

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

Advisory Opinion of 25 February 2019

On 25 February 2019, the International Court of Justice gave its Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

The Court was composed as follows: President Yusuf; Vice President Xue; Judges Tomka, Abraham, Bennouna, Cançado Trindade, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa; Registrar Couvreur.

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I. HISTORY OF THE PROCEEDINGS (PARAS. 1-24)

The Court first recalls that the questions on which the advisory opinion of the Court has been requested are set forth in resolution 71/292 adopted by the General Assembly of the United Nations on 22 June 2017. It further recalls that these questions read as follows:

- (a) “Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?”;
- (b) “What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?”.

II. EVENTS LEADING TO THE ADOPTION OF THE REQUEST FOR THE ADVISORY OPINION (PARAS. 25-53)

The Court begins by recalling that the Chagos Archipelago consists of a number of islands and atolls. The largest island is Diego Garcia, located in the south-east of the archipelago. Between 1814 and 1965, the Chagos Archipelago was administered by the United Kingdom as a dependency of the colony of Mauritius.

On 14 December 1960, the General Assembly adopted resolution 1514 (XV) entitled “Declaration on the Granting of Independence to Colonial Countries and

Peoples”. On 27 November 1961, the General Assembly, by resolution 1654 (XVI), established the Committee of Twenty-Four, a special committee on decolonization, to monitor the implementation of resolution 1514 (XV).

In February 1964, discussions commenced between the United States of America and the United Kingdom regarding the use by the United States of certain British-owned islands in the Indian Ocean. The United States expressed an interest in establishing military facilities on the island of Diego Garcia. On 29 June 1964, the United Kingdom also commenced talks with the Premier of the colony of Mauritius regarding the detachment of the Chagos Archipelago from Mauritius. At Lancaster House, talks between representatives of the colony of Mauritius and the United Kingdom Government led to the conclusion on 23 September 1965 of an agreement in which the Premier and other representatives of Mauritius agreed to the principle of detachment of the Chagos Archipelago from the territory of Mauritius for the purpose of establishing a military facility on the island of Diego Garcia, it being understood, however, that the archipelago could be returned to Mauritius at a later date.

On 8 November 1965, by the British Indian Ocean Territory Order 1965, the United Kingdom established a new colony known as the British Indian Ocean Territory (the “BIOT”) consisting of the Chagos Archipelago, detached from Mauritius, and the Aldabra, Farquhar and Desroches islands, detached from Seychelles. On 16 December of the same year, the General Assembly adopted resolution 2066 (XX) on the “Question of Mauritius”, in which it expressed deep concern about the detachment of certain islands from the territory of Mauritius for the purpose of establishing a military base and invited the “administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”.

On 20 December 1966, the General Assembly adopted resolution 2232 (XXI) on a number of territories including Mauritius. The resolution reiterated that “any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)”. The talks between the United Kingdom and the United States resulted in the conclusion on 30 December 1966 of the “Agreement concerning the Availability for Defence Purposes of the British Indian Ocean Territory” and the conclusion of an Agreed Minute of the same date. Based on the Agreement, both States agreed that the Government of the United Kingdom would take any “administrative measures” necessary to ensure that their defence needs were met. The Agreed Minute provided that, among the administrative measures to be taken, was “resettling any inhabitants” of the islands.

On 15, 17 and 19 June 1967, the Committee of Twenty-Four adopted a resolution on Mauritius. In this resolution, the Committee “[d]eplors the dismemberment of Mauritius and Seychelles by the administering Power which violates their territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI) and calls upon the administering Power to return to these Territories the islands detached therefrom”. Between 1967 and 1973, the entire population of the Chagos Archipelago was either prevented from returning or forcibly removed and prevented from returning by the United Kingdom. The main forcible removal of Diego Garcia’s population took place in July and September 1971.

On 12 March 1968, Mauritius became an independent State and on 26 April 1968 was admitted to membership in the United Nations. Sir Seewoosagur Ramgoolam became the first Prime Minister of the Republic of Mauritius. Section 111, paragraph 1, of the 1968 Constitution of Mauritius, promulgated by the United Kingdom Government before independence on 4 March 1968, defined Mauritius as “the territories which immediately before 12th March 1968 constituted the colony of Mauritius”. This definition did not include the Chagos Archipelago in the territory of Mauritius.

In July 1980, the Organisation of African Unity (“OAU”) adopted resolution 99 (XVII) (1980) in which it “demands” that Diego Garcia be “unconditionally returned to Mauritius”. On 9 October 1980, the Mauritian Prime Minister, at the thirty-fifth session of the United Nations General Assembly, stated that the BIOT should be disbanded and the territory restored to Mauritius as part of its natural heritage. In July 2000, the OAU adopted a decision expressing its concern that the Chagos Archipelago was excised by the colonial Power from Mauritius prior to its independence in violation of United Nations resolution 1514.

On 30 December 2016, the 50-year period covered by the 1966 Agreement came to an end; however, it was extended for a further period of twenty years, in accordance with its terms. On 30 January 2017, the Assembly of the African Union adopted resolution AU/Res.1 (XXVIII) on the Chagos Archipelago which resolved, among other things, to support Mauritius with a view to ensuring “the completion of the decolonization of the Republic of Mauritius”. On 23 June 2017, the General Assembly adopted resolution 71/292 requesting an advisory opinion from the Court.

III. JURISDICTION AND DISCRETION (PARAS. 54-91)

When the Court is seised of a request for an advisory opinion, it must first consider whether it has jurisdiction to give the opinion requested and, if so, whether there is any reason why the Court should, in the exercise of its discretion, decline to answer the request.

The Court’s jurisdiction to give an advisory opinion is based on Article 65, paragraph 1, of its Statute which provides that “[t]he Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request”. The Court notes that the General Assembly is competent to request an advisory opinion by virtue of Article 96, paragraph 1, of the Charter, which provides that “[t]he General Assembly . . . may request the International Court of Justice to give an advisory opinion on any legal question”.

The Court then turns to the requirement in Article 96 of the Charter and Article 65 of its Statute that the advisory opinion must be on a “legal question”. In the present proceedings, the first question put to the Court is whether the process of decolonization of Mauritius was lawfully completed having regard to international law when it was granted independence following the separation of the Chagos Archipelago. The second question relates to the consequences arising under international law from the continued administration by the United Kingdom of the Chagos Archipelago. The Court considers that a request from the General Assembly for an advisory opinion to examine a situation by reference to international law concerns a legal question. The

Court therefore concludes that the request has been made in accordance with the Charter and that the two questions submitted to it are legal in character. The Court accordingly has jurisdiction to give the advisory opinion requested by resolution 71/292 of the General Assembly.

The fact that the Court has jurisdiction does not mean, however, that it is obliged to exercise it. The Court has recalled many times in the past that Article 65, paragraph 1, of its Statute should be interpreted to mean that the Court has a discretionary power to decline to give an advisory opinion even if the conditions of jurisdiction are met. The discretion whether or not to respond to a request for an advisory opinion exists so as to protect the integrity of the Court's judicial function as the principal judicial organ of the United Nations. The Court is, nevertheless, mindful of the fact that its answer to a request for an advisory opinion "represents its participation in the activities of the Organization, and, in principle, should not be refused". Thus, the consistent jurisprudence of the Court is that only "compelling reasons" may lead the Court to refuse its opinion in response to a request falling within its jurisdiction.

Some participants in the present proceedings have argued that there are "compelling reasons" for the Court to exercise its discretion to decline to give the advisory opinion requested. Among the reasons raised by these participants are that, first, advisory proceedings are not suitable for determination of complex and disputed factual issues; secondly, the Court's response would not assist the General Assembly in the performance of its functions; thirdly, it would be inappropriate for the Court to re-examine a question already settled by the Arbitral Tribunal constituted under Annex VII of UNCLOS in the *Arbitration regarding the Chagos Marine Protected Area*; and fourthly, the questions asked in the present proceedings relate to a pending bilateral dispute between two States which have not consented to the settlement of that dispute by the Court. The Court will thus examine whether such reasons exist in these proceedings.

