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CR 2018/27

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2018

Public sitting

held on Thursday 6 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 jeudi 6 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

The Republic of Zambia is represented by:

Mr. Likando Kalaluka, S.C., Attorney General,

as Head of the Delegation;

Ms Mutinta Mushabati, Senior Counsel,

Ms Bertha Musonda Chileshe, Counsellor, Embassy of the Republic of Zambia in the Kingdom of Belgium,

Mr. Dapo Akande, Professor of Public International Law, University of Oxford.

The African Union is represented by:

H.E. Dr. Namira Negm, Ambassador, Legal Counsel of the African Union and Director of Legal Affairs Directorate,

as Head of the Delegation;

Dr. Mohamed Gomaa, Legal Counselor and Arbitrator,

Professor Dr. Makane Moïse Mbengue, Professor of International Law, University of Geneva and Affiliate Professor, Institut d'études politiques, Paris,

as Counsel;

Mr. Mohamed Salem Boukhari Khalil, Legal Advisor, African Union Commission,

Ms Elise Ruggeri Abonnat, Consultant and Ph.D. candidate, University of Geneva and University Paris 2,

Ms Betelhem Arega Asmamaw, Associate Legal Officer, African Union Commission,

Ms Emilie Gonin, Barrister, Doughty Street Chambers,

Mr. Karim Ashraf Ahmed, Legal Assistant, Yehia Associates,

as Legal Assistants.

La République de Zambie est représentée par :

M. Likando Kalaluka, S.C., *Attorney General*,

comme chef de délégation ;

Mme Mutinta Mushabati, conseillère principale,

Mme Bertha Musonda Chileshe, conseillère, ambassade de la République de Zambie au Royaume de Belgique,

M. Dapo Akande, professeur de droit international public à l'Université d'Oxford.

L'Union africaine est représentée par :

S. Exc. Mme Namira Negm, ambassadeur, conseillère juridique de l'Union africaine et directrice des affaires juridiques,

comme cheffe de délégation ;

M. Mohamed Gomaa, conseiller juridique et arbitre,

M. Makane Moïse Mbengue, professeur de droit international à l'Université de Genève et professeur affilié à l'Institut d'études politiques de Paris,

comme conseils ;

M. Mohamed Salem Boukhari Khalil, conseiller juridique, Commission de l'Union africaine,

Mme Elise Ruggeri Abonnat, consultante et doctorante à l'Université de Genève et à l'Université Paris 2,

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Mme Emilie Gonin, avocate, Doughty Street Chambers,

M. Karim Ashraf Ahmed, juriste, Yehia Associates,

comme assistants juridiques.

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

The Court meets this afternoon to hear Zambia and the African Union on the advisory opinion requested by the United Nations General Assembly. Each delegation has 40 minutes to make its oral statement. The time allotted to each delegation should not in any way be exceeded. I would also like to remind the Participants in this afternoon's proceedings not to speak too fast, in order to allow the interpreters to follow their intervention and deliver it in the other official language of the Court.

I shall now give the floor to Mr. Likando Kalaluka, speaking on behalf of the Republic of Zambia. You have the floor.

Mr. KALALUKA:

OPENING STATEMENT

1. Mr. President, Madam Vice-President, Members of the Court, it is an honour to appear before you in my capacity as the Attorney General of the Republic of Zambia. I have not been able to be present in person until today, because of other official duties, but I have followed the proceedings with the close attention which they deserve.

2. This is the first time that Zambia has appeared before this Court. The fact that it does so today is testament to the significance which Zambia attaches to this Request for an advisory opinion. As the last State to contribute to the hearing before the African Union takes the floor, Zambia will focus on the key issues which have emerged during the four days of oral submissions. After my remarks, Professor Dapo Akande will complete Zambia's presentation.

3. Mr. President, Zambia finds it appropriate that the last State to address you is an African nation, itself a former colony, which gained its independence in 1964, the year before Mauritius was dismembered.

4. You have been addressed this week by a range of African nations, all of them urging you to answer the questions posed by the General Assembly, to recognize that the decolonization of Mauritius remains incomplete, and to address the consequences of this.

5. The fact that, in 2018, there remains a colonized territory on the continent of Africa, and the people dispossessed from their homeland, is a situation which must be brought to an end, immediately. And you have heard States from all the other regions of the world, and of each United Nations Regional Groups, emphatically saying the same thing.

6. But also there is a small minority of States which have argued that this is nothing more than a bilateral dispute. They have argued that the General Assembly's resolution was drafted by Mauritius and that somehow was smuggled into the General Assembly in order to circumvent the requirements of consent.

7. Mr. President, that is simply not correct. The resolution was carefully considered by the African Group as a whole, including Zambia, and put forward by, and on behalf of, the whole of Africa. The submissions of South Africa, Botswana, Kenya and Nigeria will already have left you in no doubt of the importance which the continent of Africa attaches to this Request, and I echo all that has been said about the significance of this issue.

8. In urging you to answer the two questions that have been posed by the General Assembly, the vast majority of States before this Court take the view that those questions fall squarely within the jurisdiction of the Court. Indeed, there is virtually unanimous decision or agreement among the State Parties taking part in these proceedings that this Court has jurisdiction, with only a single State arguing to the contrary. Even the administering Power itself has not objected to the Court's jurisdiction.

9. The drafting history of resolution 71/292 requesting your opinion underlines both why the Court has jurisdiction and why it should exercise it in this particular case. The two questions, Mr. President, were carefully crafted. Zambia, along with other States which put the resolution forward, carefully drafted them as legal questions, relying on the past practice of the Court in defining such questions. In asking the General Assembly to refer these questions, we sought to understand — and to help the General Assembly understand — the consequences for States of the continuing colonization of Mauritius. This was the intention behind the question, and we hope that this Court will not leave such important issues unaddressed.

10. Mr. President, it is impossible, in our view, to answer a question of decolonization without dealing with the consequences for States. States are the primary subjects of international

law. Colonialism involves States asserting sovereignty over the territories of others. Decolonization can, therefore, only be achieved by a change in sovereignty over the colonial territories. To attempt to keep the two distinct is completely artificial and, in the circumstances, would lead to great injustice.

