of Rwanda and Burundi to attain independence as separate States on 1 July 1962, the date envisaged in paragraph 7 of resolution 1743 (XVI)**"**); emphasis added.

42. That the preservation of the territorial integrity of a colony formed part of the right of self-determination held by the people of that colony is confirmed by resolutions subsequent to the Colonial Declaration[48]. In 1961, the General Assembly in resolution 1654 recited that it was ~~***[on screen 13]***~~:

> "*Deeply concerned* that, contrary to the provisions of paragraph 6 of the [Colonial] Declaration, acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries *in the process of decolonization*."[49] ~~***[Screen off]***~~

43. In 1965, specifically with respect to Mauritius, the Assembly referred to detachment as a ***"contravention*** of the Declaration, *and in particular of paragraph 6 thereof*"[50].

44. Operative paragraph 4 then went on to refer specifically to violation of the "territorial integrity" of Mauritius, which was at that stage still a colony[51]. ~~***[Screen off]***~~

45. Members of the Court, once the people of a colony enjoyed a right to self-determination, the protection of the territorial integrity of that colony formed part of that right[52]. The obligation on administering States to respect the right to self-determination and to enable its exercise meant that they could not sever any part of the territory of the colony unless that severance was in accordance with the freely expressed will of its people. The administering State effecting a severance in other circumstances would prevent the people of a colonial territory from exercising their right to self-determination with respect to the entirety of the territory to which that right related.

46. If there was a wrongful severance of part of a colony, and the people of that colony later chose through an election for the remaining territory to become independent from the administering State, that would not constitute a full exercise of their right to self-determination. That is because

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[48] See StBZ, paras. 3.6 and 3.10.

[49] UNGA res. 1654 (XVI), The situation with regard to the implementation of the Declaration on the granting of independence to colonial countries and peoples, doc. A/RES/1654(XVI), 27 Nov. 1961 (UN dossier No. 101), recital 6***; emphasis added***.

[50] UNGA res. 2066 (XX), Question of Mauritius, doc. A/RES/2066(XX), 16 Dec. 1965 (UN dossier No. 146), recital 5***; emphasis added***.

[51] UNGA res. 2066 (XX), Question of Mauritius, doc. A/RES/2066(XX), 16 Dec. 1965 (UN dossier No. 146), para. 4.

[52] See M. Shaw, *Title to Territory in Africa* (1986), p. 134 ("As a rule, the need to maintain the colonial unit during the period leading up to independence is clearly a crucial element in the viability of the concept of self-determination"); J. Crawford, *The Creation of States in International Law* (2nd ed., 2006), p. 645 ("Administering States are not at liberty to divide up or dismember those territories in violation of self-determination. Territories formed by such dismemberment are not self-determination units, but are subject to the principle of territorial integrity.").

their right would also relate to additional territory, which had already been severed in breach of that right.

47. Those States now making contrary submissions cannot be expecting the Court to hold that as late as 1965 colonial Powers were free under international law to carve up non-self-governing territories to suit their own interests.

48. Of course division of a colony could lawfully occur under international law, if it was an exercise of the right to self-determination[53], because it was in accordance with, to use the Court's words from *Western Sahara*, the "free and genuine expression of the will of the peoples concerned"[54], and so it is to that that I now turn.

B. Free and genuine expression of the will of the peoples holding the right to self-determination

49. There are two issues relevant to this subject[55].

(a) The first is how to characterize under international law the status of the British Indian Ocean Territory if the United Kingdom's claim to it were to be correct. The particular issue of characterization is whether in substance the United Kingdom has purported to *integrate* the Territory.

(b) If it has, then the second is whether under international law that would have required the free and genuine will of the Mauritian people to have been established by way of a vote.

50. For reasons I will develop, this subject may alleviate any need for the Court to resolve any issue of duress.

51. When the administering State created the British Indian Ocean Territory, it called it a new "colony"[56]. Now the administering State calls it a "British overseas territory"[57]. Under the

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[53] See, for example, UNGA res. 1746 (XVI), doc. A/RES/1746(XVI), 27 June 1962; UNGA res. 3288 (XXIX), doc. A/RES/3288(XXIX), 13 Dec. 1974; 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, Vol. V, *UNGAOR*, Twenty-Ninth Session, Supplement No. 23 (1976), doc. A/9623/Rev.1, paras. 135-191.

[54] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 31, para. 55: "The above provisions [referring to paras. 2, 5 and 6 of resolution 1514 (XV)], in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned." See also para. 162.

[55] See the CoGB, paras. 4.51-4.58, and the CoUS, paras. 3.50-3.54, as well as categorical statements made orally during the hearing on 3 Sept. 2018 about the exercise of the right to self-determination not requiring a vote.

[56] British Indian Ocean Territory ~~***(BIOT)***~~ Order 1965 (S.I. 1965 No. 1920), 8 Nov. 1965; ***sec. 3, StGB, Ann. 11***.

internal law of the United Kingdom, it does not form part of the United Kingdom of Great Britain and Northern Ireland, although the United Kingdom nonetheless considers itself to have an "undivided realm"[58].

52. But the internal position is of course not conclusive, since international law requires an objective characterization of the conduct of the State purporting to exercise sovereignty. The potential categories under international law are: (1) independence, (2) free association, (3) integration by the administering State and (4) a new colony. This is clearly not independence or free association[59], which leaves the options as integration by the United Kingdom or a new colony of the United Kingdom.

53. There are at least three reasons indicating that under international law the best characterization may be that the United Kingdom has purported to *integrate* the Territory.

(a) The first is that the United Kingdom regards itself as the absolute sovereign over the British Indian Ocean Territory[60].

(b) Second, the United Kingdom has not treated that Territory as a colony. As acknowledged by Mr. Wordsworth yesterday[61], it has never provided information on the Territory as a separate non-self-governing territory under Article 73 of the Charter. Indeed the United Kingdom positively, and successfully, sought to avoid it being listed as a non-self-governing territory for the purpose of Chapter XI of the Charter[62]. The United Kingdom equally does not regard it as subject to any right to self-determination held by its displaced people. If the United Kingdom never treated it as a non-self-governing territory under the Charter, subject to the law on

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[57] See, British Overseas Territories Act 2002 (UK), explanatory note 4, referring to a March 1999 White Paper dealing with "the decision that they should be known as 'overseas territories' in place of outdated terms such as 'dependent territories' or 'colonies'".

[58] See e.g. ***British Indian Ocean Territory*** BIOT, Governance, <https://biot.gov.io/governance/> (referring to BIOT as being "constitutionally distinct and separate from the UK"). See also StGB, para. 2.33. See further, The Overseas Territories: Security, Success and Sustainability, White Paper, Cm 8374 (June 2012), p. 8.

[59] J. Crawford, *The Creation of States in International Law* (2nd ***ed.***, 2006), p. 625.

[60] See, StGB, paras. 5.10-5.11, 5.14 and 9.18, and statement by the Permanent Under-Secretary in the Foreign Office quoted at para. 3.103 of the StMU: "We must surely be very tough about this. The object of the exercise is to get some rocks which will remain *ours*"; emphasis in original.

[61] CR 2018/21, p. 32, para. 13 (Wordsworth).

[62] See StMU, Anns. 77-81.

decolonization, the only credible alternative would be if the United Kingdom had purported to integrate it.

(c) Third, the United Kingdom regards itself as subject to an undertaking to "cede" the Chagos Archipelago to Mauritius when it is no longer needed for the United Kingdom's defence purposes[63]. That would only be possible if the United Kingdom had integrated the Territory. If it were otherwise, from the perspective of the United Kingdom, a new self-determination unit would have been created and the people of that newly created entity — who at the time of its creation still inhabited the Archipelago — would from 1965 have had the right freely to determine their own future political status, and the United Kingdom would have been under an obligation to enable them to do so.

54. The administering State created the British Indian Ocean Territory so that it would have absolute sovereignty over a strategic piece of territory from which it planned to remove all permanent inhabitants in order to have untrammelled use of the territory for its own purposes for so long as it determined. If the correct characterization of that situation under international law is purported integration, then the next issue is what would have been required under international law to establish the consent of the Mauritian people to it.

55. Where a non-self-governing territory proceeds to independence, that has been regarded as a presumptively valid exercise of a right to self-determination[64]. There has been no requirement in that situation for the people concerned to express their free and genuine will through a vote in a referendum, plebiscite or election.

56. The position has been different if a change in status of all or part of a non-self-governing territory has involved integration into the administering State. That is because there is an obvious risk of the continuation of colonial subjugation in that scenario, and so a referendum, plebiscite or election has been required.

57. This may be seen in General Assembly resolution 1541, adopted the day following the Colonial Declaration, which required that integration of a non-self-governing territory should

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[63] *UNGAOR*, Fifty-fourth Session (19th meeting), doc. A/54/PV.19, 30 Sept. 1999 (UN dossier No. 292), p. 39 quoted at para. 5.10 of the StGB.

[64] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 33, para. 59.

involve "informed and democratic processes, impartially conducted, and based on universal adult suffrage"[65]. It was adopted by 69 votes in favour, 2 against, with 21 abstentions[66]. The two votes against were South Africa and Portugal, and the records of the Fourth Committee show that the number of abstentions had nothing to do with integration requiring a vote. They concerned United Nations supervision of such a vote[67].

58. State practice is that in virtually every case where integration was either an option for, or the actual outcome of, an exercise of self-determination, the free will of the people was expressed through a referendum, plebiscite or election[68]. The very few examples to the contrary occurred in the 1940s or early 1950s, prior to the emergence of a settled right of self-determination[69].

59. Where after 1960 States did *attempt* to integrate non-self-governing territories without a vote, the international community objected, for example in the 1976 Security Council resolution concerning Namibia which referred to free elections as "imperative"[70].

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[65] UNGA res. 1541 (XV), doc. A/RES/1541(XV), 15 Dec. 1960 (UN dossier No. 78), Ann., Principle IX (Integration), para. *(b)*. And see UNGA res. 648 (VII), doc. A/RES/648(VII), 10 Dec. 1952; UNGA res. 742 (VIII), doc. A/RES/742(VIII), 27 Nov. 1953.

[66] *UNGAOR*, Fifteenth Session (948th meeting), doc. A/PV.948 (15 Dec. 1960) (UN dossier No. 79), p. 1292, para. 88.

[67] See e.g. United Kingdom: UN doc. A/C.4/SR.1043, paras. 52-53. See the numerous statements proceeding on the basis that integration could only occur where the free and genuine expression of will had been expressed by way of a vote: *UNGAOR*, Fifteenth Session, Fourth Committee (1031st-1045th meetings), docs. A/C.4/SR.1031 to A/C.4/SR.1045 in respect of Burma (A/C.4/SR.1033, para. 11); Israel (A/C.4/SR.1037, paras. 12-13); Mali (A/C.4/SR.1043, para. 11); Tunisia (A/C.4/SR.1043, para. 20); Liberia (SR.1043, para. 26); Indonesia (A/C.4/SR.1043, para. 31); Guinea (A/C.4/SR.1043, para. 36); United Kingdom (A/C.4/SR.1043, paras. 52-53); Tunisia (A/C.4/SR.1044, para. 7); Mali (A/C.4/SR.1044, para. 19); Morocco (A/C.4/SR.1044, para. 27); and Guinea (A/C.4/SR.1045, paras. 3 and 10).