1. Whether advisory proceedings are suitable for determination of complex and disputed factual issues

The Court observes that an abundance of material has been presented before it, including a voluminous dossier from the United Nations. Moreover, many participants have submitted written statements and written comments, and made oral statements which contain information relevant to answering the questions. Thirty-one States and the African Union filed written statements, ten of those States and the African Union submitted written comments thereon, and twenty-two States and the African Union made oral statements. The Court notes that information provided by participants includes the various official records from the 1960s, such as those from the United Kingdom concerning the detachment of the Chagos Archipelago and the accession of Mauritius to independence. The Court is therefore satisfied that there is in the present proceedings sufficient information on the facts before it for the Court to give the requested opinion. Accordingly, the Court cannot decline to answer the questions put to it.

2. Whether the Court's response would assist the General Assembly in the performance of its functions

The Court considers that it is not for the Court itself to determine the usefulness of its response to the requesting organ. Rather, it should be left to the requesting organ, the General Assembly, to determine whether it needs the opinion for the proper performance of its functions. It follows that in the present proceedings the Court cannot decline to answer the questions posed to it by the General Assembly in resolution 71/292 on the ground that its opinion would not assist the General Assembly in the performance of its functions.

3. Whether it would be appropriate for the Court to re-examine a question allegedly settled by the Arbitral Tribunal constituted under UNCLOS Annex VII in the *Arbitration regarding the Chagos Marine Protected Area*

The Court recalls that its opinion is given not to States, but to the organ which is entitled to request it. The Court also observes that the principle of *res judicata* does not preclude it from rendering an advisory opinion. In any event, the Court further notes that the issues that were determined by the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected Area* are not the same as those that are before the Court in these proceedings. It follows from the foregoing that the Court cannot decline to answer the questions on this ground.

4. Whether the questions asked relate to a pending dispute between two States, which have not consented to its settlement by the Court

The Court notes that the questions put to it by the General Assembly relate to the decolonization of Mauritius. The General Assembly has not sought the Court's opinion to resolve a territorial dispute between two States. Rather, the purpose of the request is for the General Assembly to receive the Court's assistance so that it may be guided in the discharge of its functions relating to the decolonization of Mauritius.

Moreover, the Court observes that there may be differences of views on legal questions in advisory proceedings. However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute. In these circumstances, the Court does not consider that to give the opinion requested would have the effect of circumventing the principle of consent by a State to the judicial settlement of its dispute with another State. The Court therefore cannot, in the exercise of its discretion, decline to give the opinion on that ground.

In light of the foregoing, the Court concludes that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

IV. THE FACTUAL CONTEXT OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS (PARAS. 92-131)

Before addressing the questions submitted to it by the General Assembly relating to the separation of the Chagos Archipelago from Mauritius and the legal consequences arising from the continued administration by the United Kingdom of the

Chagos Archipelago, the Court deems it important to examine the factual circumstances surrounding the separation of the archipelago from Mauritius, as well as those relating to the removal of the Chagossians from this territory. In this regard, the Court notes that, prior to the separation of the Chagos Archipelago from Mauritius, there were formal discussions between the United Kingdom and the United States and between the Government of the United Kingdom and the representatives of the colony of Mauritius.

In February 1964, the United Kingdom and the United States thus commenced formal discussions during which the latter expressed an interest in establishing a military communication facility on Diego Garcia. It was agreed that the United Kingdom delegation would recommend to its Government that it should be responsible for acquiring land, resettling the population and providing compensation at the United Kingdom Government's expense; that the Government of the United States would be responsible for construction and maintenance costs and that the United Kingdom Government would assess quickly the feasibility of the transfer of the administration of Diego Garcia and the other islands of the Chagos Archipelago from Mauritius. These formal discussions led to the conclusion of the 1966 Agreement for the establishment of a military base by the United States on the Chagos Archipelago.

Discussions were also held between the Government of the United Kingdom and the representatives of the colony of Mauritius with respect to the Chagos Archipelago. During the Fourth Constitutional Conference, which commenced in London on 7 September 1965 and ended on 24 September 1965, there were several private meetings on defence matters. At the first such meeting, held on 13 September 1965, the Premier of Mauritius stated that Mauritius preferred a lease rather than a detachment of the Chagos Archipelago. Following the meeting, the United Kingdom Foreign Secretary and the Defence Secretary concluded that if Mauritius would not agree to the detachment, they would have to adopt their Government's recommendation of forcible detachment and compensation. On 20 September 1965, during a meeting on defence matters chaired by the United Kingdom Secretary of State, the Premier of Mauritius reiterated his position. As an alternative, the Premier of Mauritius proposed that the United Kingdom first concede independence to Mauritius and thereafter allow the Mauritian Government to negotiate with the Governments of the United Kingdom and the United States on the question of Diego Garcia. During those discussions, the Secretary of State indicated that a lease would not be acceptable to the United States and that the Chagos Archipelago would have to be made available on the basis of its detachment.

On 23 September 1965, a meeting on defence matters was held at Lancaster House between Premier Ramgoolam, three other Mauritian Ministers and the United Kingdom Secretary of State. At the end of that meeting, the United Kingdom Secretary of State enquired whether the Mauritian Ministers could agree to the detachment of the Chagos Archipelago on the basis of undertakings that he would recommend to the Cabinet, which included the payment of compensation totalling up to £3 million to Mauritius over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Archipelago, and the return of the latter to Mauritius when the need for the facilities there disappeared. The Premier of Mauritius informed the Secretary of State for the Colonies that the proposals put forward by the United Kingdom were acceptable in principle, but that he would discuss the matter with his other ministerial colleagues. On 24 September 1965, the

Government of the United Kingdom announced that it was in favour of granting independence to Mauritius. On 6 October 1965, the Secretary of State for the Colonies communicated to the Governor of Mauritius the United Kingdom's acceptance of the additional understanding that had been sought by the Premier of Mauritius, including that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to Mauritius. This additional understanding was eventually incorporated into the final record of the meeting at Lancaster House and formed part of the Lancaster House agreement. On 5 November 1965, the Governor of Mauritius informed the United Kingdom Secretary of State that the Mauritius Council of Ministers confirmed agreement to the detachment of the Chagos Archipelago.

Between 1967 and 1973, the inhabitants of the Chagos Archipelago who had left the islands were prevented from returning. The other inhabitants were forcibly removed and prevented from returning to the islands. On 16 April 1971, the BIOT Commissioner enacted an ordinance which made it unlawful for any person to enter or remain in the Chagos Archipelago without a permit (the "Immigration Ordinance 1971"). By virtue of an agreement concluded between Mauritius and the United Kingdom on 4 September 1972, Mauritius accepted payment of the sum of £650,000 in full and final discharge of the United Kingdom's undertaking given in 1965 to meet the cost of resettlement of persons displaced from the Chagos Archipelago.

On 7 July 1982, an agreement was concluded between the Governments of Mauritius and the United Kingdom, for the payment by the United Kingdom of the sum of £4 million on an *ex gratia* basis, with no admission of liability on the part of the United Kingdom, in full and final settlement of all claims whatsoever of the kind referred to in the Agreement against the United Kingdom by or on behalf of the Ilois. This Agreement also required Mauritius to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims.

In 1998, Mr. Louis Olivier Bancoult, a Chagossian, instituted proceedings in the United Kingdom courts challenging the validity of legislation denying him the right to reside in the Chagos Archipelago. On 3 November 2000, judgment was given in his favour by the Divisional Court which ruled that the relevant provisions of the 1971 Ordinance be quashed. The United Kingdom Government did not appeal the ruling and it repealed the 1971 Ordinance that had prohibited Chagossians from returning to the Chagos Archipelago. The United Kingdom's Foreign Secretary announced that the United Kingdom Government was examining the feasibility of resettling the Ilois. On the same day that the Divisional Court rendered the judgment in Mr. Bancoult's favour, the United Kingdom made another immigration ordinance applicable to the Chagos Archipelago, with the exception of Diego Garcia. The ordinance provided that restrictions on entry into and residence in the archipelago would not apply to the Chagossians, given their connection to the Chagos Islands. Chagossians were however not permitted to enter or reside in Diego Garcia.