11. My colleague Professor Akande will deal with these legal issues in greater detail shortly. After considering the judicial propriety, he will briefly address this Court on the right to self-determination, which Zambia considers firmly established well before its independence in 1964, and before Mauritius was dismembered in 1965. This was a right and not a mere political principle. He will address the scope of this right, including the important obligation to respect the territorial integrity of non-self-governing territories. It is quite wrong to suggest, as the United Kingdom and the United States have done, that a colonial Power could simply dismember a State at will at any time before its independence. Professor Akande will also briefly address the small handful of historical examples which these two States have relied on in their unconvincing attempts to simply wish away the right of self-determination. He will then briefly touch on the critical evidence which demonstrates beyond doubt that the right of self-determination was grossly violated in the case of Mauritius. And finally, he will address the second question, and in particular the range of legal consequences which flow from the fact that decolonization of Mauritius remains incomplete. And as I have already stated, Zambia considers that the second question cannot possibly be answered without addressing the consequences for States of this continuing unlawful situation.

12. Mr. President, the final point I would like to make is about the reality of the experience of decolonization and also of emerging independence. You have heard the administering Power complaining that Mauritius did not assert its rights over the Chagos Islands more strongly in the first decade of its independence. This, in our view, is an astonishing submission — very astonishing — and one which demonstrates a colonial Power's lofty detachment from reality.

13. The suggestion that an economically vulnerable State, still heavily dependent on the former colonial Power and dealing with all the pressing issues of recent independence, should be punished, decades later, for having needed a little more time to address the wounds of dismemberment, this is simply extraordinary. By the time of independence, which was achieved

in 1968, Mauritius had been under colonial rule for more than 300 years. The inequality of a colonial Power and its colony does not simply disappear at the moment of independence. On this point, we ask this honourable Court to listen to the experiences of countries such as Zambia and Kenya, and not to the rhetoric of colonial Powers.

14. Mr. President, Madam Vice-President, Members of the Court, I thank you for your kind attention and, with your permission, I ask that I call Professor Akande to the podium to come and address this honourable Court. I am obliged.

Mr. AKANDE:

THE KEY ISSUES

1. Mr. President, Madam Vice-President, Members of the Court, it is an honour to appear before you and to represent the Republic of Zambia in these proceedings. My task this afternoon will be to try to assist the Court by providing an overview of the key issues that may be in your minds after listening to an extensive set of pleadings over the past four days. What I aim to do is to provide something of a road map with regard to the issues that you have been called upon to decide in these proceedings, and at the same time to set out Zambia's position on some of the main issues in this case.

2. The Attorney General has just set out Zambia's position on *the first issue* that has arisen in these proceedings: the Court has jurisdiction to deal with this advisory opinion. I will follow up by making *six* additional points.

3. *The second point* relates to the *propriety of the exercise of your jurisdiction in these proceedings*. Zambia submits that there are no compelling reasons for the Court to refrain from exercising its jurisdiction.

4. It has been argued by the United Kingdom and a small number of States that this case is about a purely bilateral dispute between the United Kingdom and Mauritius regarding sovereignty over territory[1]. They claim that it would be improper for you to decide on such a dispute without the consent of the United Kingdom. However, as can be seen from the wording of the first question

[1] See e.g. CR 2018/21, p. 11, para. 22 (Buckland); p. 26, para. 2; p. 28, para. 7 (Wordsworth).

put to the Court, this case is about the international law obligations regarding *decolonization*. That is a matter which is squarely within the competence of the General Assembly and thus not purely bilateral. In particular, this case is about the implementation of the right to self-determination, a right that this Court has decided gives rise to obligations *erga omnes*[2].

5. Mr. President, that the advisory proceedings will have implications for sovereignty over territory in no way makes it a purely bilateral matter. As the Attorney General has already indicated, decolonization *always* implicates sovereignty over territory. This is because the law relating to decolonization is about the right of a people to govern themselves *and* the territory within which they live. When it is achieved, decolonization will *always* involve a transfer of sovereignty. Also, to the extent that the right to self-determination gives a people a right to choose independence, that right is precisely about the exercise of sovereignty. As Judge Huber stated in a well-known quote: "Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State."[3]

6. So, invocation of differing views as to who ought to exercise sovereignty following decolonization is not a bar to the exercise of this Court's advisory jurisdiction. If invocations of sovereignty automatically debarred the Court from exercising its advisory functions, this Court would not have been able to exercise those functions in many of the previous advisory proceedings that have come before it regarding decolonization[4].

7. Now let me move to the *third point: the timing of the crystallization of right of self-determination* under customary international law. Two States[5] have argued that, in 1965 when the Chagos Archipelago was detached, self-determination was not a legal right, merely a political principle.

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[2] *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),* p. 199, para. 156.

[3] *Island of Palmas case (Netherlands, USA), 1928,* United Nations, *Reports of International Arbitral Awards (RIAA)*, Vol. II, p. 838.

[4] See e.g. *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;Western Sahara, Advisory Opinion, I.C.J. Reports 1975;International Status of South West Africa, Advisory Opinion, I.C.J Reports 1950.*

[5] StGB, paras. 8.64-8.77; CoGB, paras. 4.18-4.28; StUS, paras. 4.30-4.75; CoUS, paras. 3.49-3.58; CR 2018/21, p. 45, paras. 14-18 (Webb); CR 2018/24, p. 22, para. 64 (Newstead).

8. However, the majority of States that have appeared before you have strongly rejected that argument. It has been pointed out to you that the nine States that abstained in voting on the United Nations General Assembly resolution 1514 (XV), the "Colonial Declaration", cannot be said to have been objecting to the legal status of that right[6]. I wish simply to remind the Court that the very States that *now* argue that there was no right of self-determination had, *in 1965*, themselves made statements supporting such a right and voted for resolutions that, explicitly or implicitly, affirmed or reaffirmed such a right. The examples are numerous[7] but I will only take a few.

9. [Slide on] In the drafting of the Colonial Declaration, the United States stated — and you see on the screens before you — on 14 December 1960: "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."[8] [Slide off]

10. [Slide on] The United Kingdom for its part, during the debate on Gibraltar before the Committee of 24, in 1964, noted "the ultimate irony . . . that Spain should attempt to take over the people of Gibraltar under the cover of General Assembly resolution 1514 (XV), which proclaimed the *right* of all peoples to self-determination". The United Kingdom also noted, in that same session of the Committee in that same period, that paragraph 2 of the Colonial Declaration "quite rightly stated that all peoples had the right of self-determination"[9]. [Slide off]

11. [Slide on] Both the United States and the United Kingdom voted for Security Council resolution 183 of 11 December 1963, which "[r]eaffirms the interpretation of self-determination laid down in General Assembly resolution 1514 (XV) as follows: All peoples have *the right* to self-determination". [Slide off]

12. Members of the Court, these words confirm what was accepted throughout the international community by this time, namely that the people of a non-self-governing territory had a binding legal right to self-determination.