[68] This included: British Togoland (1956) (A/RES/1044 (XI), 13 Dec. 1956, para. 4 and recital 1); Northern ***Mariana Islands*** (1958, 1961, 1979 and 1975) (S/RES/683, 22 Dec. 1990, recitals 6-7); Alaska (1958) (A/4115, Ann. I (11 June 1959), p. 3); Hawaii (1959) (A/4226, Annex I (24 Sep. 1959), p. 3); British Cameroons (1961) (case concerning the *Northern Cameroons (Cameroon* v. *United Kingdom), Preliminary Objections, Judgment of 2 December 1963, I.C.J. Reports 1963*, pp. 21-22); Sabeh (1963) (*The Yearbook of the United Nations 1963*, pp. 42-43); Sarawak (1963) (*The Yearbook of the United Nations 1963*, pp. 42-43); Singapore (1963); Gibraltar (1967) (UNGA res. 2353 (XXII), Question of Gibraltar, doc. A/RES/2353 (XXII), 19 Dec. 1967, para. 2; *UNGAOR*, Twenty-second Session (1641st meeting), doc. A/PV.1641 (19 Dec. 1967), p. 9, paras. 97 and 100); and the Cocos (Keeling) Islands (1984) (A/RES/39/30, 5 Dec. 1984, paras. 2-3). This would also include Puerto Rico (1952) which para. 4.70 of the StUS regards as having been integrated into the United States.

[69] French Guiana, Réunion, Guadeloupe and Martinique (1946, but see also *Repertory of Practice of United Nations Organs, Supplement No. 3*, Vol. 3, Art. 73, p. 33 para. 212: "in 1960 and 1961, statements were made by certain representatives to the effect that the Government of France was still under an obligation to transmit information under Article 73 e on all its territories until they were self-governing"); Eritrea (1952, but see A/RES/390 (V) A, 2 Dec. 1950 and A/RES/617 (VII), 17 Dec. 1952); Suriname and Netherlands Antilles (1954, but see A/RES/945 (X), 15 Dec. 1955, especially para. 2); and Greenland (1952, but see A/RES/849 (IX), 22 Nov. 1954, paras. 4-5).

[70] Security Council res. 385, "The situation in Namibia", doc. S/RES/385, 30 Jan. 1976: "in order that the people of Namibia may be enabled freely to determine their own future, it is imperative that free elections . . . be held for the whole of Namibia as one political entity".

60. Members of the Court, if integration is to be a lawful exercise of a right to self-determination, the establishment of the free and genuine will of the people has required a vote of the people holding the right to self-determination[71].

61. This may matter, because any agreement arrived at between executive governments, even if freely entered into, could not have qualified as an expression of the free and genuine will of the people of Mauritius to the Chagos Archipelago being integrated by the United Kingdom.

IV. The consequences under international law if the process of decolonization of Mauritius was not lawfully completed

62. Turning to my final point, I propose to deal with the consequences under international law if the process of decolonization of Mauritius was not lawfully completed by way of eight summary propositions.

(a) First, if by separating the Chagos Archipelago from Mauritius in 1965 the administering State breached its international obligation to respect the right of the Mauritian people to self-determination, and to enable the exercise of that right in respect of the entirety of the territory to which that right related, then the administering State is responsible for that internationally wrongful act.

(b) Second, if that obligation was not fully discharged in 1968 then the administering State remains subject to the obligation.

(c) Third, and this is the corollary of the second point, the people of Mauritius[72] would continue to hold the right to self-determination in respect of the entirety of the territory of Mauritius as it was immediately before the internationally wrongful separation of the Chagos Archipelago.

(d) Fourth, by maintaining to this day the separation of the Chagos Archipelago the administering State would be in continuing breach of its obligation to respect the right to self-determination of the Mauritian people with respect to the entirety of the territory to which their right related.

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[71] A. Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (1995), p. 331: "strictly speaking, the wishes of the population concerned must only be ascertained by means of a plebiscite or referendum when the population seems inclined to opt for association or integration with another State".

[72] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 56, para. 127.

(e) Fifth, the administering State would therefore be obliged to cease forthwith its internationally wrongful conduct and to make reparation for the breach[73]. This would involve the United Kingdom ceasing forthwith its separation of the Chagos Archipelago from Mauritius, so as to restore the territorial integrity of Mauritius as it was immediately prior to the commencement of the breach of international law in 1965[74].

The PRESIDENT: You have now used all of the 40 minutes at your disposal. I invite you to conclude.

Mr. JURATOWITCH: I am in your debt, Mr. President, thank you.

63. Belize, therefore, rests on its written submissions on ***the*** other aspects of consequences. Those, Mr. President, are the submissions of Belize. I thank the Court for its attention.

The PRESIDENT: I thank the delegation of Belize and invite the delegation of the Republic of Botswana to address the Court. The first speaker is Mr. Nchunga Nchunga. You have the floor, Sir.

Mr. NCHUNGA NCHUNGA:

1. Mr. President, Madam Vice-President, Members of the Court, it is a great honour for me to appear before this honourable Court on behalf of the Republic of Botswana.

2. Botswana came to this Court 20 years ago to settle a dispute we had with our neighbour, Namibia. As we said at that time, "for a long period of time after its independence in 1966, Botswana was a lone but prominent beacon of democracy in a sea of minority-ruled *régimes*. Our country has continued to this day to be the standard bearer of democracy and the rule of law"[75]. And, precisely because democracy and the rule of law are in question in the present proceedings,

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[73] Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA), with commentaries, *Yearbook of the International Law Commission (YILC)*, 2001, Vol. II, Part II, doc. A/CN.4/SER.A/2001/Add.1 (Part 2), p. 88 (Art. 30) and p. 91 (Art. 31); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, pp. 197-198, paras. 150-151.

[74] See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 54, para. 118; and ARSIWA with commentaries, p. 97, para. 5 of the commentary to Article 35.

[75] CR 99/6, p. 10 (Tafa).

we decided to ask the Court to give us your precious time to explain our view on this important question of the right to self-determination.

3. We have broadly six points to make: firstly, that the United Kingdom's account of the *Chagos Arbitral Award* is not correct; secondly, there is no compelling reason for the Court to refuse to give the advisory opinion in the present case; thirdly, the peoples' right to self-determination existed during the period between 1965 to 1968; fourthly, the administrating Power was not entitled, in 1965 to 1968, to separate a part of non-self-governing territory; fifthly, a violation of the right to self-determination entails various obligations incumbent upon all States and the United Nations; and sixthly, the so-called persistent objector rule is in any case inapplicable to the right to self-determination.

4. The first two points will be made by our Counsel, Professor Shotaro Hamamoto. I will return and deal with the third, fourth and fifth points, all relating to the right to self-determination, and Professor Hamamoto will appear again to discuss the questions concerning persistent objectors. Mr. President, with your permission, Professor Hamamoto will now address questions concerning the discretion of the Court.

M. HAMAMOTO :

LA SENTENCE ARBITRALE RELATIVE AUX CHAGOS ET LE POUVOIR DISCRÉTIONNAIRE DE LA COUR

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, c'est un honneur renouvelé d'apparaître devant vous. Honneur également de représenter le Botswana qui m'accorde sa confiance.

2. Comme vient de l'indiquer M. Nchunga, il m'incombe de vous expliquer la position du Botswana sur l'interprétation de la sentence arbitrale relative aux Chagos et sur le pouvoir discrétionnaire de la Cour.

I. La sentence arbitrale relative aux Chagos

3. Je commence par la sentence arbitrale relative aux Chagos[76]. Il va sans dire que le Botswana n'était pas partie à cet arbitrage, mais puisque la sentence est publiée et que les questions juridiques dont le Tribunal a traité sont importantes, le Botswana l'a examinée de manière attentive, comme l'ont fait sans doute de nombreux Etats.

4. Au sujet de cette sentence arbitrale, le Royaume-Uni a affirmé hier à plusieurs reprises qu'elle venait à l'appui de son argument relatif au consentement. Cette affirmation est fondée sur un seul paragraphe de la sentence. Mais, si notre lecture est correcte — et nous sommes convaincus qu'elle l'est —, cette affaire n'avait pas trait au droit de la décolonisation, à l'égard duquel le Tribunal a décidé, à la majorité, qu'il n'avait pas compétence pour se prononcer. Cette affaire était limitée à l'interprétation et à l'application de la convention de Montego Bay, rien de plus.

5. En effet, le Tribunal ne s'est pas prononcé sur la question de savoir si Maurice a valablement «consenti» au démembrement de son territoire. La majorité a estimé, au paragraphe 221 de la sentence, que le Tribunal n'avait pas compétence pour traiter de cette question, car elle sortait du champ de compétence d'un tribunal établi sur la base de la convention de Montego Bay.

6. En l'absence d'une telle compétence, le Tribunal a estimé que les engagements pris par le Royaume-Uni à Lancaster House pouvaient être qualifiés d'engagements unilatéraux contraignants pour le Royaume-Uni. Il a atteint cette conclusion en faisant application de la doctrine de l'*estoppel [début de la projection]* :

1) Premièrement, il a constaté que, depuis l'indépendance de Maurice, «the United Kingdom has repeated and reaffirmed the Lancaster House Undertakings on multiple occasions»[77].
2) Deuxièmement, il a constaté que Maurice s'était ultérieurement fié à ces engagements à son détriment, en particulier en ne contestant pas la légitimité du détachement dans les premières années de son indépendance[78].
3) De ce fait, selon le Tribunal, «the United Kingdom's repetition of the undertakings, and the Mauritius' reliance thereon, suffices to resolve any concern that defects in Mauritian consent in

[76] *Chagos Marine Protected Area (Mauritius* v. *United Kingdom)*, Award, 18 March 2015.

[77] *Chagos Marine Protected Area*, par. 428.

[78] *Ibid.*, par. 442.

1965 would have prevented the Lancaster House Undertakings from binding the United Kingdom»[79] *[fin de la projection]*.

7. Le Tribunal ne s'est pas prononcé sur la question du consentement de Maurice, ou sur la validité de celui-ci. Il ne s'est pas prononcé sur la question de savoir si un accord était intervenu qui serait susceptible de lier Maurice en droit international. Il a seulement conclu que les engagements pris par le Royaume-Uni étaient contraignants pour cet Etat.