On 6 December 2001, the Human Rights Committee, in considering the periodic reports submitted by the United Kingdom under Article 40 of the International Covenant on Civil and Political Rights, noted "the State party's acceptance that its prohibition of the return of Ilois who had left or been removed from the territory was unlawful". It recommended that "the State party should, to the extent still possible, seek to make exercise of the Ilois' right to return to their territory practicable".

In June 2002, a feasibility study commissioned by the BIOT Administration concerning the Chagos Archipelago was completed. The study indicated that, while it may be feasible to resettle the islanders in the short term, the costs of maintaining a long-term inhabitation were likely to be prohibitive. Even in the short term, natural events such as periodic flooding from storms and seismic activity were likely to make life difficult for a resettled population. In 2004, the United Kingdom issued two orders in Council: the British Indian Ocean Territory (Constitution) Order 2004 and the British Indian Ocean Territory (Immigration) Order 2004. These orders declared that no person had the right of abode in the BIOT nor the right without authorization to enter and remain there. That same year, Mr. Bancoult challenged the validity of these orders in the courts of the United Kingdom. He succeeded in the High Court. An appeal was brought by the Secretary of State for Foreign and Commonwealth Affairs against the decision of the High Court. The Court of Appeal upheld the High Court's decision.

On 30 July 2008, the Human Rights Committee, in considering another periodic report submitted by the United Kingdom, took note of the aforementioned decision of the Court of Appeal. On the basis of Article 12 of the International Covenant on Civil and Political Rights, the Committee recommended that: "The State party should ensure that the Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard. It should consider compensation for the denial of this right over an extended period."

The Secretary of State for Foreign and Commonwealth Affairs appealed the decision of the Court of Appeal upholding Mr. Bancoult's challenge of the validity of the British Indian Ocean Territory (Constitution) Order 2004. On 22 October 2008, the House of Lords upheld the appeal by the Secretary of State for Foreign and Commonwealth Affairs.

On 20 December 2012, the United Kingdom announced a review of its policy on resettlement of the Chagossians who were forcibly removed from, or prevented from returning to, the Chagos Archipelago. A second feasibility study, carried out between 2014 and 2015, was commissioned by the BIOT Administration to analyse the different options for resettlement in the Chagos Archipelago. The feasibility study concluded that resettlement was possible although there would be significant challenges including high and very uncertain costs, and long-term liabilities for the United Kingdom taxpayer. Thereafter, on 16 November 2016, the United Kingdom decided against resettlement on the "grounds of feasibility, defence and security interests and cost to the British taxpayer".

To date, the Chagossians remain dispersed in several countries, including the United Kingdom, Mauritius and Seychelles. By virtue of United Kingdom law and judicial decisions of that country, they are not allowed to return to the Chagos Archipelago.

V. THE QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY (PARAS. 132-182)

The Court considers that there is no need for it to reformulate the questions submitted to it for an advisory opinion in these proceedings. Indeed, the first question is whether the process of decolonization of Mauritius was lawfully completed in 1968, having regard to international law, following the separation of the Chagos Archipelago

from its territory in 1965. The General Assembly's reference to certain resolutions which it adopted during this period does not, in the Court's view, prejudge either their legal content or scope. In Question (a), the General Assembly asks the Court to examine certain events which occurred between 1965 and 1968, and which fall within the framework of the process of decolonization of Mauritius as a non-self-governing territory. It did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius. In Question (b), which is clearly linked to Question (a), the Court is asked to state the consequences, under international law, of the continued administration by the United Kingdom of the Chagos Archipelago. By referring in this way to international law, the General Assembly necessarily had in mind the consequences for the subjects of that law, including States.

It is for the Court to state the law applicable to the factual situation referred to it by the General Assembly in its request for an advisory opinion. There is thus no need for it to interpret restrictively the questions put to it by the General Assembly. When the Court states the law in the exercise of its advisory function, it lends its assistance to the General Assembly in the solution of a problem confronting it. In giving its advisory opinion, the Court is not interfering with the exercise of the General Assembly's own functions.

1. Whether the process of decolonization of Mauritius was lawfully completed having regard to international law (Question (a))

The Court explained that, in order to pronounce on whether the process of decolonization of Mauritius was lawfully completed having regard to international law, it must determine, first, the relevant period of time for the purpose of identifying the applicable rules of international law and, secondly, the content of that law. In addition, since the General Assembly has referred to some of the resolutions it adopted, the Court, in determining the obligations reflected in these resolutions, must examine the functions of the General Assembly in conducting the process of decolonization.

(a) The relevant period of time for the purpose of identifying the applicable rules of international law

In Question (a), the General Assembly situates the process of decolonization of Mauritius in the period between the separation of the Chagos Archipelago from its territory in 1965 and its independence in 1968. It is therefore by reference to this period that the Court is required to identify the rules of international law that are applicable to that process. The Court is of the view that, while its determination of the applicable law must focus on the period from 1965 to 1968, this will not prevent it, particularly when customary rules are at issue, from considering the evolution of the law on self-determination since the adoption of the Charter of the United Nations and of resolution 1514 (XV) of 14 December 1960. Indeed, State practice and *opinio juris*, i.e. the acceptance of that practice as law (Article 38 of the Statute of the Court), are consolidated and confirmed gradually over time. The Court may also rely on legal instruments which postdate the period in question, when those instruments confirm or interpret pre-existing rules or principles.

(b) Applicable international law

The Court notes that it must determine the nature, content and scope of the right to self-determination applicable to the process of decolonization of Mauritius, a non-self-governing territory recognized as such, from 1946 onwards, both in United Nations practice and by the administering Power itself.

It begins by recalling that “respect for the principle of equal rights and self-determination of peoples” is one of the purposes of the United Nations (Article 1, paragraph 2, of the Charter). Such a purpose concerns, in particular, the “Declaration regarding non-self-governing territories” (Chapter XI of the Charter), since the “Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government” are obliged to “develop [the] self-government” of those peoples (Article 73 of the Charter). In the Court’s view, it follows that the legal régime of non-self-governing territories, as set out in Chapter XI of the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination.

Having made respect for the principle of equal rights and self-determination of peoples one of the purposes of the United Nations, the Charter included provisions that would enable non-self-governing territories ultimately to govern themselves. It is in this context that the Court must ascertain when the right to self-determination crystallized as a customary rule binding on all States.

The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization, in so far as this resolution clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated in the 1960s, as the peoples of numerous non-self-governing territories exercised their right to self-determination and achieved independence. In the Court’s view, there is a clear relationship between resolution 1514 (XV) and the process of decolonization following its adoption.

The Court considers that resolution 1514 (XV) has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption. It also has a normative character, in so far as it affirms that “[a]ll peoples have the right to self-determination”. Its preamble proclaims “the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations” and its first paragraph states that “[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and] is contrary to the Charter of the United Nations”. Resolution 1514 (XV) further provides that “[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire”. In order to prevent any dismemberment of non-self-governing territories, paragraph 6 of resolution 1514 (XV) provides 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.”

The nature and scope of the right to self-determination of peoples, including respect for “the national unity and territorial integrity of a State or country”, were reiterated in the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations. By recognizing the right to self-determination as one of the “basic principles of international law”, the Declaration confirmed its normative character under customary international law.

The means of implementing the right to self-determination in a non-self-governing territory, described as “geographically separate and ... distinct ethnically and/or culturally from the country administering it”, were set out in Principle VI of General Assembly resolution 1541 (XV), adopted on 15 December 1960: “A Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State”. The Court recalls that, while the exercise of self-determination may be achieved through one of the options laid down by resolution 1541 (XV), it must be the expression of the free and genuine will of the people concerned. However, “[t]he right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized”.