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[6] CR 2018/23, p. 32, para. 9 to p. 34, para. 21 (Nchunga Nchunga).

[7] For example: the plebiscites for Northern and Southern Cameroons; the separation of the Cayman Islands and Turks and Caicos from Jamaica; the division of Ruanda-Urundi; Cocos (Keeling) Islands and Christmas Island.

[8] UN doc. A/PV.947 (14 Dec. 1960), UN dossier No. 74, p. 1283, para. 145.

[9] UN Security Council res. 183 (11 Dec. 1963).

13. Mr. President, having discussed the existence of the right of self-determination, I now turn to the *fourth point: the scope of the right of self-determination.* In particular: did that right — as it existed in 1965 — include an obligation on the administering Power to respect the territorial integrity of non-self-governing territories?

14. You have been shown — several times now — the now famous paragraph 6 of the "Colonial Declaration"[10], which indicates that there was an obligation to respect the territorial integrity of non-self-governing territories — or "countries" as the Declaration put it[11]. As Belize argued before you, on Tuesday: when both the Colonial Declaration and the Friendly Relations Declaration refer to the obligation to respect the territorial integrity of "countries", they *must* mean non-self-governing territories, not independent States, since the very title of the Colonial Declaration speaks of granting "independence" to colonial "countries".

15. During these proceedings, two States argued that there is no associated right to territorial integrity for non-self-governing territories. They contended that an administering Authority could detach, partition, integrate, merge or do whatever it saw fit to its colony without the consent of the people subjected to its rule. In making this argument, they cited a handful of historical examples as evidence of State practice. But these examples provide no support at all. The administrative reassignment — by the United Kingdom of the Cocos Islands and Christmas Island to Australia — took place in 1955 and 1958 and thus *before* the Colonial Declaration, which crystallized the right fully. The other examples, the merger of Northern and Southern Cameroons with Nigeria[12] and Cameroon respectively, the separation of the Cayman Islands and Turks and Caicos from Jamaica[13], and the division of Ruanda-Urundi[14] *all* took place as a result of the expressed desire of

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[10] 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).

[11] See e.g. CR 2018/23, p. 14, para. 29 to p. 18, para. 48 (Juratowitch).

[12] During the session of the Fourth Committee in 1961, the representatives from Southern and Northern Cameroons decided to exclude independence as separate entities in view of their limited economic potential. See Fourth Committee, 898th meeting; Draft Resolution adopted as resolution 1352 at the 829th plenary meeting; A/RES/1608(XV). On the decision to join Nigeria and Cameroon; see res. 1608 (XIV), The Future of the Trust Territory of the Cameroons under United Kingdom Administration.

[13] See Written Statement of Comments, paras. 3.62-3.63 and Ann. 205.

[14] See UNGA, 15th Session, The Future of Ruanda-Urundi, UN doc. A/RES/1605(XV), 21 Apr. 1961, which recognized that it was the actual "desire of the Governments of Rwanda and Burundi to attain independence as separate States." See also UNGA, 16th Session, The future of Ruanda-Urundi, UN doc. A/RES/1746(XVI), 27 June 1962, noting that the decision to divide Ruanda-Urundi was taken because maintaining the integrity of the unit proved impossible as a consequence of internal disturbances.

the people of those territories to effect those changes. That desire was expressed either in United Nations-supervised plebiscites, or by the assemblies or the governments of those territories concerned.

16. It has been suggested that, if the Court were to find that there was an obligation to respect the territorial integrity of non-self-governing territories, this might put in doubt, retrospectively, a number of boundaries of States that have emerged from colonial rule. However, the cases just mentioned are the only examples of changes to territorial integrity that have been cited to you in these proceedings. I am confident that those making these arguments will have scoured the historical record. If these are the only examples they can find — and since these examples do not suggest any violation of the principle — there is no danger of the Court, with its decision in these proceedings, allowing settled boundaries to be revisited.

17. I now turn to the *fifth point: the application of the law to the facts relating to the detachment of the Chagos Archipelago*. I will not explore this point in any detail, since the evidence is so clear. The colonial Power has tried to argue that what it calls the "1965 Agreement" was a free expression of the will of the people of Mauritius. I would simply invite you to ask yourselves this question: what would have happened if the Mauritian ministers had said "no" to detachment and insisted on the independence of the whole territory? As you have seen, the colonial Power had already decided that if the ministers refused, the Government of the United Kingdom "will exercise their right to transfer Chagos to permanent British sovereignty under order-in-council"[15]. Detachment in these circumstances was a plain violation of the right of self-determination and the associated obligation to respect the territorial integrity of Mauritius. This means that the decolonization of Mauritius has not been lawfully completed, and we urge you to so decide in answer to the first question put to you by the General Assembly.

18. Members of the Court, now permit me to move on to the *sixth point* which has arisen in these proceedings. This point relates to the second question put to you by the General Assembly. Zambia argues that *the Court is entitled to address the legal consequences for States of the non-completion of the decolonization of Mauritius*.

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

19. Germany has argued that, although the Court should answer both questions that have been put to it, it should limit the scope of its answer to the second question by *not* pronouncing on the legal consequences for States, but only on the legal consequences for the General Assembly.

20. Our submission is that it is highly artificial, even unrealistic, to try to distinguish between a pronouncement on the legal consequences for States and pronouncing on the consequences for the General Assembly. This is so for two overlapping reasons.

21. First, the practice of the General Assembly shows that in the exercise of its functions with regard to decolonization, the Assembly will often consider the consequences for States of their obligations with regard to decolonization.

22. Second, the *very wording* of the second question indicates that the General Assembly is asking the Court to set out the obligations for States. Germany admits, relying on the *Wall* case[16], that the Court can address legal consequences for States even where a request for an advisory opinion does not expressly ask for them, at least in circumstances where the request refers to international instruments imposing obligations on States. The second question asks you for the consequences under international law "including the obligations reflected in the above-mentioned resolutions", in other words the resolutions referred to in the earlier General Assembly requests. When one looks at those resolutions we can see that those resolutions specifically refer to the obligations for States.