8. Le Botswana voudrait également faire remarquer que le Tribunal, n'ayant rien dit sur la validité de l'accord, a expressément rejeté l'affirmation du Royaume-Uni selon laquelle Maurice aurait confirmé la validité de l'accord de 1965. *[Début de la projection]* Le Tribunal a, au contraire, pointé le «silence initial» de Maurice, suivi par «a comparatively restrained assertion of its sovereignty claim thereafter». Le Tribunal a conclu, à l'unanimité, que c'était là le résultat de l'engagement unilatéral pris par le Royaume-Uni. Permettez-moi de citer la sentence sur ce point :

> «In so relying, Mauritius forewent the opportunity of asserting its sovereignty claim more aggressively, in particular in the early years following independence . . . Had the package of undertakings not been given, the Tribunal considers it beyond the question that Mauritius would have asserted its claim to the Archipelago early and more directly . . .»[80] *[Fin de la projection]*

9. Monsieur le président, hier après-midi, le Royaume-Uni s'est référé également à l'opinion individuelle et dissidente des juges Wolfrum et Kateka. Selon sir Michael Wood, ceux-ci auraient conclu que les discussions de Lancaster House «resulted in a package binding under national law which upon the independence of Mauritius devolved upon the international law level»[81]. Ceci signifierait, toujours selon sir Michael, que «If the United Kingdom, as Mauritius continues to assert, is bound by its part of the «package deal», Mauritius is bound by its part too.»[82] C'est pour le moins surprenant, en tout cas aux yeux du Botswana, de suggérer que cette opinion individuelle et dissidente viendrait appuyer la position du Royaume-Uni sur la question du consentement à l'excision, dès lors que le Tribunal ne s'est pas prononcé sur le consentement, et que les juges Kateka et Wolfrum ont dit tout le contraire : *[début de la projection]* ils ont conclu que la

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[79] *Ibid.*, par. 428.

[80] *Ibid.*, par. 442.

[81] CR 2018/21 (Wood), p. 58, par. 18 ; *Chagos Marine Protected Area*, dissenting and concurring opinion (Judge James Kateka and Judge Rüdiger Wolfrum), par. 84.

[82] CR 2018/21 (Wood), p. 58, par. 18.

menace du premier ministre Wilson équivalait à une contrainte et que le secrétaire aux colonies avait eu recours à un langage d'intimidation[83] *[fin de la projection]*.

10. Permettez-moi de vous rappeler la conclusion des juges Wolfrum et Kateka : *[début de la projection]* «The 1965 excision of the Chagos Archipelago from Mauritius shows a complete disregard for the territorial integrity of Mauritius by the United Kingdom which was the colonial power»[84] *[fin de la projection]*. Cette opinion conforte ainsi sans la moindre équivoque la position de Maurice selon laquelle aucun consentement valable n'a été donné, que ce soit en 1965 ou par la suite.

II. Le pouvoir discrétionnaire de la Cour

11. Monsieur le président, j'en viens maintenant à mon deuxième point portant sur le pouvoir discrétionnaire de la Cour. Mais avant d'entamer la discussion, qu'il me soit permis de faire une remarque préliminaire.

12. L'avis est demandé dans cette affaire par la résolution 71/292 de l'Assemblée générale. Hier après-midi, nous avons entendu dire maintes fois que cette résolution a été rédigée uniquement par Maurice. *[Début de la projection]* Monsieur le président, vous avez sur votre écran le projet de résolution[85]. Comme vous le voyez, le projet a été proposé par le Congo, au nom des Etats membres du groupe des Etats d'Afrique, y compris bien sûr le Botswana. D'après le Royaume-Uni, les Etats africains autres que Maurice n'ont aucunement contribué à la préparation de ce projet de résolution. Pour être diplomatique, c'est très, très, regrettable *[fin de la projection]*. Ce n'est pas que Maurice mais c'est l'Afrique entière — dont le Botswana — qui s'intéresse à la décolonisation de la dernière colonie britannique en Afrique.

1. La Cour doit répondre à la demande d'avis consultatif à moins que la question puisse être considérée seulement comme une question bilatérale

13. Monsieur le président, pour ce qui est du pouvoir discrétionnaire de la Cour, vu les exposés écrits que soumettent à la Cour de nombreux Etats et l'Union africaine, mon intervention

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[83] *Chagos Marine Protected Area*, dissenting and concurring opinion (Judge James Kateka and Judge Rüdiger Wolfrum), par. 77.

[84] *Ibid.*, par. 91.

[85] Nations Unies, *Assemblée générale*, doc. A/71/L.73.

se limite à une seule question, qui divise les participants à la présente procédure, c'est-à-dire celle de savoir s'il existe des «raisons décisives» qui, exceptionnellement, conduiraient la Cour à opposer un refus, pour la première fois dans sa longue histoire, à une demande d'avis par l'Assemblée générale. Le Botswana, quant à lui, considère qu'aucun élément de la présente affaire ne doit conduire la Cour à trouver de telles «raisons décisives».

14. Le Royaume-Uni soutient que la Cour doit se taire, du fait du caractère bilatéral des questions posées[86]. Monsieur le président, le Royaume-Uni a déjà soulevé ce point à l'Assemblée générale, lorsqu'elle examinait le projet de résolution sur la demande d'avis consultatif. *[Début de la projection]* Comme vous le voyez sur vos écrans, le représentant britannique a employé l'adjectif «bilateral» et l'adverbe «bilaterally» 18 fois, pour ne compter que la première page de son intervention, afin de convaincre l'Assemblée générale d'abandonner le projet de résolution. En vain, puisque le projet a été adopté par 94 voix contre 15 *[fin de la projection]*.

15. Monsieur le président, si l'argument du Royaume-Uni mettant l'accent sur le caractère bilatéral de la question a été rejeté par une telle majorité claire et nette, c'est parce qu'il ne se conforme pas à la jurisprudence constante de la Cour.

16. Dans l'affaire de l'*Edification d'un Mur*, Israël a insisté sur le fait que la Cour ne devrait pas exercer sa compétence, au motif que la demande concernerait un différend bilatéral entre lui et la Palestine à l'égard duquel il n'avait pas accepté la juridiction de la Cour[87]. Pourtant, Monsieur le président, votre Cour a décidé d'exercer sa compétence, en estimant que la question ne pouvait pas être considérée *seulement* comme une question bilatérale entre Israël et la Palestine, mais comme intéressant directement l'Organisation des Nations Unies[88].

17. Comme l'a dit la Cour dans son avis consultatif relatif à l'*Interprétation des traités de paix*, «[l]'avis est donné par la Cour non aux États, mais à l'organe habilité pour le lui demander»[89].

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[86] CR 2018/21, p. 29, par. 8 *b)* (Wordsworth) .

[87] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif du 9 juillet 2004, C.I.J. Recueil 2004 (I)*, p. 157, par. 46.

[88] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif du 9 juillet 2004, C.I.J. Recueil 2004 (I)*, p. 158-159, par. 49.

[89] *Interprétation des traités de paix conclus avec la Bulgarie, la Hongrie et la Roumanie, première phase, avis consultatif, C.I.J. Recueil 1950*, p. 71.

Donc, ce qui est décisif est de savoir si la question posée à la Cour intéresse l'organisation ou l'organe demandeur de l'avis.

18. Sans doute, dans l'affaire relative à l'*Interprétation des traités de paix*, la Cour a été inspirée par l'exposé d'un des orateurs, et non le moindre, puisqu'il s'agit de sir Gerald Fitzmaurice, alors conseiller juridique au *Foreign Office*. *[Début de la projection]* Il a plaidé dans cette salle au nom du Royaume-Uni comme suit :

> «Stress must also be laid on the primary object and function of advisory opinions, namely of facilitating the work of the requesting Organization … , bearing in mind also the status and positions of the Court as an organ of the United Nations, and its principal judicial organ at that, … [I]n principle, … an advisory opinion [should] not be refused to an international Organization merely because the opinion relates to an issue between States.»[90]

19. Précisément pour cette raison, je prie la Cour de maintenir votre jurisprudence aujourd'hui bien établie, d'après laquelle la Cour doit répondre à la demande d'avis consultatif par l'Assemblée générale, à moins que «la question … puisse être considérée *seulement* comme une question bilatérale»[91] *[fin de la projection]*.

2. La question soumise à la Cour ne peut pas être considérée *seulement* comme une question bilatérale

20. Monsieur le président, pour ce qui est de l'archipel des Chagos, personne ne nierait l'existence d'un différend entre Maurice et le Royaume-Uni.

21. Mais le Botswana considère qu'il ne s'agit pas seulement de questions bilatérales entre Maurice et le Royaume-Uni. Si cela était le cas, le Botswana ne serait pas là. L'Assemblée générale, pour «œuvrer activement pour la décolonisation»[92], adresse à la Cour deux questions portant sur le droit des peuples à disposer d'eux-mêmes. Et, il n'est nul besoin d'expliquer combien l'Assemblée générale s'intéresse aux questions relatives à la décolonisation.

22. Monsieur le président, il faut également noter que, comme le dit votre Cour, le droit des peuples à disposer d'eux-mêmes est un droit *erga omnes*[93], et l'obligation de respecter ce droit est

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[90] Exposé oral de M. Fitzmaurice, représentant du Royaume-Uni, à l'audience publique tenue le 2 mars 1950, *C.I.J. Mémoires, Interprétation des traités de paix*, p. 312.

[91] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif du 9 juillet 2004, C.I.J. Recueil 2004 (I)*, p. 158-159, par. 49 ; les italiques sont de nous.

[92] Nations Unies, *Assemblée générale, soixante et onzième session*, préambule, doc. A/RES/292.

[93] *Timor oriental (Portugal c. Australie), arrêt, C.I.J. Recueil 1995*, p. 102, par. 29.

une obligation *erga omnes*[94]. Comment est-il possible, logiquement, que les questions relatives à la détermination du contenu précis des droits et des obligations *erga omnes* soient *seulement* des questions bilatérales ? Conformément à la jurisprudence bien établie, la Cour doit exercer sa compétence dans cette affaire.

23. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, je vous remercie pour la patiente attention avec laquelle vous avez bien voulu m'écouter — malgré ma voix un peu éraillée — et je laisserai maintenant la parole, si vous me le permettez, Monsieur le président, à M. Nchunga, le *Deputy Government Attorney* de la République du Botswana. Merci, Monsieur le président.

Mr. NCHUNGA NCHUNGA:

ON THE TWO QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY

1. Mr. President, I appear this time to explain Botswana's position on the two questions asked by the General Assembly. Botswana was one of the African States that submitted the draft resolution to the General Assembly requesting the advisory opinion. As a State that became independent in 1966, Botswana fully understands what Mauritius experienced during the same period of time. This is why we proposed the draft resolution, and voted in favour of resolution 71/292 and appear~~ing~~ before this Court today.

Question *(a)*

2. [Slide 1 on] The General Assembly's first question is on your screens.

3. Concerning this question, Botswana wishes to make two remarks. Firstly, the right to self-determination had already been established under international law in 1965-1968. And secondly, the administrating Power was not entitled under international law, in 1965-1968, to separate a part of a non-self-governing territory so that only a part of it would be granted independence. [Slide 1 off]

[94] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif du 9 juillet 2004, C.I.J. Recueil 2004 (I)*, p. 199, par. 155.

The right to self-determination had already been established under international law in 1965-1968

4. Botswana became independent in 1966, that is, at the time when, according to the United Kingdom and the United States, no right to self-determination existed[95]. However, as our President Seretse Khama stated in the General Assembly, Botswana's independence was the achievement of self-determination[96]. We explained, in the case concerning *Kasikili/Sedudu*, that "[t]he independence of Botswana was perceived as an inspiration to the black majority populations of Rhodesia, South Africa and South West Africa to attain their own independence and self-determination"[97].