The Court recalls that the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory. Both State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of a non-self-governing territory as a corollary of the right to self-determination. No example has been brought to the attention of the Court in which, following the adoption of resolution 1514 (XV), the General Assembly or any other organ of the United Nations has considered as lawful the detachment by the administering Power of part of a non-self-governing territory, for the purpose of maintaining it under its colonial rule. States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power. It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.

In the Court’s view, the law on self-determination constitutes the applicable international law during the period under consideration, namely between 1965 and 1968. The Court has in the past noted the consolidation of that law.

(c) The functions of the General Assembly with regard to decolonization

The General Assembly has played a crucial role in the work of the United Nations on decolonization, in particular, since the adoption of resolution 1514 (XV). It has overseen the implementation of the obligations of Member States in this regard, such as they are laid down in Chapter XI of the Charter and as they arise from the practice which has developed within the Organization. It is in this context that the Court is asked in Question (a) to consider, in its analysis of the international

law applicable to the process of decolonization of Mauritius, the obligations reflected in General Assembly resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

In resolution 2066 (XX) of 16 December 1965, entitled “Question of Mauritius”, having noted “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, in the operative part of the text, invites “the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”. In resolutions 2232 (XXI) and 2357 (XXII), which are more general in nature and relate to the monitoring of the situation in a number of non-self-governing territories, the General Assembly “[r]eiterates its declaration that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)”.

In the Court’s view, by inviting the United Kingdom to comply with its international obligations in conducting the process of decolonization of Mauritius, the General Assembly acted within the framework of the Charter and within the scope of the functions assigned to it to oversee the application of the right to self-determination. The General Assembly assumed those functions in order to supervise the implementation of obligations incumbent upon administering Powers under the Charter. It thus established a special committee tasked with examining the factors that would enable it to decide “whether any territory is or is not a territory whose people have not yet attained a full measure of self government” (resolution 334 (IV) of 2 December 1949). It has been the Assembly’s consistent practice to adopt resolutions to pronounce on the specific situation of any non-self-governing territory. Thus, immediately after the adoption of resolution 1514 (XV), it established the Committee of Twenty-Four tasked with monitoring the implementation of that resolution and making suggestions and recommendations thereon (resolution 1654 (XVI) of 27 November 1961). The General Assembly also monitors the means by which the free and genuine will of the people of a non-self-governing territory is expressed, including the formulation of questions submitted for popular consultation. Finally, the General Assembly has consistently called upon administering Powers to respect the territorial integrity of non-self-governing territories, especially after the adoption of resolution 1514 (XV) of 14 December 1960.

The Court then examines the circumstances relating to the detachment of the Chagos Archipelago from Mauritius and determines whether it was carried out in accordance with international law.

(d) Application in the present proceedings

The Court begins by recalling that, at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory. In the Lancaster House agreement of 23 September 1965, the Premier and other representatives of Mauritius, which was still under the authority of the United Kingdom as administering Power, agreed in principle to the detachment of the

Chagos Archipelago from the territory of Mauritius on condition that the archipelago could be returned to Mauritius at a later date.

The Court observes that when the Council of Ministers agreed in principle to the detachment from Mauritius of the Chagos Archipelago, Mauritius was, as a colony, under the authority of the United Kingdom. Having reviewed the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the Lancaster House agreement, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.

In its resolution 2066 (XX) of 16 December 1965, adopted a few weeks after the detachment of the Chagos Archipelago, the General Assembly deemed it appropriate to recall the obligation of the United Kingdom, as the administering Power, to respect the territorial integrity of Mauritius. The Court considers that the obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require the United Kingdom, as the administering Power, to respect the territorial integrity of that country, including the Chagos Archipelago.

The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.

2. The consequences under international law arising from the continued administration by the United Kingdom of the Chagos Archipelago (Question (b))

Having established that the process of decolonization of Mauritius was not lawfully completed in 1968, the Court must now examine the consequences, under international law, arising from the United Kingdom's continued administration of the Chagos Archipelago (Question (b)).

The Court having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State. It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.

The modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its functions relating to decolonization. As the Court has stated in the past, it is not for it to "determine what steps the General Assembly may wish to take after receiving the Court's opinion or what effect that opinion may have in relation to those steps".

Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right. The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect. As regards the resettlement on

the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin, this is an issue relating to the protection of the human rights of those concerned, which should be addressed by the General Assembly during the completion of the decolonization of Mauritius.

In response to Question (b) of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, the Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.

VI. OPERATIVE PARAGRAPH (PARA. 183)

For these reasons,

The Court,

(1) Unanimously,

Finds that it has jurisdiction to give the advisory opinion requested;

(2) By twelve votes to two,

Decides to comply with the request for an advisory opinion;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Abraham, Bennouna, Cañado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: Judges Tomka, Donoghue;

(3) By thirteen votes to one,

Is of the opinion that, having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cañado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: Judge Donoghue;

(4) By thirteen votes to one,

Is of the opinion that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cañado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: Judge Donoghue;

(5) By thirteen votes to one,

Is of the opinion that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.

IN FAVOUR: President Yusuf; Vice-President Xue; Judges Tomka, Abraham, Bennouna, Cañado Trindade, Gaja, Sebutinde, Bhandari, Robinson, Gevorgian, Salam, Iwasawa;

AGAINST: Judge Donoghue.

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Vice-President Xue appends a declaration to the Advisory Opinion of the Court; Judges Tomka and Abraham append declarations to the Advisory Opinion of the Court; Judge Cañado Trindade appends a separate opinion to the Advisory Opinion of the Court; Judges Cañado Trindade and Robinson append a joint declaration to the Advisory Opinion of the Court; Judge Donoghue appends a dissenting opinion to the Advisory Opinion of the Court; Judges Gaja, Sebutinde and Robinson append separate opinions to the Advisory Opinion of the Court; Judges Gevorgian, Salam and Iwasawa append declarations to the Advisory Opinion of the Court.

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Declaration of Vice-President Xue

While in full agreement with the Advisory Opinion of the Court, Vice-President Xue highlights some aspects with regard to the application of the non-circumvention principle in this case. She notes that the dispute between Mauritius and the United Kingdom concerning the issue of the Chagos Archipelago has been going on for decades, but the two States hold divergent views on the nature of the subject-matter of the issue. Whether this bilateral dispute constitutes a compelling reason for the Court to exercise its discretionary power to decline to give a reply to the questions put to it by the General Assembly is one of the core issues that was intensely debated in the proceedings.

Vice-President Xue recalls the Court's jurisprudence on the fundamental importance of the principle of consent, according to which there is a compelling reason to decline to give an advisory opinion, if "to give a reply would have the effect of circumventing the principle that a State is not obligated to allow its disputes to be submitted to judicial settlement without its consent" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 33; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 191, para. 37; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J.*

Reports 2004 (I), p. 158, para. 47). This non-circumvention principle equally applies to the present case.

Vice-President Xue notes, however, that the fact of a pending bilateral dispute, by itself, is not considered a compelling reason for the Court to decline to give an advisory opinion. What is decisive is the object and nature of the request. In light of its consistent jurisprudence, the Court has to examine whether the object of the request is for the General Assembly to “obtain enlightenment as to the course of action it should take”, or to assist the peaceful settlement of the dispute (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71), and whether the legal controversy arose during the proceedings of the General Assembly and in relation to matters with which it was dealing, or arose independently in bilateral relations (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 25, para. 34).

Vice-President Xue concurs with the Court’s conclusion that the questions submitted by the General Assembly relate to the decolonization of Mauritius; the object of the Request is not to resolve a territorial dispute between Mauritius and the United Kingdom, but to assist the General Assembly in the discharge of its functions relating to the decolonization of Mauritius; therefore, to give the requested opinion would not have the effect of circumventing the principle of consent.

Vice-President Xue takes this position on the basis of the following considerations. First of all, the scope of Question (a) put to the Court by the General Assembly is specifically defined. The Court is requested to determine, at the particular time when Mauritius was granted independence, whether the decolonization process of Mauritius was lawfully completed. The issue of the Chagos Archipelago has to be examined on the basis of the facts and the law as existed at that time and against the historical background of the decolonization of Mauritius.