23. [Slide on] Members of the Court, you will see on the screen four of the resolutions mentioned in resolution 71/292. As we take a look at what those resolutions say, you will see how the Assembly in its practice on decolonization takes a keen interest in the obligations of States. You will also see that by referring to these resolutions — in resolution 71/292 — that resolution specifically cross-refers to the obligations for States.

24. [Slide on] Resolution 1514 places an obligation on States when it says "[a]ll States shall observe". [Slide on] Resolutions 2232 and 2357 also deal with the consequences for administering Powers of the resolutions of the General Assembly.

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[16] StDE, para. 109.

25. As is well known, the General Assembly also has dealt in detail with the obligations of individual States. [Slide on] As you see, resolution 2066 deals specifically with the United Kingdom.

26. Members of the Court, to accept Germany's arguments would be to presume to decide what the General Assembly should do and what it needs. However, it is for the General Assembly to decide for itself on the use that it wishes to make of the opinion.

27. Mr. President, let me now turn to my *seventh and final point*.

The PRESIDENT: The Republic of Zambia has now used up the 40 minutes put at your disposal, so I will invite you to conclude.

Mr. AKANDE: I am grateful to you, Mr. President.

Mr. President, Madam Vice-President, Members of the Court, this concludes the oral pleadings of the Republic of Zambia and I thank you for your attention.

The PRESIDENT: I thank the delegation of the Republic of Zambia for its statement. The next speaker to address the Court is Ms Namira Negm, speaking on behalf of the African Union. You have the floor, Madam.

Ms NEGM:

I. INTRODUCTORY REMARKS

1. Honourable President of the Court, Madame Vice-President, Honourable Justices, Members of the Court, it is my honour to stand before you today representing the African Union and its 55 member States[17]. The African Union and its predecessor, the Organization of African Unity, were established to promote sovereignty, African integrity and the inalienable right to independent existence. It is historic that the Organization, for the first time, presents before your esteemed Court its contribution to the question of the decolonization of Mauritius, one of its

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

member States. For that, the African Union is grateful to the Court for granting us the opportunity to be part of these important proceedings.

2. The African Union, since its establishment, has been committed to principles of self-determination, territorial integrity and to fighting colonization, not only in Africa but across the world. This commitment is vivid in Article II of the Charter of the Organization of African Unity[18], Articles 3 and 4 of the Constitutive Act of the African Union[19] and reiterated by the Heads of State of the Union in Agenda 2063 entitled "The Africa We Want". Through its work, the African Union has always been consistent in expressing its support to Chagos and the Chagossians, as part of Mauritius, as well as to the Malvinas, Palestine and others.

3. In the last few days, it was clear that the overwhelming majority of States are in favour of the Court to exercise its jurisdiction; an overwhelming majority supported the fact that the decolonization of Chagos is incomplete. Not a single State argued or opposed the legal principles of decolonization and self-determination. Those two principles are applicable to Chagos.

4. In accordance with Chapter VIII of the United Nations Charter, the African Union has dealt extensively with decolonization issues in Africa, including Chagos, as part of its contribution to the fulfilment of the agenda of the United Nations General Assembly on decolonization and self-determination.

5. Mr. President, Members of the Court, cognizant of the great importance of the subject-matter before the Court today, the Union, through the African Group in the United Nations in New York, has been the main drafter and catalyst in initiating the current proceedings calling for an advisory opinion to allow the Court to pronounce itself to free the Chagos Archipelago, put an end to the colonization of Mauritius and close that chapter of the last British colony in Africa.

6. As the main drafter of the resolution submitted to the Court by the General Assembly, the African Union confirms that its intent was to request the Court to give an opinion on the incomplete decolonization of Mauritius because of the excision of Chagos and for the Court to

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[18] Exhibit AU-2, OAU Charter, dated 25 May 1963, Article II *(c)* and Article II *(d)* listing the purpose of the African Union as follows: "*(c)* To defend [African States'] sovereignty, their territorial integrity and independence; *(d)* To eradicate all forms of colonialism from Africa . . ."

[19] Exhibit AU-1, Constitutive Act of the African Union, dated 11 July 2000, Arts. 3 and 4 ("[t]he objectives of the Union shall be to . . . defend the sovereignty, territorial integrity and independence of its Member States.")

address the legal consequences of the continued British presence in the territory to serve as a guidance to the General Assembly and to the international community.

7. This was also evident in the language used by our Heads of State at the January 2018 Summit, when the Union sent a strong message to the international community in support of the full decolonization of the Republic of Mauritius, in full, in order to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia. This was not the first time that our Heads of States pronounced their position clearly and openly calling upon the United Kingdom to end its unlawful presence in the occupied Mauritian territory in accordance with the relevant United Nations resolutions on decolonization and international law.

8. While addressing the General Assembly resolutions, the United Kingdom explained that abstention is equal to objection. This has no merits. When it comes to resolution 1514, of course, all the colonizers would not have supported it because it was not in their interests. Yet, they could not vote against it out of moral duty, which, in fact, is evidence of *opinio juris* and State practice at the time.

9. In 1965, the colony, Mauritius, went to negotiate with its colonizer to gain its independence. Its representatives, at the time, were compelled to agree to the terms of its British colonizers, not out of free will, but out of desperation for independence. This was, in no way, a bargain between equals, neither two States; it was an act of starvation for liberation and freedom. In fact, it has never been a territorial dispute, nor the 1965 so-called agreement a package. This was a territory under colonization and the colonizer granted independence to a part, and kept the other, in violation of rules of international law. The colonized Mauritius was only allowed to accept what the colonial masters were willing to offer in a manner of “take what we offer or leave with nothing”.

10. In fact, the United Kingdom contradicts its own narrative by claiming that there is no geographical setting between Mauritius and Chagos. Yet, one wonders where is the geographical setting between the United Kingdom and Chagos? It has also falsely claimed that the *Chagos Arbitration* Award denied Mauritius the right to sovereignty over the Archipelago. However, the reality is that the Tribunal, decided by a majority that it had no jurisdiction to rule on which of Mauritius or the United Kingdom was the coastal state.

11. The United Kingdom, repeatedly mentioned comments made by the then Prime Minister of Mauritius, in addressing the Mauritian public, the Council of Ministers and his opposition in the Parliament, regarding what took place in 1965. From these comments, it is very clear that Mr. Ramgoolam had to keep reminding everyone that he got something out of the 1965 — so-called — Agreement, through repeating that the excised part will eventually return to Mauritius. Let us not forget, that this was acknowledged and confirmed by British officials since 1965.