5. From our independence in 1966 to 1968, we had several occasions to deliver statements in the General Assembly. And each time, we stressed the importance of self-determination[98] and explicitly emphasized that of the *right* to self-determination. Thus, in 1967, Mr. Nwako, Minister of State for External Affairs of Botswana, stated: [slide 2 on] "In respect of the Viet-Nam war, . . . my delegation will support all measures intended . . . to allow the people of Viet-Nam to exercise the *right* of self-determination."[99] [Slide 2 off]

6. In fact, a great number of States showed the same understanding. Just to give a few examples, the Foreign Minister of Senegal, Mr. Doudou Thiam — a name familiar to all international lawyers —, stated in the General Assembly already in 1961: [slide 3 on] "Political decolonization means the recognition of the right of peoples still under colonial domination to independence and self-determination. This principle has today become a rule of international law which is binding on all."[100] [Slide 3 off]

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[95] StGB, paras. 8.64-8.67; CoGB, paras. 4.18-4.28; StUS, paras. 4.25-4.29; CoUS, paras. 3.16-3.48.

[96] Sir Seretse Khama (Botswana), UN doc. A/PV.1764, 24 Sept. 1969, para. 21.

[97] *Kasikili/Sedudu Island (Botswana/Namibia)*, Memorial of the Republic of Botswana, Vol. I, 28 Feb. para. 82.

[98] Sir Seretse Khama (Botswana), UN doc. A/PV.1764, 24 Sept. 1969, para. 18; Mr. Nwako (Botswana), UN doc. A/PV. 1694, 14 Oct. 1968, p. 2, para. 13.

[99] Mr. Nwako (Botswana), UN doc. A/PV.1579, 4 Oct. 1967, p. 21, para. 216.

[100] Mr. Thiam (Senegal), UN doc. A/PV.1012, 22 Sept. 1961, para. 41. In original French: «La décolonisation politique est la reconnaissance du droit à l'indépendance et à l'autodétermination des peuples encore sous domination coloniale. Ce principe est devenu aujourd'hui une règle de droit international, ayant force obligatoire pour tous.»

7. [Slide 4 on] As you see on your screens, on the same day, the representative of Lebanon, Fouad Ammoun, future judge of this Court, reiterated the importance of the "right of peoples to self-determination"[101]. [Slide 4 off]

8. These statements are not surprising at all, given that the General Assembly resolution 1514 was adopted by an overwhelming majority of 89 to none, nine States abstaining.

9. One might argue that nine States abstained at the adoption of resolution 1514. However, publicly available records clearly indicate that these nine States — Australia, Belgium, Dominican Republic, France, Portugal, South Africa, Spain and the United Kingdom and the United States — also considered that the peoples' right to self-determination had already been established during the period in question. The Written Comments submitted by Mauritius explain this with abundant evidence[102]. We hereby submit further evidence from our perspective.

10. At the time of our independence in 1966, Botswana was particularly concerned, for evident geographical reasons, with the situations in Southern Rhodesia under a minority régime. [Slide 5 on] The Security Council was also concerned and adopted, in 1966, resolution 232, which stated what you see on your screens[103].

11. Mr. President, Members of the Court, I would like to draw your attention to the verb "reaffirm" in this paragraph. It can only mean that the Security Council considered that the rights in question were already in existence in 1966. And the Security Council "reaffirm[ed]" these rights "in accordance with" General Assembly resolution 1514. Again, this can only mean that the Security Council considered that the rights enshrined in resolution 1514 were already in existence in 1966.

12. This was a binding resolution, as its paragraph 6 refers to Article 25 of the Charter. It was adopted by 11 votes to none, with four abstentions (Bulgaria, France, Mali, and USSR). The United Kingdom and the United States voted in favour of this binding resolution, which did not create but "reaffirm[ed]", in 1966, the peoples' right to independence "in accordance with" General Assembly resolution 1514. [Slide 5 off]

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[101] Fouad Ammoun (Lebanon), UN doc. A/PV.1141, 3 Oct. 1962, para. 125.

[102] CoMU, Vol. I, paras. 3.34-3.37.

[103] UN doc. S/RES/232 (1966), para. 4.

13. In fact, this was not the first case where the Security Council *reaffirmed* the peoples' right to self-determination. [Slide 6 on] As you see on your screens, resolution 183, adopted in 1963 concerning the situation in the territories in Africa under Portuguese administration, already "reaffirm[ed]" the peoples' right to self-determination[104]. It was adopted by 14 to none, with France abstaining. The United Kingdom and the United States voted in favour of this resolution. [Slide 6 off]

14. In addition, the Security Council adopted another resolution that "reaffirm[ed]" the peoples' right to self-determination. Resolution 246, adopted unanimously in 1968 concerning the continued stay of South Africa in South West Africa[105].

15. Accordingly, in at least three resolutions adopted in and before 1968, including the binding one, the Security Council "reaffirm[ed]", with the concurring votes of the United Kingdom and the United States, the right to self-determination as laid down in General Assembly resolution 1514. We wonder why the United Kingdom and the United States have to now contradict, before this Court, what they themselves did 50 years ago in the Security Council.

16. I now turn to France, which was one of the nine States that abstained at the adoption of General Assembly resolution 1514. I can be brief here, since I already mentioned the unanimously adopted Security Council resolution 246, which "reaffirm[ed]" the peoples' right to self-determination in 1966. France of course voted in favour.

17. Mr. President, what about the other six abstaining States — Australia, Belgium, Dominican Republic, Portugal, Spain, and South Africa?

18. Australia and Dominican Republic voted in favour of General Assembly resolution 2145 on the termination of the mandate conferred upon South Africa with respect to South West Africa, adopted in 1966. The resolution also "*reaffirm[ed]* the inalienable right of the people of South West Africa to freedom and independence in accordance with . . . General Assembly resolution 1514 (XV)"[106]. This resolution was legally binding, in the sense that the Court, in its

[104] UN doc. S/RES/183 (1963), para. 4.

[105] UN doc. S/RES/246 (1968), preamble.

[106] UN doc. A/RES/2145 (XXI), 27 Oct. 1966, preamble.

Advisory Opinion on *Namibia*, held that it had legally terminated the mandate conferred upon South Africa[107].

19. As for Belgium, when it voted against General Assembly resolution 1807 on the African territories under Portuguese administration in 1962, the Belgian delegate to the United Nations explained in the Belgian Parliament as follows: [slide 7 on] "This vote should in no way be interpreted as an opposition by the Belgian Delegation to [the] principle [of self-determination]. Belgium is firmly attached to the principle, which it considers as an inalienable *right* of the peoples."[108] [Slide 7 off]

20. Now, this leaves Portugal, Spain and South Africa. Portugal and Spain made it clear that they were against colonialism[109] and in favour of self-determination on other occasions[110]. South Africa's argument at that time was that they were implementing the right to self-determination in their own way[111]. Of course, the international community certainly did not accept their argument, but what is important is that South Africa did accept the right to self-determination during the period in question.

21. Accordingly, all the States that abstained in the adoption of resolution 1514 considered that the peoples' right to self-determination was already in existence during the period in question.

The administrating Power was not entitled under international law, in 1965-1968, to separate a part of a non-self-governing territory

22. Mr. President, I now turn to the second remark that Botswana wishes to make with respect to the first question put to the Court by the General Assembly. Botswana considers that the

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[107] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, pp. 46-50, paras. 94-103.

[108] *Bulletin des questions et réponses*, Chambre des représentants, 1962-1963, n° 9, 22 janvier 1963, quoted in *Revue belge de droit international*, t. 1, 1965, p. 207; emphasis added. In the original French text : «La délégation belge a regretté devoir s'opposer à une résolution qui dans l'esprit de ses auteurs est destinée à favoriser la réalisation du principe fondamental de l'autodétermination dans les territoires sous administration portugaise. Ce vote ne peut en rien être interprété comme une opposition de la délégation belge au dit principe. La Belgique y est fermement attachée le considérant comme un *droit* inaliénable des peuples.»

[109] Mr. Garin (Portugal), UN doc. A/PV.934, 3 Dec. 1960, paras. 31-34.

[110] Mr. Garin (Portugal), UN doc. A/PV.947, 14 Dec. 1960, para. 101; Mr. Aznar (Spain), UN doc. A/PV. 1492, 13 Dec. 1966, para. 215.

[111] See Mr. Jooste (South Africa), UN doc. A/PV.1236, 10 Oct. 1963, paras. 38, 46.

administrating Power was not entitled under international law, in 1965-1968, to separate a part of a non-self-governing territory so that only a part of it would be granted independence.

23. The United Kingdom and the United States argue that there was no such rule of customary international law[112]. I would like to give two brief comments on this argument.

24. First of all, it is difficult to understand their argument. Because paragraph 2 of General Assembly resolution 1514 clearly states that it is "peoples" who have the right to self-determination. As pointed out by Mr. Aureliu Cristescu, Special Rapporteur for the Sub-Commission on Prevention of Discrimination and Protection of Minorities, "[t]he question of a definition of the term 'people' is of the greatest importance"[113]. The argument advanced by the United Kingdom and the United States amounts to saying that colonial Powers were at perfect liberty to determine the question "of the greatest importance". It amounts to saying: "I recognize that you have the right to self-determination, but it is I who determine who you are." This is an outright denial of the right to self-determination.

25. Secondly, we find the precedents relied on by the United Kingdom are not relevant[114]. Since many of them have already been critically examined by the Written Comments of Mauritius[115], we point out only one thing. The Written Statement of the United Kingdom states that the Eparses Islands were attached in Madagascar by France and then administered by the Prefect of Réunion[116]. However, these islands were entirely uninhabited[117]. No population could have been, deported from the Eparses Islands when their administrative status was modified. We wonder therefore in which sense the Eparses Islands could be a meaningful precedent in the present proceedings.

26. For these reasons, Botswana does not share the argument advanced by the United Kingdom and the United States that there was no customary international law rule

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[112] StGB, paras. 8.46, 8.55-8.58; CoGB, paras. 4.29-4.50; StUS, paras. 4.34, 4.50, 4.69, 4.73.

[113] *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments*, Study prepared by Aureliu Cristescu, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, 1981, UN doc. E/CN.4/Sub.2/404/Rev.1, para. 279.

[114] StGB, para. 8.57.

[115] CoMU, paras. 3.62-3.64.

[116] StGB, para. 8.57.

[117] See District des îles Eparses, <http://www.taaf.fr/-District-des-iles-Eparses->.

prohibiting changes to the boundaries of colonial territories prior to independence during the period between 1965 and 1968.

Question *(b)*

27. [Slide 8 on] Mr. President, I now turn to the second question asked by the General Assembly, which you see on your screens. What are the consequences?

28. I would like to draw your attention to the decision by the Heads of State and Government of all the 55 members of the African Union, including Botswana, in January 2018[118]. [Slide 8 off] [Slide 9 on] It is the position of Botswana, together with all the other members of the African Union, that the United Kingdom must expeditiously put an end to its unlawful occupation of the Chagos Archipelago, in accordance with well-established principles of international law[119].

29. Secondly, all the members of the African Union, including Botswana, decided to fully support Mauritius by all means in order to ensure the completion of the decolonization of Mauritius and to enable Mauritius to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia[120]. [Slide 9 off]

30. As I conclude, Mr. President, these decisions taken by all members of the African Union are perfectly in line with the jurisprudence of this Court.