She notes that the evidence submitted to the Court demonstrates that the detachment of the Chagos Archipelago by the United Kingdom was not simply the result of a normal administrative restructuring of a colony by the administering Power, but part of a defensive strategy particularly designed in view of the prospective independence of the colonial Territories in the western Indian Ocean. In other words, the very root cause of the separation of the Chagos Archipelago lies in the decolonization of Mauritius. Whether the “consent” of Mauritius’ Council of Ministers, which was still under the authority of the administering Power, can be regarded as representing the free and genuine will of the people of Mauritius is a crucial issue that the Court has to determine in accordance with the principle of self-determination under international law, as it has a direct bearing on Question (a).

She observes that both the United Kingdom itself and the United Nations treated the detachment of the Chagos Archipelago as a matter of decolonization rather than a territorial issue. The archives of the Foreign Office of the United Kingdom reveal that at the time when the detachment plan was being contemplated, the United Kingdom officials were aware, and even acknowledged, that by detaching the Chagos Archipelago and other islands to set up the British Indian Ocean Territory, the United Kingdom was actually creating a new colony.

Declaration of Judge Tomka

While Judge Tomka agrees with the conclusions of the Court that the process of decolonization of Mauritius was not lawfully completed and that the United Kingdom is under an obligation to bring its administration of the Chagos Archipelago to an end, he does not agree with the reasoning by which the Court has reached its answer to the second question of the General Assembly. He considers that the Court's answer goes further than necessary to assist the General Assembly and intrudes upon the bilateral dispute concerning the Chagos Archipelago between Mauritius and the United Kingdom.

He is concerned that the advisory proceedings are becoming a way of bringing before the Court contentious matters upon an initiative taken by one of the Parties to the dispute. In the present case, there is a bilateral dispute between Mauritius and the United Kingdom concerning the Chagos Archipelago. The present advisory proceedings have their origin in that dispute. These proceedings are the result of an initiative of Mauritius and the questions asked were drafted by Mauritius. In these circumstances, Judge Tomka believes that the Court must exercise caution not to go further than is strictly necessary and useful for the General Assembly in order to avoid circumventing the principle that a State is not bound to submit a dispute for judicial settlement without its consent.

In the present advisory proceedings, taking into account the equally authentic French text of the first question of the General Assembly, the Assembly has asked whether the conditions necessary for the complete decolonization of Mauritius have been met. In Judge Tomka's view, in answering the second question, it is thus not necessary for the Court to go beyond a conclusion that decolonization remains to be completed. In ruling on the conduct of the United Kingdom, the Court deals with questions of the law of State responsibility. He considers that the United Nations Charter is a source of obligations for the administering Powers of non-self-governing territories and not customary rules of international law on State responsibility.

Declaration of Judge Abraham

In his declaration, Judge Abraham voices his reservations about what he considers to be the somewhat ambiguous manner in which the Court deals with the principle of "territorial integrity" in the context of the decolonization process.

Judge Abraham agrees with the idea that the obligation, for an administering Power, to respect the territorial integrity of a non-self-governing territory is "a corollary of the right to self-determination", as stated in paragraph 160 of the Advisory Opinion. In his view, that obligation must, however, be understood as aiming to prevent the dismantling of that territory by a unilateral decision of the administering Power, at the time of or in the period immediately preceding accession to independence, for the political, strategic or other interests of that Power.

Judge Abraham considers that, in these proceedings, there was no need for the Court to go beyond this conclusion in order to respond to the questions put to it, once it had found that the detachment of the Chagos Archipelago was not based on the free and genuine expression of the will of the people of Mauritius. He is concerned that certain passages of the Opinion might be interpreted as giving the principle of territorial

integrity a near absolute scope, which would be questionable under customary international law as it existed in the period under consideration.

Given the sometimes arbitrary and mobile nature of the boundaries of colonial entities defined by the administering Powers, it cannot be ruled out that the populations of the geographical subunits of a single colonial entity might have differing aspirations in the choice of their future. In such circumstances, according to Judge Abraham, the principle of territorial integrity does not preclude agreeing to the partition of a territory based on the freely expressed will of the different components of the population of that territory. If the population of the Chagos Archipelago had been consulted, which it was not, and if it had freely expressed its will not to be integrated into the new independent State of Mauritius, the parameters of the question submitted to the Court would, in Judge Abraham's view, have been substantially different.

Separate opinion of Judge Cançado Trindade

1. In his Separate Opinion, composed of 19 parts, Judge Cançado Trindade begins by pointing out that, though he supports the conclusions reached by the International Court of Justice (ICJ) and set forth in the resolutive points of the *dispositif* of the present Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, he does so on the basis of a reasoning at times clearly distinct from that of the Court. There are some points, - he adds, - which have not been sufficiently dealt with by the ICJ, or deserve more attention, and even relevant points which have not been considered at all by the Court.

2. He thus dwells upon them, develops his own reasoning and presents the foundations of his own personal position thereon. He starts examining the successive General Assembly resolutions, from 1950 onwards, evidencing the long-standing United Nations acknowledgment of, and commitment to, the fundamental right to self-determination of peoples (part II, paras. 6-29). Among the many resolutions surveyed are the landmark General Assembly resolutions 1514 (XV) of 1960 (Declaration on the Granting of Independence to Colonial Countries and Peoples) and 2625(XXV) of 1970 (Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations).

3. Judge Cançado Trindade recalls that, in the period between those two Declarations, General Assembly resolution 2066(XX) of 1965 warned against any step taken by the "administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base", which would be in "contravention" of the 1960 Declaration, which made it clear that the submission of peoples to foreign domination constituted "a denial of fundamental human rights" contrary to the United Nations Charter. And General Assembly resolution 2621(XXV), of 1970, in its paragraph 1, typified the continuation of colonialism as a *crime*.

4. In Judge Cançado Trindade's perception, the historical formation of the international law of decolonization (part IV, paras. 38-55) stands as a manifestation of the historical process of *humanization* of contemporary international law. Subsequent resolutions, from 1970 to 2017, condemned colonialism as a denial and breach of fundamental human rights, contrary to the United Nations Charter itself. The right to

self-determination emerged and crystallized as a true human right in itself, a right of peoples (paras. 29-37).

5. There were, likewise, - he adds, - the successive resolutions of the old Organization of African Unity and African Union (1980-2015) condemning categorically the military basis established in the island Diego Garcia (in Chagos) as a “threat to Africa”, and calling upon an “expeditious end” of the United Kingdom’s “unlawful occupation of the Chagos Archipelago” with a view to enable Mauritius to exercise its sovereignty over the Archipelago (paras. 52-55).

6. Judge Cançado Trindade then singles out the historical significance of the insertion of the right to self-determination in Article 1 of the two United Nations Covenants on Human Rights of 1966, and the contribution of the Human Rights Committee on the matter (in its General Comments, its Observations on Reports by States Parties to the Covenant on Civil and Political Rights, focusing on Chagos islanders, and its Views on communications), in support of the rights of Chagos islanders, including their right to reparations, victimized for a prolonged period of time since their forced displacement from their islands (part V, paras. 56-68).

7. Attention is then turned by Judge Cançado Trindade to the acknowledgment of the right to self-determination in the case-law of the ICJ (paras. 69-76), as well as by the Second United Nations World Conference on Human Rights held in Vienna in 1993 (paras. 77-86). He observes that the final document of that memorable United Nations World Conference of 1993 went further than the 1970 Declaration of Principles, in proscribing discrimination “of any kind”, thus enlarging the framework of the right to self-determination (para. 78). We can behold nowadays, - Judge Cançado Trindade proceeds, -

“the new *ethos* of our times, reflected in the new *jus gentium* of our times, wherein the human persons and peoples occupy a central position (...) bearing always in mind the pressing needs of protection of the victims (in particular those in situations of vulnerability or even defencelessness) (...).