12. Mr. President, Members of the Court, in these oral pleadings, Dr. Mohammed Gomaa will address the reasons why the Court should give its opinion, followed by Professor Makane Mbengue who will address the illegal excision of Chagos from Mauritius in 1965 and its consequences and please allow me to present the concluding remarks on behalf of the Union.

13. Now, please allow me, to courteously invite my colleague, Dr. Mohammed Gomaa to address the Court.

Mr. GOMAA:

II. THE COURT SHOULD RENDER THE REQUESTED ADVISORY OPINION

No compelling reasons to refuse the Request

1. Mr. President, Members of the Court, the African Union would have preferred — in the short time available to it — to ponder on the substantive issues, on which the General Assembly seeks your guidance. But, the role of law, and the role of the Court to interpret and clarify the law, have been put into question in the name of "propriety". In short, so much intellectual effort in the number of written and oral statements has gone into an attempt to convince the Court that it should abdicate its judicial function in the present proceedings.

2. Also, it was questioned whether it was proper for the Court to pronounce itself on the legal questions requested of it. Worse, it has been claimed that answering the questions would serve no useful purpose . . . that it would be harmful to Court's function and integrity . . . and would set an undesirable precedent!

3. What is *really* "improper", is not the advisory opinion requested; it is the smokescreen thrown at the Court to humble its role — and in the process — that of international law. Actually,

the arguments set out in these objections — or rather these tactical manoeuvres *(properly understood)* — *compel* the Court to respond to the Request.

4. While we certainly trust the wisdom of the Court in dealing with this, we believe, however, that such allegations need a forceful rejoinder from the African Union. Therefore, it falls to me to have this great privilege and honour to stand before you today to re-address and elaborate further on certain preliminary and propriety issues.

No "pending territorial dispute" or "circumvention of consent"

5. Mr. President, the United Kingdom and the few States supporting it have persistently — and over the past days too — portrayed the subject-matter of the Request as a pending *bilateral territorial dispute* between Mauritius and the United Kingdom, in respect of which the United Kingdom has not given its consent. However, we have not been told in what way is it so? Is it over title? Is it over boundaries? They do so without due reference to the origin of that alleged "territorial dispute".

6. *In casu*, the African Union has already explained that, for a territorial dispute to exist, there must either be a dispute over borders or delimitation issues, or a dispute over title. We reiterate: both are absent here. The facts — already available to the Court — speak for themselves: the General Assembly has not asked the Court about a boundary, and neither State has invoked a border dispute or delimitation issues against the other in these proceedings. And, the United Kingdom *itself* has *continuously* confirmed its binding unilateral obligation to return the Archipelago to Mauritius when it was no longer needed for defence purposes. It has confirmed this since 1965 and onwards, including before this Court, as we have heard. Legally, this means that it recognizes that Chagos is Mauritian territory . . . in other words Mauritius has undisputed title over the Archipelago. Or else, why would the United Kingdom undertake to return it to Mauritius?

7. So, the so-called "dispute", then, must lie elsewhere. Clearly, there is in this case a controversy, but which has its *fons et origo* in a larger one, which rose within the ranks of the United Nations and its predecessor, the League of Nations, and today remains in its custody . . . decolonization. And, it is in the Court's *jurisprudence constante*: that matters which are of concern to the United Nations and which are located in a much broader frame of reference than a bilateral

dispute — as with decolonization — would not in the view of the Court have the effect of circumventing the principle of consent to judicial settlement[20].

8. In point of fact, the Court has practiced what it preached; South Africa did not consent to the *Namibia* request, Spain not to the *Western Sahara* request, Romania not to the *Mazilu* request, Malaysia not to the *Cumaraswamy* request, and Israel not to the *Wall* request; yet, in *all* of these, the Court gave its opinion.

9. In any event, the Court has ruled that the acceptance of the provisions of the Charter and its Statute constituted, in general, consent to its advisory jurisdiction[21].

10. Thus, the United Kingdom's alleged absence of consent is not *a fortiori* a reason for the Court to decline to give its opinion. Therefore, I must, with respect, ask the Court to disregard this allegation altogether and give its opinion.

The mandate of the General Assembly and decolonization

11. Mr. President, indeed, the present controversy is over matters in which the General Assembly is directly involved, including by Article 73 on non-self-governing territories. Albeit, it has been argued that the Court should not answer the questions, because the General Assembly does not have a sufficient interest in the matter … it has not dealt with it for a long time . . . that the answer could not serve any useful purpose . . . and that it will not assist the Assembly in the performance of its functions[22]. This in itself is a very speculative argument.

12. The issues put before the Court are determined in the light of the terms of the questions put to it; not by those parties opposing the Request and the opinion. That is because the requesting organ is best suited to appreciate its own needs, especially if it is the organ representing the entire membership of that organization; and practically, the entire community of nations.

13. The mandate of the organ of an international organization does not elapse or expire … particularly, if it is a principal organ like the General Assembly. Therefore, it is irrelevant to maintain that the Assembly did not address the issue of Chagos and its population for a long time.

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

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

[22] StDE, para. 120; StAUS, paras. 50-54.

The Assembly has a constitutional mandate to deal with decolonization and can seise itself of a matter *whenever* it deems it necessary and in *whatever form* . . . and — by virtue of the Request — it has.

14. To argue otherwise, is to deny the Assembly its basic right to identify the issues where it wants further guidance from the Court for the proper exercise of its functions. The African Union has already underscored the nexus between the Request and the functions and interests of the General Assembly[23]. Together with many other States, it has also explained its role with respect to decolonization, so I will not take this matter any further.

Usefulness of the opinion

15. However, Mr. President, it is respectfully submitted that it would be useful for the General Assembly, *inter alia*, to gain clarity on a number of grounds of illegality, which for decades have deprived the Chagossians of their rights . . . not *only* the right to self-determination, but also other fundamental rights of individuals, permanent sovereignty over natural resources and territorial integrity. An answer from the Court is required in order for the Assembly to fulfil its Charter-based obligations with respect to the continuing exercise of its supervisory function of decolonization — including that of Mauritius. The Assembly would also gain clarity on a number of legal consequences. It would also receive the support it needs in promoting and realizing the purposes and principles of the United Nations, *against which* goes colonialism.