31. With respect to the consequences for the United Kingdom, there is no need to explain that the wrongdoer must cease its wrongdoing expeditiously[121].

32. With respect to the consequences for States, it is to be recalled that the Court found, in its Judgment in *East Timor* and in its Advisory Opinion in the *Wall* case, that the peoples' right to self-determination and the corresponding obligation to respect the right of self-determination have an *erga omnes* character[122]. In the *Wall* Opinion, "the character and the importance of the rights and

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[118] Assembly of the African Union, Decision on Chagos Archipelago, AU doc. Assembly/AU/Dec.684(XXX), 28-29 Jan. 2018 (hereinafter, "Decision on Chagos Archipelago"), available at https://au.int/sites/default/files/decisions/33908-assembly_decisions_665_-_689_e.pdf.

[119] African Union Assembly, Decision on Chagos Archipelago, para. 9.

[120] African Union Assembly, Decision on Chagos Archipelago, para. 7.

[121] *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980*, p. 44, para. 95 (1) (3).

[122] *East Timor (Portugal* v. *Australia), Judgment, I.C.J. Reports 1995*, p. 102, para. 29; *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. 199, para. 155.

obligations involved"[123] led this Court to declare that all States are under certain obligations, namely: an obligation not to recognize the illegal situation resulting from a violation of the right to self-determination; an obligation not to render aid or assistance in maintaining the situation created by such a violation; and an obligation to see to it that any impediment, resulting from the violation, to the exercise by the people of its right to self-determination is brought to an end[124]. There is therefore no reason that the Court should not arrive at the same conclusions in the present case.

33. With respect to the consequences for the United Nations, as the Court stated in the *Wall* case, it is incumbent upon the United Nations, especially the General Assembly, to consider what further action is required to bring to an end the illegal situation resulting from the violation of the right to self-determination[125].

34. Mr. President, Members of the Court, thank you very much for your attention. With your permission, Mr. President, Professor Hamamoto will discuss the last issues relating to persistent objector. I thank you.

M. HAMAMOTO :

L'OBJECTEUR PERSISTANT

1. Monsieur le président, Mesdames et Messieurs les Membres de la Cour, le Royaume-Uni, dans son exposé écrit, soutient que le droit des peuples à disposer d'eux-mêmes, y compris le droit du peuple d'un territoire non autonome à l'intégrité territoriale, n'était pas obligatoire pour ce qui est de lui qui était un objecteur persistant dans son splendide isolement[126].

2. Or, Monsieur le président, cet argument est démenti par sa propre pratique. Comme vient de le faire remarquer M. Nchunga, le Royaume-Uni lui-même reconnaissait que le droit des peuples à disposer d'eux-mêmes existait déjà dans les années 1960[127]. Il était peut-être un

[123] *Construction of a Wall (Advisory Opinion),* p. 200, para. 159.

[124] *Ibid.*

[125] *Construction of a Wall (Advisory Opinion), I.C.J. Reports 2004 (I),* p. 202, para. 163 (3) E.

[126] EéGB, par. 8.59-8.61.

[127] M. Nchunga (Botswana), Self-determination, par. 11-15, 4 septembre 2018.

objecteur, de temps en temps, mais certainement pas persistant, ce qui est très juste d'ailleurs, «[v]u la nature et l'importance des droits et obligations en cause»[128].

3. En tout état de cause, la doctrine de l'objecteur persistant, si jamais elle existe en droit international, ne s'applique pas au droit des peuples à disposer d'eux-mêmes.

4. Dans l'affaire du *Sud-Ouest africain*, l'Afrique du Sud a affirmé, devant cette Cour, que la règle coutumière interdisant l'apartheid n'était pas obligatoire à son égard, du fait qu'elle était un objecteur persistant[129]. Alors, le Royaume-Uni considérait-il que l'Afrique du Sud n'était pas liée par la règle coutumière interdisant l'apartheid ?

5. Bien sûr que non, et il a raison. *[Début de la projection]*. Le Royaume-Uni a participé au consensus lors de l'adoption de la résolution 34/93***O*** de l'Assemblée générale[130], qui a réaffirmé que l'apartheid était un crime contre la conscience et la dignité de l'humanité et dénoncé comme étant invalides tous les plans de démembrement de l'Afrique du Sud par la bantoustanisation[131]. Le Royaume-Uni considère ainsi, et à juste titre, que la doctrine de l'objecteur persistant ne s'applique pas à l'interdiction de l'apartheid *[fin de la projection]*.

6. L'interdiction de l'apartheid est étroitement liée au droit des peuples à disposer d'eux-mêmes, comme l'indique la résolution 417 du Conseil de sécurité, adoptée en 1977 avec le vote affirmatif du Royaume-Uni[132]. De plus, comme je l'ai déjà rappelé, l'obligation de respecter le droit des peuples à disposer d'eux-mêmes est une obligation *erga omnes*[133]. Comment est-il possible, logiquement, qu'un Etat puisse déroger à une obligation *erga omnes*, par son objection unilatérale, persistante ou non ? La position du Royaume-Uni n'est pas soutenable.

7. Monsieur le président, ces derniers mots viennent conclure l'exposé oral de la République du Botswana. Je renouvelle le témoignage de toute la reconnaissance du Botswana vis-à-vis de la Cour qui lui a offert la possibilité d'être entendu.

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[128] *Conséquences juridiques de l'édification d'un mur dans le territoire palestinien occupé, avis consultatif du 9 juillet 2004, C.I.J. Recueil 2004 (I)*, p. 200, par. 159.

[129] Réplique déposée par le Gouvernement de la République de l'Afrique du Sud, *C.I.J. Mémoires, Sud-Ouest africain*, vol. V, p. 140-141, par. 37 ; M. Verloren van Themaat, agent du Gouvernement de l'Afrique du Sud, *C.I.J. Mémoires, Sud-Ouest africain*, vol. X, p. 9-11.

[130] Nations Unies, doc. A/34/PV.100, par. 267 (12 décembre 1979).

[131] Nations Unies, *Assemblée* générale, doc. A/RES/34/93***O***, préambule.

[132] Nations Unies, *Conseil de sécurité*, doc. S/RES/417 (1977), préambule.

[133] M. Hamamoto (Botswana), pouvoir discrétionnaire, par. 23, 4 septembre 2018.

The PRESIDENT : I thank the delegation of Botswana. Before I invite the next delegation to the podium, the Court will observe a coffee break for 10 minutes. The hearing is suspended.

The Court adjourned from 4.20 p.m. to 4.30 p.m.

The PRESIDENT: Please be seated. The sitting is resumed. The next speaker is the delegation of Brazil. Her Excellency Ms Cordeiro Dunlop will make a statement on behalf of Brazil. You have the floor, Madam.

Ms CORDEIRO DUNLOP:

1. Mr. President, Madam Vice-President, distinguished Members of the Court, it is an honour to appear before this Court in this advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. On behalf of Brazil, I would like to express our recognition of the fundamental role this Court plays in promoting and clarifying international law, thus contributing to a more peaceful and just world.

2. In view of its firm commitment to international law and multilateralism, Brazil voted in favour of resolution 71/292 of the United Nations General Assembly, which requested the present advisory opinion. We deem it a positive tendency that important international issues are increasingly being brought to this Court. It is an acknowledgment of the commendable work of the International Court of Justice in responding to the requests of Member States for legal advice in difficult questions. The willingness of the Court to tackle challenging international matters and shed light on their legal aspects is one of the factors that make it so relevant today. Brazil trusts that, once again, this Court will provide legal guidance on matters that concern the international community as a whole: decolonization and self-determination. We are confident that the findings of the current procedure will have an impact not only on the particular question of Chagos, but on all other decolonization processes that are still pending.

3. Before I proceed, I would like to refer to the good relations between Brazil and both the Republic of Mauritius and the United Kingdom. Our decision to participate in the advisory opinion stems from our perception that legal clarity may contribute to a more productive dialogue on the decolonization process of Mauritius, thus defusing tension and promoting stability. We do not

perceive this procedure as a bilateral dispute, nor do we approach the present statement as being adversarial to any State.

4. Mr. President, Members of the Court, considering that Brazil has already stated its position in its written submission, I will limit this oral presentation to a few particularly relevant aspects of our argument. After carefully reviewing all written statements submitted by other Member States, Brazil will focus on two particular elements raised in most written contributions: (i) jurisdiction and judicial propriety, particularly the question of whether this is a multilateral issue or a bilateral dispute; and (ii) self-determination and territorial integrity in the context of decolonization.

JURISDICTION AND JUDICIAL PROPRIETY

5. An overwhelming majority of States participating in the present proceedings accepts that the Court has jurisdiction to entertain the General Assembly's Request for this advisory opinion. Indeed, all criteria for the Court to have advisory jurisdiction under Article 65 (1) of the Statute have been met. The present Request asks the Court to assess whether a decolonization process was "lawfully completed" and to clarify the "consequences under international law" that stem from the current situation. The issues raised by the General Assembly are "framed in terms of law", "raise problems of international law" and are —"by their very nature susceptible of a reply based on law"[134], to use the terms of the *Western Sahara* Advisory Opinion of 1975 — thus fulfilling the requirements of a legal question.

6. It is also the view of most participant States that there are no compelling reasons to prevent the Court from replying to both questions formulated in resolution 71/292. During the written proceedings, few States have argued that the Court should decline to render this advisory opinion because it addresses a bilateral dispute and, therefore, moving forward to the merits would circumvent the principle of consent to judicial settlement. For Brazil, consent is in fact key in adjudicating bilateral disputes before the International Court of Justice, as this very Court has already confirmed in plentiful adversarial proceedings. Nevertheless, we consider that the issues

[134] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 18, para. 15.

before this Court today transcend the realm of any bilateral dispute, as they are multilateral by their very nature.

7. The present Request for an advisory opinion tackles with the core of the law of self-determination in the context of decolonization, an issue which is of direct concern of the United Nations. The General Assembly has specific competencies in the field of decolonization, as established by the Charter and by the subsequent practice of the Organization. This Court has already recognized the important role of the General Assembly in the development of the law on decolonization, particularly with the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples[135] — resolution 1514 of the Fifteenth General Assembly. This Declaration, as per the *Western Sahara* Advisory Opinion, "provided the basis for the process of decolonization" that resulted "since 1960 in the creation of many States which are today Members of the United Nations"[136]. Hence, with the present request for an advisory opinion, the General Assembly is seeking legal guidance from the principal judicial organ of the United Nations for the proper exercise of a function that it has been duly performing for a very long time.

8. Moreover, the issues at hand concern the international community as a whole, even if they also have a bilateral dimension. The Court asserted in the past, in its *East Timor* Judgment of 1995, that the right of peoples to self-determination in colonial contexts creates *erga omnes* obligations[137], which are, by their very nature, the concern of all States. The fact that 94 States voted in favour of the resolution requesting the advisory opinion and 31 States decided to take part in the current proceeding, reinforces the view that we are not dealing with an exclusively bilateral affair, but rather with rights whose protection is in the interest of the international community as a whole, including through the United Nations.