Such *corpus juris* is a true *law of protection (droit de protection)* of the rights of human beings and peoples, and not of States, - a development which could hardly have been anticipated some decades ago. (...) Hence (...) the utmost importance of the right of access to justice *lato sensu*, with the new primacy of the *raison d’humanité* over the old *raison d’État*, in the framework of the new *jus gentium* of our times” (paras. 85-86).

8. In sequence, he focuses then on the question he put to all participating Delegations in the ICJ’s oral advisory proceedings, in the public sitting of 5 September 2018, and to their written answers, and comments thereon (parts VIII-IX, paras. 87-119). Judge Cançado Trindade’s question concerned the legal consequences ensuing from the formation of customary international law with the significant presence of *opinio juris communis* for ensuring compliance with the obligations stated in relevant General Assembly resolutions.

9. The fundamental right of peoples to self-determination, - he continues, - is endowed with *jus cogens* character in contemporary international law, as expressly acknowledged by the participating Delegations in their responses to his question. To

them, moreover, the relevant General Assembly resolutions in support of it disclose an *opinio juris communis*, with *erga omnes* duties (of compliance with the fundamental right of self-determination). And Judge Cançado Trindade adds:

“In my understanding, there is no reason nor justification for the ICJ, in its present Advisory Opinion, not having expressly held that the fundamental right of peoples to self-determination belongs to the realm of *jus cogens*.”

This is a point which has been made by several participating Delegations throughout the present advisory proceedings, and has not been taken into account by the ICJ in its own reasoning. It is a matter which deserves careful consideration, to which I shall next turn attention. It could never have been left out of the reasoning of the present Advisory Opinion of the ICJ; there is no justification for not having addressed it. The fundamental right of peoples to self-determination indeed belongs to the realm of *jus cogens*, and entails obligations *erga omnes*, with all legal consequences ensuing therefrom” (paras. 118-119).

10. This being so, Judge Cançado Trindade, accordingly, dedicates the following three parts (X, XI and XII) of the present Separate Opinion to an in-depth study of the matter, starting with the fundamental right to self-determination in the domain of *jus cogens*, from its early acknowledgment (paras. 120-128) to reassertions of *jus cogens* made by participating Delegations in the course of the present advisory proceedings (paras. 129-150). He considers “significant” such reassertions of *jus cogens*, though “unfortunately” not having been addressed the Court in the present Advisory Opinion (para. 150).

11. Judge Cançado Trindade then proceeds to his criticism of the insufficiencies in the ICJ’s case-law relating to *jus cogens* (paras. 151-169). In his understanding, “the ICJ cannot at all keep on overlooking the legal consequences of *jus cogens*, obsessed with the consent of individual States to the exercise of its own jurisdiction” (para. 155). He sustains that *jus cogens* goes beyond the law of treaties, and there is here need of a people-centred approach, with the *raison d’humanité* prevailing over the *raison d’État* (para. 158).

12. Judge Cançado Trindade recalls that, in his successive Individual Opinions within the ICJ, he has been devoting special attention to the incidence of *jus cogens* with its legal consequences (paras. 156 and 159-162). Having been dedicating considerable attention to the importance and the expansion of the material content of *jus cogens* in the contemporary law of nations, he feels obliged to express here his criticism that

“the case-law of the ICJ relating to the matter has appeared reluctant and far too slow; the ICJ could and should have developed much further its considerations as to the legal consequences of a breach of *jus cogens*, in particular when faced, - as it is now in the present Advisory Opinion, and in successive cases in recent years, - with situations of grave violations of the rights of the human person and of peoples” (para. 163).

13. He further ponders that, though the issue of *jus cogens* has been brought to the ICJ's attention for a long time, almost half a century, "the Court could and should have developed much further its jurisprudential construction thereon" (para. 167). He reiterates his criticism that to him it was "most regrettable" that in the present Advisory Opinion

"the ICJ has not even mentioned the very important issue of the *jus cogens* character of the fundamental right to self-determination and its legal consequences, extensively dealt with by participating Delegations, in several of their written and oral submissions (in support of *jus cogens*) in the course of the present advisory proceedings (...).

The Court, for reasons which escape my comprehension, in face of such an important matter as that of the present request by the General Assembly of its Advisory Opinion, has avoided even mentioning *jus cogens*, limiting itself to refer *in passim* (in para. 180) to 'respect for the right to self-determination' as 'an obligation *erga omnes*'" (paras.168-169).

14. Accordingly, Judge Cançado Trindade then dedicates his following reflections to *jus cogens* and the existence of *opinio juris communis* (paras. 170-174), and to the *recta ratio* in respect of *jus cogens* and the primacy of conscience above the "will" (paras. 175-201). To him, - as he has been sustaining along many years, - the invocation of State "consent" "cannot deprive *jus cogens* of all its legal effects, nor of the legal consequences of its breach" (paras.171-172). The evolving general international law emanates not from State "will", but rather from human conscience, and he adds that

"General or customary international law emanates not so much from the practice of States (not devoid of ambiguities and contradictions), but rather from the *opinio juris communis* of all the subjects of international law (States, international organizations, human beings, peoples, and humankind as a whole)" (para. 174).

15. Judge Cançado Trindade then turns attention to *recta ratio: jus cogens* and the primacy of conscience above the "will". He emphasizes that above the "will" stands the human conscience, the universal juridical conscience (para. 175), recalling that the most lucid international legal doctrine has upheld this as from the lessons of the "founding fathers" of the law of nations, who already at their time sustained that the *jus gentium* could not derive from the "will" of States, as it was a *lex praeceptiva* (proper of natural law) and apprehended a *recta ratio* inherent to humankind (paras. 176-178). *Jus necessarium*, ensuing from the *recta ratio* and not from the "will" of States, transcends the limitations of the *jus voluntarium* (paras. 179 and 196).

16. Hence the importance attributed to fundamental general principles of law, and to rights and duties of all *inter se*, well above State sovereignty (paras. 179 and 192). The duty of reparation for injuries, - he proceeds, - was clearly seen as a response to an *international need*, in conformity with the *recta ratio*, - whether the beneficiaries were (emerging) States, peoples, groups or individuals (para. 185). In their humanist outlook, the "founding fathers" of the *droit des gens*, as from the Sixteenth century, envisioned redress for damages as fulfilling an international need in conformity with *recta ratio* (para. 186).

17. Judge Cançado Trindade warns that legal positivist thinking - as from the late Nineteenth century - unduly placed the “will” of States above *recta ratio*. It is in jusnaturalist thinking that “the notion of *justice* has always occupied a central position, orienting *law* as a whole; *justice*, in sum, is at the beginning of all *law*, being, moreover, its ultimate end” (para. 190). To him, general principles of law, guiding all legal norms and standing above the “will” of States, “emanate, like *jus cogens*, from human conscience, rescuing international law from the pitfalls of State voluntarism and unilateralism, incompatible with the foundations of a true international legal order” (para. 195). And he adds:

“There is pressing need today for the ICJ to elaborate its reasoning on *jus cogens* (not only obligations *erga omnes*) and its legal consequences, taking into account the progressive development of international law. It cannot keep on referring only to obligations *erga omnes* without focusing and elaborating on *jus cogens* wherefrom they ensue. Furthermore, in my understanding, the situation of the forcefully displaced Chagossians, in inter-generational perspective, is to be kept carefully in mind, in the light of the successive resolutions of the United Nations General Assembly examined in the present Separate Opinion” (para. 201).

18. Judge Cançado Trindade, sustaining that the rights of peoples are beyond the strict inter-State outlook, recalls the historical antecedents to be taken into account, such as the minorities and mandates systems at the time of the League of Nations, followed by non-self-governing territories and the trusteeship system under the United Nations Charter (paras. 203 and 205). He further recalls pertinent examples of resort to peoples’ rights before the ICJ (paras. 206-213), demonstrating that when the matter lodged with it concerns the *rights of peoples*, “the ICJ reasoning is to transcend ineluctably the strictly inter-State outlook. Otherwise justice cannot be done. The nature of the matters lodged with the ICJ is to lead to its proper reasoning” (paras. 214-215).