16. The Court has successfully complemented the United Nations' system, and in particular the General Assembly's role in the maintenance of international peace and security *lato sensu*. And in the process, its case law has diffused many tensions around the world. Namibia, Western Sahara, East Timor *all* stand witnesses to the responsibility of the Court towards mandates, trusts and non-self-governing territories.

The questions are clear and interlinked and should be fully answered

17. Therefore, we are surprised to hear that *should* the Court answer the questions submitted by the Assembly *at all*, it should do so restrictively. And, if it were to answer Question *(a)* — we

[23] CoAU, para. 90.

are told — it should, however, refrain from answering Question *(b)*, as it was obscure and very general and, therefore, the Court has been invited to interpret, and possibly reformulate the questions[24].

18. The African Union has already rejected this proposition altogether in its Written Submissions and explained why the Court should answer the two questions. They are *legal questions* in the meaning of the Charter, the Statute and the Court's own jurisprudence. As such, they are "*susceptible of a reply based on law*"[25]. *In casu*, and in particular, they concern the *international legal* aspects of the compatibility of a decolonization process with international law, including the Charter of the United Nations, the relevant United Nations resolutions, and the Organization of African Unity and the African Union's decisions and resolutions.

19. The questions have also been framed in such a way that the Court is expressly requested to advise on the legal consequences, *under international law*, of a continued administration by a Member State of the United Nations of the territories of another.

20. While there is nothing in the Statute or its jurisprudence that suggests that in order to answer multiple questions, those questions have to be interlinked; the present questions *are*. This is more a reason for the Court to answer both.

21. Mr. President, Members of the Court, the African Union is confident that the Court will fulfil the singular responsibility imposed upon it by exercising its role as the principal judicial organ of the United Nations. As an organ of the Organization, it has competently and devotedly upheld the purposes and principles for which the United Nations exists. These principles and purposes underlie the pending Request par excellence: self-determination, territorial integrity, and human rights in the broadest sense.

22. As judges, you are flanked *and* guided by "Veritas", by "Justitia", so, in the name of *truth* and *justice* I respectfully implore you — on behalf of 55 African States, the members of the African Union — *to not abstain* . . . but to answer the two questions, *and in full*. There is no price for self-determination and there is no price for decolonization!

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[24] StGB paras. 9.15 and 9.21; StDE, paras. 67, 77, 115 and 132.

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

23. Monsieur le président, Mesdames et Messieurs de la Cour, avec votre permission, je vais maintenant donner la parole à mon collègue et ami le professeur Makane Mbengue.

Je vous remercie de votre attention.

M. MBENGUE :

III. L'ILLICÉITÉ DE LA SÉPARATION DES CHAGOS DE MAURICE EN 1965 ET SES CONSÉQUENCES

Le champ matériel et temporel de la présente procédure consultative

1. Monsieur le président, Madame la vice-présidente, Mesdames et Messieurs de la Cour, c'est un honneur pour moi que de comparaître devant vous, au nom de l'Union africaine, dans une procédure consultative qui soulève des questions d'une extrême importance pour la sauvegarde des droits fondamentaux des Chagossiens et du peuple de Maurice.

2. L'Union africaine considère que la Cour s'acquittera de sa tâche judiciaire dans la présente procédure en se limitant principalement à la prise en compte de deux facteurs, en l'occurrence le *fait critique* et la *date critique* qui sont à l'origine de la présente demande d'avis consultatif.

3. La Cour est invitée non à décider d'un soi-disant et artificiel contentieux territorial. Elle est invitée, comme l'indique l'intitulé de la résolution 71/292 de l'Assemblée générale[26], à se pencher sur les *effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965*. L'on ne peut être plus clair. D'une part, il s'agit pour la Cour de s'interroger sur un *fait*, celui de la séparation des Chagos du reste du territoire de Maurice. D'autre part, il revient à la Cour de prendre en compte une *date*, celle de 1965. 1965 et non 1968. Ni plus, ni moins.

4. Tout autre aspect est superfétatoire et ne requiert pas de la Cour un examen dans le cadre de la présente procédure consultative, notamment pour répondre à la première question qui lui a été posée par l'Assemblée générale sur la validité du processus de décolonisation de Maurice.

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[26] Nations Unies, *Assemblée générale*, Demande d'avis consultatif de la Cour internationale de Justice sur les effets juridiques de la séparation de l'archipel des Chagos de Maurice en 1965, doc. A/RES/71/292 du 22 juin 2017 ; dossier des juges, onglet n° 7.

Le sens et la portée des questions posées à la Cour

5. Conformément à sa jurisprudence constante, la Cour devrait s'appesantir sur le «sens et la portée» de la question qui lui est posée sans avoir à la reformuler. De l'avis de l'Union africaine, l'appréhension juridique des deux facteurs critiques devrait conduire la Cour à se poser une et une seule question : *En 1965, le droit international permettait-il à une puissance coloniale de démembrer une partie de l'entité coloniale sous son administration dans le processus de décolonisation de ladite entité ?*

6. La Cour admettra sans grande difficulté que l'on ne peut répondre que par la négative.

La cristallisation du droit à l'autodétermination comme règle du droit international coutumier en 1965

7. En 1965, le droit à l'autodétermination faisait *déjà* partie du droit international coutumier et était opposable *erga omnes omnes*. La fameuse résolution 1514 (XV)[27], si je puis m'exprimer ainsi, n'a pas réinventé la roue et était purement déclaratoire du droit coutumier existant.

8. Votre honorable Cour a elle-même reconnu en 1971 *mutatis mutandis* dans son avis consultatif sur le *Sud-Ouest africain*[28] que le *corpus juris gentium*[29] applicable à l'autodétermination et à l'indépendance des peuples a connu «*dans les cinquante dernières années* une évolution importante»[30], reconnaissant par là les développements du droit coutumier en la matière.

9. Le texte de la résolution 1514 est précis sur l'*invalidité* en droit international général d'un processus de décolonisation qui aurait été initialement fondé sur un démembrement de l'unité territoriale colonisée.

10. Le sens ordinaire des termes de son paragraphe 6, maintes fois mentionné ces derniers jours, s'impose de lui-même[31].

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

[28] *Conséquences juridiques pour les Etats de la présence continue de l'Afrique du Sud en Namibie (Sud-Ouest africain) nonobstant la résolution 276 (1970) du Conseil de sécurité, avis consultatif, C.I.J. Recueil 1971*, p. 16.