9. As acknowledged by the Court in the *Wall* proceedings, under these circumstances, where the questions are "located in a much broader frame of reference than a bilateral dispute", exercising advisory jurisdiction does not "have the effect of circumventing the principle of consent to judicial

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[135] UNGA res. 1514 (XV) of 14 Dec. 1960; see *I.C.J. Reports 1971*, p. 31.

[136] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 32, para. 57.

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

settlement"[138]. As the principal judicial organ of the United Nations, the Court has been diligently complying with requests for advisory opinion, providing clarity and support to the United Nations in legal matters. Here, it has again the opportunity to give a valuable contribution in a matter that has been of concern to the General Assembly for a long time[139], and that has stayed alive ever since[140], as per African Union Declarations and resolutions in G77 Ministerial Declarations as recent as 2016. Brazil is confident that there are no compelling reasons for the Court to abstain from exercising its judicial function. Quite the opposite: the long overdue process of decolonization and the nature of the rights involved are actually compelling reasons for the Court to analyse the merits and provide the legal guidance that the General Assembly requested.

SELF-DETERMINATION AND TERRITORIAL INTEGRITY IN THE CONTEXT OF DECOLONIZATION

10. The second element to be focused in this presentation is self-determination and territorial integrity in the context of decolonization. As most States that submitted written statements, Brazil considers that, by the time of the excision by the administrative Power of the Chagos Archipelago from Mauritius, there was already a binding right of self-determination in colonial contexts. Indeed, the right to self-determination in the context of decolonization has been recognized in United Nations resolutions[141], in multilateral declarations[142], and even in this Court's own decisions[143], as in the Advisory Opinion of 1970 regarding *Namibia*.

11. Brazil considers that the right of colonial peoples to self-determination is not only an *erga omnes* obligation, but also a peremptory norm of international law. By the time of the adoption of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

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[138] *Legal Consequences of the Construction of a Wall in the Palestinian Occupied Territories, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 159, para. 50.

[139] UNGA res. 2066 (XX), 2232 (XXI) and 2357 (XXII).

[140] See e.g. Ministerial Declaration of the Group of 77 and China to UNCTAD XIV (TD/507), 22 July 2016; Declaration adopted by the Thirty-Seventh Annual Meetings of Ministers for Foreign Affairs of the Member States of the Group of 77, New York, 26 Sep. 2013; Resolution on Chagos Archipelago Dc. EX.CL/901 (XXVII) (AU/Res.1 (XXV)), 14-15 June 2015; African Union Assembly of Heads of State and Government, 50th Anniversary Solemn Declaration, Addis Ababa, 26 May 2013, p. 3.

[141] See e.g. UNGA resolutions 1514 (XV) and 2625 (XXV).

[142] See e.g. Vienna Declaration and Programme of Action (2003), I, 2.

[143] *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*; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Application for Permission to Intervene, Judgment, I.C.J. Reports 2001*, p. 655, para. 9.

in 1960, it had already evolved into a legal right. The evidence of State practice and *opinion juris* is abundant, as demonstrated, for instance, by several General Assembly resolutions adopted on the matter and by the significant number of non-self-governing and trust territories that achieved independence in that period.

12. Much of the history of international law during the 1960s dealt with the law of self-determination and decolonization. The independence of new colonies did not derive from comity or courtesy of the former colonial Powers. It was rather the due exercise of a right, whose application should lead to "bringing all colonial situations to a speedy end"[144], to use once again language from the *Western Sahara* Advisory Opinion.

13. Some written statements cast doubt on the content of the right to self-determination in colonial contexts. The existence of divergent views on this matter only reinforces the need for legal guidance from the Court. For Brazil, as for many other participant States, there is a clear link between self-determination and territorial integrity. The right of peoples to self-determination has a territorial projection: the people must be able to exercise their rights over the entire territory. Territorial integrity is therefore not only a corollary of sovereignty but also a corollary of self-determination.

14. The very notion of self-determination in colonial contexts would be deprived of meaning if the administering Powers could, contrary to the freely expressed will and desire of the population, dismember the territory prior to independence. The General Assembly has highlighted this understanding on several occasions, adding that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations"[145]. Although General Assembly resolutions are not binding per se, they do have normative value. They provide evidence of customary international law, contribute to the interpretation of the Charter and help to consolidate practices of the Organization. On the matter of territorial integrity, General Assembly resolutions clarify and reinforce the view that this principle, which is enshrined in Article 2, paragraph 4, of the

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

[145] Declaration on the Granting of Independence to Colonial Countries and Peoples, para. 6.

United Nations Charter, also applies to non-self-governing territories and others living under colonial rule.

15. Regarding the specific situation of this Request for advisory opinion, General Assembly resolution 2066 (XX) from the Twentieth United Nations General Assembly indicates the clear understanding of the most representative organ of the United Nations on the detachment of the Chagos Archipelago. It "note[d] with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof". The General Assembly also "invite[d] the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity". Adopted with 89 votes in favour and no votes against it, resolution 2066 (XX) from the Twentieth United Nations General Assembly reflects the view that the disruption of Mauritius' territorial integrity was not in accordance with the United Nations Charter.

16. Another consequence of the principle of self-determination in colonial contexts is the prohibition, for administrative Powers, to "disrupt the demographic composition" of the territories under colonial rule[146]. That is exactly what happened with the forcible removal of Mauritians of Chagossian origin to other countries. They were not allowed to resettle in the Archipelago, neither were they properly compensated for. Moreover, as described in the United Nations Convention on the Law of the Sea Tribunal, Award of 18 March 2015, the administering Power established a marine protected area surrounding the Archipelago, impairing the feasibility of a possible return of the indigenous population[147]. Article 13, paragraph 2, of the Universal Declaration of Human Rights determines that "[e]veryone has the right to leave any country, including his own, and to return to his country". The fact that the administering Power has been preventing the resettlement of Chagossians in the Archipelago constitutes a violation of that right.

17. Given that the dismemberment of the Chagos Archipelago was not in conformity with international law, particularly with the right of self-determination in colonial contexts and the

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[146] UNGA res. 35/118 of 11 Dec. 1980.

[147] *Chagos Marine Protected Area (Mauritius* v. *United Kingdom), Arbitral Tribunal Constituted under Annex VII of the United Nations Convention on the Law of the Sea, Award*, 18 Mar. 2015.

principle of territorial integrity, Brazil considers that the decolonization of Mauritius was not lawfully completed — and remains incomplete to this day.

18. The passing of time does not correct this wrongdoing, nor does it create a fait accompli, since we are dealing here with the violation of a *jus cogens* norm. As a consequence, and as part of the general obligation of putting a speedy end to colonialism, the decolonization process of Mauritius must be completed. Additionally, there should be no impediment to the resettlement of Chagossians who were forcibly removed to other countries, thus bringing to an end the continuing violation of their fundamental human rights.

CONCLUSION

19. Mr. President, Members of the Court, for the reasons presented here, Brazil understands that:

(a) the Court has and should exercise advisory jurisdiction;

(b) the right of peoples to self-determination was established in international law by the time of the excision of the Chagos Archipelago from Mauritius;

(c) the exercise of self-determination by the Mauritian people was prevented from being completed, since a portion of their territory remained under control of the administering Power;

(d) the decolonization of Mauritius could not therefore be completed when independence was granted in 1968; and finally

(e) the forcible removal of the population of the Chagos Archipelago constitutes a violation of international human rights law;

(f) therefore, the administering Power has an obligation to immediately put an end to the continuing wrongful acts generated by the excision of the Chagos Archipelago from Mauritius, including the depopulation of the islands, and

(g) the administering Power shall pursue negotiations in good faith to conclude the decolonization process of Mauritius, taking into account the determinations made by the General Assembly in the realm of decolonization.

Thank you.

The PRESIDENT: I thank the delegation of Brazil. I will now give the floor to the delegation of Cyprus. I understand that Mr. Costas Clerides will speak on behalf of Cyprus. You have the floor, Sir.

Mr. CLERIDES: Mr. President, Madam Vice-President, honourable Members of the Court, it is a privilege for me to appear before you today, on behalf of the Republic of Cyprus.

Introduction

1. Cyprus will make submissions in three parts. First, I will offer some introductory remarks. Second, Ms Mary-Ann Stavrinides will address the Court on issues of jurisdiction and admissibility and on references made to Cyprus in other written statements in these proceedings. Third, Mr. Polyvios Polyviou will address the components of the right to self-determination that are, in the submission of Cyprus, crucial in the present context. Unfortunately, Professor Vaughan Lowe has been prevented by recent surgery from appearing before the Court for Cyprus today.

2. Cyprus has made submissions in this case for two reasons.

3. First, as a former colony, which has been an independent republic since 1960, it stands alongside peoples who are still seeking the full implementation of their right to self-determination and control of their territory and natural resources.

4. Second, Cyprus speaks out of its own experience in drawing the Court's attention to the fact that the bonds of colonialism take many forms, and in asking the Court to be particularly conscious, when advising the United Nations, of the need to address the realities of self-determination and not only its superficial manifestations.

5. One example of the need to look through to the reality of things concerns the basic terminology. While the precise manner in which the legal principles on decolonization are implemented in each situation may vary according to the particular facts, the application of those principles cannot be avoided by attaching a different label — for example, by calling a given area a "military base" as opposed to a "colony", or by declaring that a given area is not a "colony". At this point, we would like to draw the Court's attention to the fact that very recently — actually, on

30 July this year — the United Kingdom Supreme Court decided, in the *Bashir* case[148], that the 3 per cent of Cyprus which constitutes British military-base areas, remains a British colony. Therefore, even in the eyes of the United Kingdom itself, colonialism seems to be alive and well today, albeit under different names.

6. Another example of the need to look through to the reality of things concerns the historical perspective. A colonial State cannot escape its legal obligations by forcing or encouraging the local population of part of a colony's territory to abandon it, and then claiming some years later that there are no people there by whom, or on whose behalf, self-determination and self-government can be exercised. Similarly, a colonial State cannot escape its legal obligations by appealing to the fact that citizens of the post-colonial State are resident in a piece of the colony's territory which has been retained by the colonial State.

7. There are three main themes that Cyprus wishes to advance this afternoon.

8. First, for as long as there are parts of excised territory of a country that have been retained by the former colonial Power, the latter is under a continuing obligation to give full effect to the principle of self-determination. The same of course applies beyond the colonial context, to a dominant Power, when there are parts of the territory of a country that are being subjected to alien subjugation, domination or exploitation. In these submissions, we consider self-determination to apply both to situations of decolonization and to situations of alien subjugation, domination or exploitation, whatever label might be attached to them[149]. But for brevity, we shall refer primarily to colonialism.

9. Second, colonialism is a violation of international law in general, and of the United Nations Charter in particular. The principle of equal rights and self-determination of peoples is a fundamental principle, and a peremptory norm, of contemporary international law, generating *erga omnes* obligations[150]. Here, it is important to distinguish between two propositions.

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[148] *R (on the application of Tag Eldin Ramadan Bashir and others) (Respondents)* v. *Secretary of State for the Home Department (Appellant)*, [2018] UKSC 45, Judgment dated 30 July 2018 (hereinafter *"Bashir"*).

[149] See e.g. the Annex to UNGA resolution 2625 (XXV) of 1970, under the heading "The principle of equal rights and self-determination of peoples".