19. This brings Judge Cançado Trindade to the consideration of conditions of living and the longstanding tragedy of imposed human suffering. He examines at first the statement made in the ICJ’s public hearing of 3 September 2018, by the representative of the Chagossian community (Ms. M. Liseby Elysé). He does so in the light of his own conception that “the right to life - of forcefully displaced Chagossians and their descendants - comprises the right to dignified conditions of living” (para. 219).

20. He warns that “[i]mposed human suffering is perennial, as much as the presence of good and evil are, everywhere” (para. 223); thus, it has kept being studied, as from the ancient Greek tragedies (paras. 220-222 and 226), along the centuries (paras. 224-225 and 227), with attention “turned to human fate, given the imperfection of human justice” (para. 223). Judge Cançado Trindade adds that the aforementioned statement made before the Court by the representative of the Chagossian community

“brings to the fore, in my perception, the concern of ancient Greek tragedies with the painful human condition aggravated by violence and the imposition of human suffering, to the detriment of the vulnerable victims.
(...)

(...) The United Nations, (...) since its earlier years in the fifties, engaged itself in support of the prevalence of the fundamental right of peoples to self-determination, conscious of the need to put an end to the cruelty and evil of colonialism, the persistence of which amounts, in my understanding, to a continuing breach of *jus cogens* nowadays” (paras. 228 and 230).

21. He adds, as to the matter here presented to the ICJ by the United Nations General Assembly’s request for the present Advisory Opinion, that “the Chagossians expelled from their homeland were abandoned in other islands in extreme poverty, in slums and empty prisons, - in chronic poverty with social marginalization or exclusion which led even to suicides” (para. 231). And he ponders that contemporary *jus gentium*, attentive to fundamental principles and the realm of *jus cogens*, “is not indifferent to the sufferings of the population” (para. 231).

22. In the following part (XV) of his Separate Opinion, Judge Cançado Trindade examines the *opinio juris communis* found in successive United Nations General Assembly resolutions, contributing remarkably to the “universal acknowledgment”, consolidation and vindication of the right of peoples to self-determination (paras. 232-234). He further surveys the arguments, presented by several participating Delegations, in the course of the present advisory proceedings of the ICJ, stressing the incompatibility with successive United Nations General Assembly’s resolutions of the detachment of Chagos from Mauritius and the forced displacement of the Chagossians in the period 1967-1973, and the pressing need to put an end to such continuing situation in breach of international law (paras. 235-241).

23. In logical sequence, the following issue of reflections on the part of Judge Cançado Trindade concerns the duty to provide reparations for breaches of the right of peoples to self-determination (part XVI). He begins by observing that this issue can be properly approached in historical perspective, as the duty of redress to victims is deeply-rooted in the law of nations, wherein humanist thinking has never faded, and keeps on flourishing in its most lucid doctrine (para. 242). In a world of violence amidst the misuses of language, endeavours continue for the preservation of lucidity (para. 243).

24. In this respect, Judge Cançado Trindade recalls that the United Nations Declaration on the Rights of Indigenous Peoples (of 2007) has some provisions on the duty of redress or reparation for damages in respect of the right of peoples to self-determination; the Declaration expressly refers to reparations in distinct forms, such as restitution, or, when this is not possible, just, fair and equitable compensation, or other appropriate redress (para. 244).

25. He considers “reassuring” that, in the course of the present ICJ’s advisory proceedings, several participating Delegations have expressly addressed the right to reparations (in their forms), stressing the need of providing adequate redress (para. 245). After surveying their arguments to this effect (paras. 246-256), he observes that it should be kept in mind that “the resettlement of Chagossians on the Archipelago of Chagos is directly linked to *restitutio in integrum* as a form of reparation” (para. 256).

26. Judge Cançado Trindade further underlines that, as so much attention was carefully given by some participating Delegations to the provision of appropriate reparations to the victims, “clearly necessary and ineluctable here”, there is “no

justification for the ICJ not having addressed in the present Advisory Opinion the right to reparations, in its distinct forms, to those forcibly expelled from Chagos and their descendants” (para. 257, and cf. para. 286).

27. Even more so, as the ICJ correctly asserted, in the present Advisory Opinion, - he continues, - the occurrence of breaches by the “administering power”, the United Kingdom, in the detachment of the Chagos Archipelago without consultation with the local population, and in disrespect of the territorial integrity of Mauritius (paras. 172-173), as pointed out in successive resolutions of the United Nations General Assembly (para. 258).

28. This has led the ICJ further to assert (in para. 177), also correctly, - he adds, - that the United Kingdom’s continued administration of the Chagos Archipelago “constitutes a wrongful act entailing the international responsibility of that State”, and (in para. 178) that the United Kingdom is thus under the obligation to bring an end rapidly to its administration of the Chagos Archipelago, thus enabling Mauritius to complete the decolonization of its territory “in a manner consistent with the right of peoples to self-determination”. And the ICJ added (in para. 182) that “all States must co-operate with the United Nations to complete the decolonization of Mauritius” (para. 259, and cf. para. 287).

29. The ICJ thus responded here to the two questions contained in the request for its Advisory Opinion by the General Assembly, - he proceeds, - though in an incomplete way, as it has not addressed the breach of *jus cogens*, nor the due reparations (in its distinct forms) to those victimized (para. 260). Judge Cançado Trindade recalls the position he has been sustaining, within the ICJ on distinct occasions, that the breach of a right and the duty of prompt reparation form an indissoluble whole; the duty of redress cannot be overlooked (paras. 261-263). In Judge Cançado Trindade’s conception, there is an “indissoluble whole of breaches of the right and duty of prompt reparations”, and

“a proper consideration of reparations cannot at all limit itself only to compensation; it has to consider reparations in all its forms (...) namely: *restitutio in integrum*, appropriate compensation, satisfaction (including public apology), rehabilitation of the victims, guarantee of no-repetition of the harmful acts or omissions” (para. 263).

30. Judge Cançado Trindade then notes that there is, nowadays, vindication of, besides rights of individuals and groups, also of rights of peoples, encompassing reparations; this brings to the fore the mission of contemporary international tribunals in this respect (para. 264). This being so, he proceeds to a detailed examination of the relevant jurisprudence of international tribunals (Inter-American, African and European Courts) of human rights on the matter (paras. 265-284), showing the existence of elements in international jurisprudence in support of the vindication of the rights of peoples, accompanied by the provision of due reparations. Thus, he adds,

“there was no reason for the ICJ, in the present Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, not to have taken into due account this significant issue of the vindication of the rights of peoples with due reparations, in pursuance of the mission of contemporary international tribunals” (para. 285).

31. The remaining point that he examines is the vindication of the rights of individuals and of peoples and the important role of general principles of law in the realization of justice (part XVIII), as fundamental principles are “the foundations of the realization of justice itself, and jusnaturalist thinking has always stressed their importance” (para. 288). They are of the utmost relevance as they inform and conform the norms of international law (para. 289). Thus, - he adds, -

“The basic posture of an international tribunal can only be *principiste*, without making undue concessions to State voluntarism. Legal positivism has always attempted, in vain, to minimize the role of general principles of law, but the truth is that, without those principles, there is no legal system at all.

Those principles assume a great importance, in face of the growing contemporary tragedy of forced displaced persons, or undocumented migrants, in situations of utmost vulnerability, in distinct parts of the world. Such continuing and growing human tragedy shows that lessons from the past seem to be largely forgotten. This reinforces the relevance of fundamental principles and values, already guiding the action of the United Nations - in particular its General Assembly (...), - as well as international jurisprudence (mainly of the [Inter-American Court of Human Rights]) on the matter” (paras. 290-291).