[29] *Ibid.*, p. 31, para. 53.

[30] *Ibid* ; les italiques sont de nous.

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

11. Même à douter de la cristallisation en droit international coutumier du droit à l'autodétermination bien avant 1965 — *quod non* — à cette date critique — 1965 — la pratique des organes principaux des Nations Unies, pour ne nommer que ceux-là, est clairement indicative, voire confirmative d'une *opinio juris* visant à inscrire le droit à l'autodétermination dans le droit international coutumier.

12. Qu'il suffise de penser à la résolution 217 du Conseil de sécurité, adoptée la même année que celle de la séparation des Chagos de Maurice[32] et qui «réaffirmait» la résolution 1514 et demandait en même temps au Royaume-Uni de «prendre des mesures immédiates pour permettre au peuple de Rhodésie du Sud de décider de son propre avenir conformément aux objectifs de la résolution 1514»[33]. On n'oserait à peine rappeler que le Royaume-Uni n'a pas eu recours à son droit de véto pas plus qu'il ne s'est abstenu ! N'est-ce pas là une preuve de l'acquiescence du Royaume-Uni au caractère coutumier des obligations contenues dans la résolution 1514 ?

13. La même année, 1965, l'Assemblée générale adoptait la résolution 2066 (XX)[34] — soit un peu plus d'un mois après l'excision des Chagos — dans laquelle, pour reprendre les termes mêmes de la résolution 71/292, elle a invité le Royaume-Uni «à prendre des mesures efficaces en vue de la mise en œuvre *immédiate et complète* de la résolution 1514 (XV) et à ne prendre *aucune* mesure qui démembrerait le territoire de l'île Maurice et violerait son intégrité territoriale»[35]. Je dis bien «aucune mesure» … pas même une mesure qui consisterait à appliquer le pseudo-accord de 1965.

14. La Cour, en tant qu'organe judiciaire principal des Nations Unies, ne saurait ignorer cette détermination à effet prescriptif et normatif de l'Assemblée générale et qui vise spécifiquement le fait critique de la séparation des Chagos de Maurice.

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[32] Nations Unies, *Conseil de* sécurité, Question concernant la situation en Rhodésie du Sud, doc. S/RES/217 du 20 novembre 1965.

[33] *Ibid.*, par. 7.

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

[35] *Ibid.*, par. 4 ; les italiques sont de nous.

La situation des Chagos au regard des obligations évoquées dans la résolution 2066

15. Honorables Membres de la Cour, le passage de la résolution 2066 que je viens de mentionner, appelle trois remarques de fond. *Primo*, il apparaît *expressis verbis* du texte de cette résolution qu'en 1965, le droit à l'autodétermination était *déjà* opposable au Royaume-Uni. Et s'il ne l'était pas à titre coutumier, à quel autre titre aurait-il pu l'être ? *Secundo*, *déjà* en 1965, l'Assemblée générale demandait au Royaume-Uni de prévenir le fait internationalement illicite que constituerait la *séparation* effective des Chagos de Maurice et de se mettre «immédiatement» en conformité avec la résolution 1514. *Tertio*, la même résolution, en insistant sur la mise en œuvre «complète» de la résolution 1514 impliquait *a contrario* qu'un processus qui ne suivrait pas ses exigences juridiques serait présumé de manière irréfragable *incomplet* et, par ricochet, invalide en vertu du droit international.

16. Mais surtout ce que révèle la résolution 2066, c'est que le Royaume-Uni, contrairement à ses prétentions soudaines et opportunistes, n'a jamais été un objecteur persistant vis-à-vis du droit à l'autodétermination. L'abstention n'est pas synonyme d'objection persistante. Elle est, au mieux et dans le cas du Royaume-Uni, aveu d'embarras de n'avoir pas agi conformément au droit international en maintenant la colonisation des Chagos.

17. Enfin, la résolution 2066 démontre qu'il ne saurait exister un différend d'ordre territorial en ce qui concerne l'archipel des Chagos. Ce dernier n'aurait jamais dû être séparé en 1965 de Maurice dans les conditions imposées par le Royaume-Uni. Tout acte subséquent visant à légitimer *ex post facto* la séparation des Chagos doit être considéré comme nul et non avenu du fait du caractère *erga omnes* et de *jus cogens* du droit à l'autodétermination.

Les angles cumulatifs et interdépendants du droit à l'autodétermination

18. Monsieur le président, honorables Membres de la Cour, qu'il me soit permis d'utiliser une métaphore géométrique pour illustrer les piliers de ce droit. Le droit à l'autodétermination prend la forme d'un triangle équilatéral.

19. Le principe de l'intégrité territoriale se trouve au sommet de ce triangle. Le droit d'un peuple colonisé à pouvoir s'exprimer librement sur son futur statut se trouve sur l'un des angles du triangle ; et, sur l'autre angle du triangle, se trouve le droit d'un peuple colonisé de pouvoir, après

son indépendance, jouir de ses droits fondamentaux en vue de son développement économique, social et culturel.

20. Ces trois angles de l'autodétermination sont cumulatifs et interdépendants. Si une puissance coloniale ignore ne serait-ce que l'un de ces angles, alors le processus de décolonisation doit être considéré *incomplet et en violation du droit international général*. C'est le cas du processus de décolonisation de Maurice. Il a été mené *in toto* en violation du droit à l'autodétermination : le territoire de Maurice a été démembré sans que le peuple de Maurice, y compris les Chagossiens (et non seulement quelques représentants politiques), ne se soit exprimé librement au sujet de ce démembrement ; en outre, ce démembrement a privé les Chagossiens du droit au retour et du droit d'exercer leurs droits économiques, sociaux et culturels après l'accession à l'indépendance de Maurice.

21. La conduite du Royaume-Uni quant aux Chagos a ainsi été illicite *ab initio* et aurait dû dès 1965, en conformité avec les règles coutumières de la responsabilité des Etats, donner lieu à une cessation immédiate. En insistant de manière quasi obsessionnelle sur un consentement de Maurice, le Royaume-Uni admet l'illicéité de la séparation. En effet, pourquoi s'obstiner à parler de consentement si, comme le prétend le Royaume-Uni, les Chagos n'ont jamais fait partie intégrante de Maurice et si le droit international leur permettait en 1965 de procéder à ladite séparation ? Le Royaume-Uni tente subrepticement d'invoquer en sa faveur une circonstance excluant l'illicéité de son fait internationalement illicite. Le pseudo-accord de 1965 ne remplit certainement pas une telle fonction.