[150] Regarding the *jus cogens* dimension, see e.g. Written Comments of Cyprus (CoCY), para. 19 and fn. 14. Regarding the *erga omnes* dimension, see e.g. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 199, para. 156.

At one level, the right to self-determination is as inalienable as is the sovereignty of a State. The "inalienability" of the right to self-determination has been confirmed by the United Nations Human Rights Committee, for example[151]. As will be explained later on in our submission, no people can surrender or alienate that right. At another level, considering that, as the Permanent Court said in the *Wimbledon* case,[152] "the right of entering into international engagements is an attribute of sovereignty", in the very exercise of the inalienable right of self-determination a people may, by their free choice and continuing consent, agree to arrangements which allow, *revocably*, other States to use a part of their territory. We will come back to this point shortly.

10. The third main theme is that the international law on self-determination is not frozen at the date when the first steps towards the realization of the right to self-determination are taken in respect of a territory. Thus, situations such as the one prevailing in the Chagos Archipelago must be kept constantly under review, and appraised through the prism of the law on self-determination as it evolves over time.

Mr. President, Members of the Court, I thank you for your attention. Mr. President, with your permission, I call Ms Stavrinides to the podium. Thank you.

Ms STAVRINIDES:

Jurisdiction and admissibility

Mr. President, Madam Vice-President, Members of the Court. It is an honour to appear before you on behalf of the Republic of Cyprus. I begin with the issues of jurisdiction and admissibility.

1. Cyprus has already submitted, in its written statements, that the Court has jurisdiction to render the advisory opinion, and that there are no compelling reasons that prevent the Court from

[151] See General Comment Number 12 on Article 1 concerning "[t]he right to self-determination of peoples" of the International Covenant on Civil and Political Rights (ICCPR) of 1966: United Nations Human Rights Committee, Twenty-first session, General Comment No. 12 adopted on 13 March 1984. The ICCPR binds at least 172 States, including Mauritius, the United Kingdom and Cyprus (source: http://indicators.ohchr.org/). Article 1 of the ICCPR is identical to Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966. The ICESCR binds at least 169 States, including Mauritius, the United Kingdom and Cyprus (source: http://indicators.ohchr.org/).

[152] *S.S. "Wimbledon", Judgments, 1923, P.C.I.J., Series A, No. 1,* p. 25.

exercising what represents, in its own words, "its participation in the activities of the [United Nations]", which "in principle, should not be refused"[153].

2. Cyprus stresses that the motives of individual States in sponsoring or voting in favour of a resolution seeking an advisory opinion, of which much has been made in some of the written statements submitted to the Court[154], are as irrelevant to the Court's jurisdiction over a request for an advisory opinion[155] as they are "to the Court's exercise of its discretion whether or not to respond"[156]. This is because, as stated in *Western Sahara*, the Court ought to deny giving an advisory opinion only where this "would have the *effect*" — not the motive, but the effect — of circumventing the principle of consent to judicial settlement of disputes[157].

3. How could the "motive" of the General Assembly in requesting this opinion be ascertained? How could the motives of each of the 94 delegations that voted for the Request be determined? And should any significance be attached to the motives of the 15 delegations that opposed it? The United Nations Charter and the Court's Statute give no place for such questions. The General Assembly has requested an advisory opinion, and that Request is to be taken at face value.

4. In response to arguments made in some of the written statements to the effect that the subject-matter of the advisory opinion is essentially a bilateral dispute between Mauritius and the United Kingdom[158], Cyprus reiterates that matters pertaining to self-determination in general, and the lawful completion of a process of decolonization in particular, can never properly be characterized as purely bilateral matters between a former colonial Power and a former colony. This is confirmed by the *jus cogens* character of the right to self-determination, and by the *erga omnes* character of the obligations it generates. The relevant obligations are owed to the

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

[154] See e.g. CoGB, para. 3.2: "Mauritius . . . *seeks to recast this dispute as a matter of decolonisation*"; emphasis added; and paras. 3.4, 3.12; CoUS, para. 2.12, second point; StAUS, paras. 21 *et seq.*; StFR, para. 19; StIL, para. 3.8.

[155] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, para. 27.

[156] *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010 (II)*, para. 33.

[157] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, para. 33; emphasis added.

[158] See e.g. CoGB, paras. 3.2-3.4, 3.7 *et seq.*; CoUS, paras. 2.5 *et seq.*; StFR, para. 19.

international community as a whole, and all States have a legal interest in their proper implementation.

5. The competence of the General Assembly over decolonization is a further, crucially important factor that precludes the characterization of such matters as purely bilateral. This Request comes not from States, but from the General Assembly as an organ — like the Court — of the United Nations. The General Assembly has been given this role under the United Nations Charter precisely in order to restore at least some balance of power between a colonial Power and its colonies. This is particularly pertinent with respect to the question of consent to the excision of parcels of territory of the colony, whether made prior to, or simultaneously with, the granting of independence — but in either event, as part of the "price of independence".

6. These situations cannot be treated as a purely bilateral matter, not only in light of paragraph 6 of General Assembly resolution 1514[159], but also because of the General Assembly's explicit overall competence in respect of decolonization. Were it otherwise, matters of decolonization would have been left to be discussed and resolved as bilateral issues between colonial Powers and their colonies, with the adverse consequences this would entail, given the inherent inequalities of power between them.

7. Nowhere does the General Assembly's Request ask the Court, or have the effect of requiring it, to adjudicate a bilateral dispute. This Request, seen objectively, requires a determination regarding what constitutes a lawful completion of decolonization and a determination of the legal consequences, including the *erga omnes* legal obligations of relevant States, so that the General Assembly may have an informed basis upon which to consider appropriate action within the limits of its own competence under the United Nations Charter.

References to Cyprus in written statements

8. I now turn to the second part of my submission today. Several of the written statements submitted to the Court make reference to Cyprus or to positions said to have been taken by the Government of the Republic of Cyprus. In some instances, these references have already been addressed: for example, paragraph 24 of Cyprus' second round of written comments addressed the

[159] Declaration on the Granting of Independence to Colonial Countries and Peoples, General Assembly resolution 1514 (XV) of 14 Dec. 1960.

reference to Cyprus made by the United Kingdom. The United Kingdom also refers, in the second round of its written comments, to the proposals which were made by its Government in 1958 regarding the future of Cyprus[160]. The Republic of Cyprus does not consider these representations to be germane to the present advisory proceedings; and this is not the place to pursue the question of their accuracy or significance. Cyprus simply reserves its position in respect of all such statements.

That concludes my part of Cyprus' submission. I thank the Court for its attention. Mr. President, with your permission, Mr. Polyviou will conclude Cyprus' submission.

Mr. POLYVIOU:

Comments on the merits

1. Mr. President, Madam Vice-President, Members of the Court, it is indeed an honour to appear before you on behalf of the Republic of Cyprus. It is my task to address the substance of the ***A***dvisory ***O***pinion~~,~~ in this ***third and*** final part of Cyprus' submissions. Cyprus has ***made*** ~~***submitted***~~ a detailed written statement, ***by which it stands and with the repetition of which*** I will not tire ***the Court*** ~~***you by repeating it***~~. ***However,*** ~~***I will emphasize***~~ four important points ~~***which***~~ merit particular emphasis.

2. I begin with the matter of *territorial integrity*. There is the question of what the ILC Rapporteur on State Succession has called "incomplete territorial devolution": that is, "cases where the colonial Power agreed to transfer only a part of the dependent territory to the successor State"[161].

3. There is a presumption in favour of independence of a territorial unit as a whole[162], and the disruption of its territorial integrity by the excision and retention of part of the territory by the colonial Power is, on the face of it, incompatible with the right to self-determination. This axiomatic proposition is reflected in operative paragraph 6 of General Assembly resolution 1514 of 1960, as well as in the Preamble and in the main body of the Annex to General Assembly

[160] CoGB, para. 4.34.

[161] UN doc. A/CN.4/204, paras. 131–132.

[162] James Crawford, *The Creation of States in International Law* (2nd ed., OUP 2006), pp. 89, 336–337.

resolution 2625 of 1970, which codifies principles of the United Nations Charter that "constitute basic principles of international law"[163].

4. Accordingly, for as long as there are parts of excised territory of a country that have been retained by the former colonial Power, that Power is under a continuing obligation to give full effect to the principle of self-determination, as that principle applies under contemporary international law~~, ***of course,***~~ for the benefit of the people of the affected country.

5. I turn, Mr. President, Members of the Court, to the issue of *consent.* It is suggested in some of the written statements that the principle that prohibits the disruption of territorial integrity in the context of the implementation of the right to self-determination may be subject to qualification. Specifically, it is suggested that the excision of a parcel of territory with the consent of the former colony may, in some circumstances, be permissible. ~~***That is not so.***~~

6. To begin with, Cyprus calls attention to the fact that under the Annex to General Assembly resolution 2625[164], it is the primary *duty* of all States "to bring a speedy end to colonialism", which is a state of affairs that violates international law in general, and the United Nations Charter in particular.

7. As already mentioned by the Attorney General, the right to self-determination is *"inalienable"*. The *"inalienability" of a right* means that the right may *not* be ceded or transferred.

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[163] See in particular Preambular, paras. 14 and 15 of the Annex to the resolution. Preambular, para. 15 specifically provides that "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country . . . is incompatible with the purposes and principles of the Charter". See also the "Principle of equal rights and self-determination of peoples" in the main body of the Annex, *in fine*.

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

(a) to promote friendly relations and co-operation among States; and

(b) to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned;

and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter."

A people may not — indeed cannot — validly waive its right to self-determination, just as a people may not — indeed cannot — validly consent to being subjected to, say, slavery[165].

8. It is because a people may not validly consent to waiving its right to self-determination, including the right not to be subject to colonial rule, that a people may not validly consent to surrendering itself — or a part of itself, or its territory — to colonial rule.

9. What is more, the *jus cogens* character of the right to self-determination and the *erga omnes* character of the obligations it generates, mean two things:

— first, precisely because the duty not to participate in colonialism is a duty owed to the *whole* of the international community, consent by one or more States to the perpetuation of colonialism by another State cannot absolve the latter State of the said duty;

— secondly, precisely because colonialism constitutes an infringement of the right to self-determination, which is a *jus cogens* norm, *all* States are under a positive duty *not* to recognize as lawful any situation perpetuating colonialism[166].

10. That is, Mr. President, Members of the Court, not for a moment to deny that each and every independent State may freely exercise its sovereignty as it chooses, *inter alia*, by entering into legally binding commitments and arrangements with other States. Those arrangements may, indeed, include agreements relating to the use of portions of the State's territory. But what is essential is that the agreement be consensual ~~***— based on genuine consent***~~, not consent as some kind of legal fiction, but real consent, in ~~***the context of***~~ dealings between equal sovereign States. This is a concept which is at the very core of the rule of law.

11. Independently of and additionally to the above, Mr. President, Cyprus submits that for consent under international law to be valid and effective, it must, among other things, be freely given. This is implicit in the notion of self-determination.