Les conséquences juridiques de la séparation des Chagos et de la présence continue du Royaume-Uni sur l'archipel

22. Monsieur le président, Mesdames et Messieurs de la Cour, face à une telle situation dans laquelle le processus de décolonisation d'une unité territoriale anciennement colonisée, telle Maurice, a été mené en violation du droit international, la Cour doit en tirer toutes les conséquences juridiques et garantir le retour à la légalité internationale[36].

[36] Observations écrites de l'Union africaine (OéUA), par. 217-255.

23. Je dis bien *toutes les conséquences juridiques* : conséquences pour le Royaume-Uni ; conséquences pour Maurice et, en particulier, les réparations auxquelles ont droit les Chagossiens ; conséquences pour les Etats Membres des Nations Unies ; conséquences pour le système des Nations Unies dont l'Assemblée générale ; conséquences pour la communauté internationale dans son ensemble.

24. Le silence de la requête quant aux «destinataires» des conséquences est un silence permissif et englobant. Ce n'est pas un silence prohibitif et limitatif contrairement aux dires de l'Allemagne[37]. Cinquante ans de faits illicites ne sauraient donner lieu qu'à de simples et vagues recommandations à l'Assemblée générale !

25. L'Union africaine, et à travers elle ses 55 Etats membres, ainsi que les organisations régionales d'intégration économique auxquelles Maurice appartient, attendent vivement de la Cour qu'elle clarifie les conséquences juridiques de la présence continue et illicite du Royaume-Uni sur l'archipel des Chagos. Il ne peut y avoir de développement sur le continent africain sans intégration économique ; et il ne saurait y avoir d'intégration quand certains territoires font encore l'objet de désintégration comme dans le cas de Maurice. Les préoccupations militaires des Etats-Unis et du Royaume-Uni sont-elles plus essentielles que le droit au développement du peuple de Maurice ? Certainement pas.

26. Le droit à l'autodétermination est imprescriptible ! Il doit produire des effets *ex tunc* et *ex nunc* sur la décision illicite du Royaume-Uni de séparer les Chagos de Maurice en 1965. Cela fait encore moins de doute aujourd'hui vu le consensus universel sur le caractère coutumier et *erga omnes* du droit à l'autodétermination. Il n'est et ne sera jamais trop tard de le faire respecter et de permettre enfin à Maurice de compléter son processus de décolonisation en conformité avec le droit international. Retour vers le futur … c'est là la grande différence entre le principe de l'autodétermination et l'*uti possidetis juris* : l'autodétermination «arrête la montre [en] lui fai[sant] remonter le temps»[38], contrairement à ce qu'a soutenu ici un conseil du Royaume-Uni[39].

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[37] CR 2018/22, p. 26, par. 40 et 44 (Zimmerman).

[38] Pour paraphraser la Cour dans l'affaire *Différend frontalier (Burkina Faso/République du Mali), arrêt, C.I.J. Recueil 1986*, p. 568, par. 30 («Le principe de l'*uti possidetis* gèle le titre territorial ; il arrête la montre sans lui faire remonter le temps.»)

[39] CR 2018/21, p. 42, par. 7 (Webb).

27. L'Union africaine est convaincue que la Cour dira le droit et assistera l'Assemblée générale ainsi que toute la communauté internationale (y compris le Royaume-Uni) à mettre fin dans les plus brefs délais à cet anachronisme juridique et cette tragédie humaine que constitue la séparation des Chagos de Maurice. Cela entre tout à fait dans sa fonction judiciaire et sa compétence en matière consultative.

28. Avec votre permission, Monsieur le président, je donne maintenant la parole à l'ambassadeur Negm pour quelques mots de conclusion.

Je vous remercie de votre attention.

Ms NEGM:

IV. CONCLUDING REMARKS

1. Mr. President, Members of the Court, the African Union calls upon the Court to assume its responsibility, as the supreme body for international justice, to give an answer to the questions of law and to continue its historic legacy in supporting self-determination and the full decolonization of Africa.

2. Hence we reiterate that the best contribution that the United Kingdom can provide to the African continent is to instantly — today, not tomorrow — free Chagos and acknowledge the right to return of the Chagossians.

3. Mr. President, Members of the Court, this feels like an episode of dark inconsistent history. It hurts to come in the twenty-first century before Your Honours to contest a call by a colonizer debating the consent of the colonized for keeping part of its territory, otherwise there would be no independence. A colonial Power speaking about the free will of the colonized at the time they were under its power. Is history being rewritten? Or is it that our countries had witnessed such freedom without our knowledge? More astounding that a colonizer is requesting the colonized to bring documents from its archives. What archives! As if, by now, no one knows how colonies were run! It is equally astounding that, for the last few days, we heard a colonizer and its allies defending colonization; it feels as if the Berlin Conference has no end!

4. Mr. President, Members of the Court, all the statements we heard this week could not and should not stop us from hearing the voice of Ms Elysé . . . which shows the humanitarian sufferings

as a result of the continued colonization of Chagos. This is a human rights law matter, this is an international humanitarian law issue not only a subject of colonization. This is a voice to be heard, it is not only the voice of Ms Elysé or the Chagossians, this is the voice of justice, self-determination . . . ending colonization . . . which should not be forgotten during the Court's deliberations because it is the voice of a continent that has suffered from colonization; it is the voice of Africa.

5. Mr. President, Members of the Court, let me conclude by thanking the Court, the Registrar and his staff, the interpreters and translators for their role in getting the voice of the African Union heard by Your Honours. I thank you.

The PRESIDENT: I thank the African Union for its statement. This concludes the oral statements by all the participants who have expressed a wish to participate in the present oral proceedings.

It also brings to a close the oral proceedings on the Request for advisory opinion submitted by the General Assembly of the United Nations regarding the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. I would like to convey the Court's thanks to all the delegations who have addressed it in the course of this week, as well as to the Participants in the written proceedings. I would also ask the representatives of all Participants to remain at the disposal of the Court in case it should require any further information or explanations from them.

The Court will now retire for deliberation. The Registrar will in due course inform all Participants and all Members of the United Nations General Assembly of the date and time when the Court is to announce its opinion.

As the Court has no other business before it today, I declare this sitting closed.

The Court rose at 4.25 p.m.

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