12. But consent cannot be deemed to have been freely given in situations where a State is born with the territory of the relevant country having already been dismembered, and especially in

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[165] The fact that consent cannot preclude the wrongfulness of an act that is in breach of *jus cogens* is confirmed by, *inter alia*, Art. 53 of the Vienna Convention on the Law of Treaties of 1969 (whereby a "treaty is void if . . . it conflicts with a peremptory norm of general international law") and by Art. 26 of the ILC's Articles on Responsibility of States for Internationally Wrongful Acts of 2001 (whereby wrongfulness cannot be precluded for "any act of a State which is not in conformity with an obligation arising under a peremptory norm of general international law").

[166] See e.g. CoCY, fn. 15.

situations where the newly born State comes into existence subject to national and/or international legal constraints on its ability to challenge such prior dismemberment. In such cases, the newly born State is faced with a factual and legal fait accompli, which, *a priori*, renders the giving of "free" consent impossible.

13. That is precisely the case in situations where a people is "offered independence" — as the colonial Power might ~~***wish***~~ ***seek*** to characterize the performance of its legal duty to implement the right to self-determination — on condition that the colonial Power holds on to a parcel of the colonial territory. The delivery of some of the colonial territory to the status of independence required by international law no more confers legitimacy upon the retention of other parts of the territory than the return of some seized property entitles the person who seized it to hold on to the rest.

14. There is an important related point here. The holding of, say, an election in a colony, at a time between the making of the colonial Power's offer of a territorially handicapped independence and the birth of the new State, is insufficient to permit the inference of free consent to, *inter alia*, the territorial dismemberment ***in question***. This is because the colonized people voting in such cases are not given any meaningful choice as between independence of the whole territorial unit and independence with a part of the territory excised. The excision is presented as a fait accompli. A vote in these circumstances demonstrably does not resolve the issue.

15. Moreover, Mr. President, Members of the Court, any such vote certainly could not in any event be regarded as resolving the matter *forever*. ~~***The word is forever.***~~ Just as international law gives effect to *temporary* leases of rights over the natural resources of a State but will regard a purportedly *permanent* handing over of rights as incompatible with a State's permanent sovereignty over its natural resources[167], so too, Cyprus submits, will international law refuse in this context to accept what is alleged to be the permanent alienation by a people of part of their territory. It is Cyprus' submission that a purportedly permanent alienation would, in this context, be ~~***clearly***~~ incompatible with the inalienable nature of the right to self-determination. Of course, ~~***I repeat,***~~ we are not concerned here with cases where two equal sovereign States negotiate and solemnly

[167] See generally *Kuwait* v. *AMINOIL*, (1982), *International Law Materials (ILM)*, Vol. 21, p. 976; United Nations Declaration on Permanent Sovereignty over Natural Resources, res. 1803 (XVII), 14 Dec. 1962.

conclude a treaty to redraw their boundaries. The situation here is one where a colonial Power says that, because its "offer" of independence was accepted by its former colony, it must be supposed that the colony freely agreed to let the colonial Power keep, in perpetuity if it so wishes, everything not included in the "offer". ~~***This is totally unacceptable.***~~

16. It is true that in some cases the people of the country may, for whatever reason — ranging from an unwillingness to incur the wrath of the colonial Power to a genuine desire to foster friendly relations with it in a particular manner — wish to maintain the status quo, leaving the colonial Power in control of the excised territory. But that is something to be established by periodically *revisiting* the question, not by ignoring the wishes of the people. In the submission of Cyprus, the *continuing* consent of the people to the maintenance of the status quo is an inherent, and at all times essential, element of self-determination.

17. This is evident in international practice. The United Kingdom itself has relied heavily, in the words of the Defence Secretary ***in the House of Commons*** on the continuing "overwhelming wish to *remain* British" of peoples of United Kingdom overseas territories[168]. The Foreign Secretary of the United Kingdom, also stated that

> "In accordance with the principles of the UN Charter, the British Government fully support [an overseas territory's people's] right to self-determination and unreservedly support the decision by [their] Government to hold a referendum *on whether or not they wish the Islands to retain their current political status* as a UK Overseas Territory. We expect the international community ~~***[says Great Britain***~~] to recognise the result of the referendum."[169]

Many other statements by ~~***United Kingdom***~~ ***FCO*** ministers and other organs of the United Kingdom put stress on the free and continuing wish of the peoples of overseas territories, expressed through elections and referenda held from time to time, to *remain* British and to *retain* their status, if they so wish. ~~***Let declarations be converted into deeds.***~~

18. I would like, Mr. President, to continue with the evolution of *the law on self-determination.* The law on self-determination~~***, as the Attorney General has stated,***~~ is not frozen at the date when the first steps ~~***were taken***~~ towards the realisation of the right to

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[168] House of Commons Debates (HC Deb), 24 Mar. 2015, Vol. 594, col. 1302-1303; emphasis added.

[169] HC Deb 7 Jan. 2013, Vol. 556, col. 93W; emphasis added.

self-determination ***are taken*** in respect of a territory. Indeed, the law is not frozen at any date or stage in this process.

19. If a colonial Power does not complete the process of self-determination — if, for example, it retains control over some *areas of governance* such as foreign affairs and/or defence, or indeed, over some parcels of *territory* — it is not exempted from the effects of the development of international law. It cannot say, as it were, "we have paid part of the debt and we repudiate the rest of the debt, or we may pay the rest of what we owed you at that time, at some future time of our *own* choosing".

20. In so far as the obligation to implement the right to self-determination remains unfulfilled, it is like any other outstanding legal duty subject to developments in the law. There are, as in the present case, areas of territory in respect of which the right to self-determination, and the corresponding obligation to realize the right, remain***s*** applicable and as yet unfulfilled. That obligation is the obligation as it exists in international law today: not the obligation as it may have existed half a century, or more, ago.

21. This is a very basic principle ~~***of international law and***~~ of the international legal system. One sees it at work in the 1969 Vienna Convention on the Law of Treaties. Articles 53 and 64[170] make clear that a treaty is invalid if it conflicts with an existing rule of *jus cogens*; and if a new norm of *jus cogens* emerges, existing treaties which are in conflict with it become void and terminate. It is thus immaterial whether the rule possessed *jus cogens* status at the time that the treaty was concluded — in which case the treaty is void *ex tunc* — or has acquired it since — in which case the treaty is void *ex nunc*.

22. One sees it also at work in the principle of inter-temporal law in relation to the acquisition of territory — particularly relevant in the present context[171]. Discovery of territory may have been sufficient in the sixteenth century to give at least inchoate title: but to retain sovereignty,

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[170] Art. 53 provides "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law." Art. 64 goes on to stipulate "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates."

[171] See *Island of Palmas Case (Netherlands* v. *United States)* (Award) (1928) United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. II, p. 845: "As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called inter-temporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of the law."

a State must keep pace with the developing requirements of international law. It must ~~***do***~~ ***be*** so. This is how it must be. If it were otherwise, the most dilatory and delinquent States would be held to the least developed standards; and international law, instead of being the fabric that binds States together, would be but a patchwork of different standards pegged to the law as it stood at different times in history.

23. The United Kingdom's written statements place significant weight on the 1965 Agreement as one of the grounds which it says rendered lawful the separation of the Chagos Archipelago from the remainder of the territory of colonial Mauritius. Cyprus does not comment on questions regarding the validity of the said Agreement. However, Cyprus wishes ~~***more strongly***~~ to draw the Court's attention to the legal principles, described earlier, governing the validity of an agreement which is in conflict with an international legal rule holding the status of *jus cogens*, and to the submission advanced in many of the written statements, ~~***namely***~~ that the rules governing self-determination had in 1965, or have since acquired, the status of peremptory norms of international law.

24. I continue with the *question of terminology*. Cyprus respectfully draws the attention of the Court to the importance of extending the legal analysis beyond consideration of the applicable legal principles, and into the critical examination of the use of terminology and characterization. The Attorney General has already made the point that a State cannot avoid the legal obligations of decolonization by changing the label and saying that it does not classify the territory as a colony. Here, I wish to draw the Court's attention to the slipperiness of statements such as the "UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes"[172].

25. Such statements concerning what is necessary for defence purposes might, half a century ago, have been understood to refer to needs relating to the defence of the State making the statement, and nothing else. Read literally, however, they might be said to extend to *any* use that the author of the statement considers to be defence-related, ***and whether the 'defence' in question is that of the author of the statement*** or of another State. It can be read as a term relating to the

[172] *Chagos Arbitration*, para. 4.62.

excision of a limited geographical area, for a limited purpose, and with the implication that ~~***it is***~~ ***this*** for a limited time: or it can be read as a blank cheque — a provision enabling the State making the statement to treat the area as an asset, to use ***it*** as it wishes. The same might be said of other phrases, such as a limitation to use a particular area as a "military base".

26. However, and in view of the obligations incumbent on a State as the law of self-determination stands today, such statements cannot be accepted at face value and certainly cannot be read as a blank cheque. The insistence by a colonial Power on a right ~~***of***~~ ***to*** indefinite possession of a parcel of territory excised from a former colony must constitute, and indeed cannot but constitute, a violation of the obligations relating to the right to self-determination, thus engaging international legal responsibility, with all that it entails. In this respect, any situation of indefinite possession must be brought to a speedy end.

27. I make briefly, Mr. President, my *concluding remarks*. ~~***The***~~ ***This*** case comes before the Court as a request for advice. And the essence of the advice sought is, how much can a colonial Power hang on to after it has gone through the flag-raising ceremonies of independence for its colonies and overseas non-self-governing territories? Will the international community, and international law, forget ~~***and continue forgetting***~~ about the unfulfilled elements of the obligations of self-determination, writing them off like a stale debt? ~~***We hope and believe that that will not be the case.***~~

28. For most of the States in the world, the question now before the Court directly relates to the seriousness with which the principles of sovereign equality and self-determination, and the obligation of States to fulfil the duties arising from those principles, are regarded under international law in general, and under the United Nations Charter in particular.

29. In this context, Cyprus cannot but heed the warning, given by the General Assembly itself in resolution 2625[173], namely that the subjection of peoples to alien subjugation, domination or exploitation — of which colonialism is but a manifestation — ultimately constitutes a major obstacle to the promotion of international peace and security.

[173] See UNGA res. 2625 (XXV) , Preambular, para. 13 of the Annex to the resolution.

30. Cyprus, like any other State striving for the promotion of international peace and security, of the United Nations Charter and of fundamental human rights, must, in the last resort, rely upon the Court~~***, this venerable institution,***~~ as the principal judicial organ of the United Nations, to uphold the rule of law in international relations and to protect the integrity of the international legal order, of which the principles of sovereign equality and self-determination are basic pillars. At the end of the day, Mr. President, Madam Vice-President, Members of the Court, the matter is clear: colonialism is a remnant of the past. Let us not preserve it as an impediment to the future. Let us bring it to a speedy end.

This concludes the submission on behalf of the Republic of Cyprus. Mr. President, Madam Vice-President, distinguished Members ***of the Court***, I thank the Court for its attention.

The PRESIDENT: I thank the delegation of Cyprus for its statement and for its submissions. The statement of Cyprus brings to a close today's hearings. The Court will meet again tomorrow at 10 a.m., to hear the United States of America, Guatemala, the Marshall Islands and India. The sitting is adjourned.

The Court rose at 5.30 p.m.

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