32. He then refers to his considerations on this point, developed in the present Separate Opinion, as well as in other Individual Opinions he presented in previous Advisory Opinions of the ICJ and, earlier on, of the Inter-American Court of Human Rights (paras. 292-293). In sequence, Judge Cançado Trindade criticizes the addition, in Article 38(1)(c) of the Permanent Court of International Justice (PCIJ)/ICJ Statute, to general principles of law, of the qualification “recognized by civilized nations”: such addition was, in his perception, distracted, done “without reflection and without a minimal critical spirit”, as it is impossible to determine which are the “civilized nations”; one can only identify the countries which behave in a “civilized” way for some time, and while they so behave (para. 294), with due respect to the rights of the human person and of peoples (para. 296).

33. Such additional qualification to “general principles of law”, - he proceeds, - was made in Article 38 of the Statute of the PCIJ in 1920 by “mental lethargy”, and was maintained in the Statute of the ICJ in 1945, wherein it remains until now, by “mental inertia, and without a critical spirit” (para. 295). And Judge Cançado Trindade adds that

“We ought to have some more courage and humility, much needed, in relation to our human condition, given the notorious human propensity to unlimited cruelty. From the ancient Greek tragedies to contemporary ones, human existence has always been surrounded by tragedy. (...)

The ICJ cannot here keep on pursuing a strictly inter-State outlook, as it is used to: in the present General Assembly’s request for its Advisory Opinion, we are in face of the relevant *rights of peoples*, - which the United Nations General Assembly has always been attentive and sensitive to, - on the foundation of the United Nations Charter itself. The focus here is on the

importance of the rights of peoples, such as their right to self-determination, which count on the firm support of the great majority of participating Delegations” (paras. 295 and 297).

34. He further criticizes the attention shown by the ICJ, - as it is used to, - to individual States’ “consent”, even referring to “consent” as being a “principle” (in para. 90). He recalls that for years, within the Court, he has been sustaining that “consent” is not - cannot be - a “principle” (paras. 298-300). Moreover, the arguments of a “tiny minority” of participating Delegations overlooking or minimizing the rights of the human person and of peoples (such as their right to self-determination), could even have been dismissed by the Court, which however gave space to them in its own reasoning (e.g., in paras. 133-134). In this respect, in his view the narration by the ICJ of the arguments presented to it by participating Delegations could have been more precise (paras. 301-304).

35. In any case, - Judge Cançado Trindade proceeds, - the conclusions of the ICJ, set forth in the *dispositif*, are constructive and deserving of attention, in addition to its findings of the occurrence of a continuing “wrongful act” entailing the international responsibility of the State concerned, and of the identification of the issue of “the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin”, as pertaining to “the protection of the human rights of those concerned”, to be duly “addressed by the General Assembly during the completion of the decolonization of Mauritius”. Judge Cançado Trindade is thus confident that “this Advisory Opinion of the ICJ, despite its insufficiencies, may assist, with its conclusions in the *dispositif*, the United Nations General Assembly in seeking the realization of justice for those victimized in the Chagos Archipelago, in conformity with the United Nations Charter and the general principles of international law” (para. 305).

36. Last but not least, in his epilogue (part XIX), Judge Cançado Trindade proceeds to a recapitulation of the main points (seventy of them) sustained in his present Separate Opinion (paras. 308-335) with a reasoning clearly distinct from the Court, grounded not only on the assessment of the arguments produced before the Court by the participating Delegations, and above all on considerations of principle and fundamental values, to which he attaches greater importance. He expresses the feeling of being in peace with his own conscience, in laying the foundations of his own personal position on the matter dealt with in the present Advisory Opinion (para. 306).

37. After all, it is a matter which concerns the *rights of peoples*, requiring the ICJ reasoning “to transcend ineluctably the strictly inter-State outlook; otherwise justice cannot be done” (para. 325). Judge Cançado Trindade concludes that general principles of law (*prima principia*) and fundamental values stand well above State consent, conferring to the international legal order its ineluctable axiological dimension; fundamental principles are, in his conception, the foundations of the realization of justice, giving expression to the idea of an *objective justice* for the application of the *universal* international law, the humanized new *jus gentium* of our times (paras. 331, 333 and 335).

Joint declaration of Judges Cançado Trindade and Robinson

1. Judges Cançado Trindade and Robinson, in addition to their respective separate opinions, present their joint declaration, stressing the significance of the

normative content of General Assembly resolutions, since the fifties, providing a foundation for the right of peoples to self-determination.

2. Such resolutions demonstrate that the General Assembly clearly intended to make effective and universal the right of peoples to self-determination in international law. The General Assembly has acknowledged, along the years, the importance of the crystallization of the right of peoples to self-determination in general international law. Its successive resolutions led to the implementation of almost complete decolonization around the world. In their view, the present Advisory Opinion is to be viewed within this framework.

3. The Court should have given greater emphasis on the normative value of such General Assembly resolutions, which demonstrate the continuing development of the *opinio juris communis* on the matter in customary international law.

4. Last but not least, Judges Cançado Trindade and Robinson, stress that, given the relevance of *jus cogens* to the issues raised in the proceedings, the Court should have pronounced on the *jus cogens* character of the right of peoples to self-determination.

Dissenting opinion of Judge Donoghue

Judge Donoghue agrees that the Court has jurisdiction to give the requested Advisory Opinion. However, she considers that the Advisory Opinion has the effect of circumventing the absence of United Kingdom consent to judicial settlement of its bilateral dispute with Mauritius regarding sovereignty over the Chagos Archipelago and therefore that it undermines the integrity of the Court's judicial function. In her opinion, this is a compelling reason for the Court to exercise its discretion to decline to give the Advisory Opinion.

Separate opinion of Judge Gaja

The request of the General Assembly concerning the completion of the decolonization of Mauritius could have been answered without inquiring into the status of the principle of self-determination in 1968. What occurred in the Chagos Archipelago could not possibly be taken as a form of decolonization. In the process leading to the separation of the Chagos Archipelago from Mauritius, the Chagossians were never consulted or even represented. The representatives of Mauritius did not accept a definitive separation of the Archipelago.

For the purpose of decolonization, the principle of territorial integrity (expressed in particular in paragraph 6 of General Assembly resolution 1514 (XV)) requires that the whole colonial territory be considered. However, this does not imply that the non-self-governing territory be attributed to one and the same newly independent State.

In reply to an implied question of the General Assembly, the Court has stated that there exists an obligation for the administering Power to decolonize the Chagos Archipelago. However, the determination of how decolonization is to be effected, and not only the "modalities necessary for ensuring the completion of the decolonization of Mauritius", should have been left to the General Assembly.

In order to specify further consequences under international law of the continued administration of the Chagos Archipelago by the United Kingdom, it would be necessary for the General Assembly to determine first how the process of decolonization has to be completed.

Separate opinion of Judge Sebutinde

The Advisory Opinion omits certain important facts from its narrative, which facts have a direct bearing upon the first question posed by the General Assembly. The Court has also missed the opportunity to recognize that the right to self-determination within the context of decolonization, has attained peremptory status (*jus cogens*), whereby no derogation therefrom is permitted. As a direct corollary of that right is the *erga omnes* obligation to respect that right. A failure to recognize the peremptory status of the said right has led to the failure of the Court to properly and fully consider the consequences of its violation when answering Question (b). Judge Sebutinde's separate opinion addresses these issues.

Separate opinion of Judge Robinson

1. In his separate opinion, Judge Robinson indicates that while he has voted in favour of all the findings in the operative paragraph of the Court's Opinion, the purpose of his opinion is to address issues that have either not been dealt with in the Court's Advisory Opinion or, in his view, not sufficiently stressed, clarified or elaborated.

2. In his opinion he addresses four areas. First he analyses General Assembly resolutions during the period 1950 to 1957 and comments on their impact in the development of the customary international law of the right to self-determination. Second he analyses the Declaration on the Granting of Independence to Colonial Countries and Peoples (resolution 1514 (XV)) (which due to its impact and historic significance, he refers to as simply "1514") and its impact on the development of the right to self-determination. Third he addresses the status of the right of self-determination as a norm of *jus cogens* and the consequences for such a status on Mauritius' purported consent to the detachment of the Chagos Archipelago and its impact on any treaty that may conflict with that norm against the background that decolonization must reflect the free and genuine expression of the will of the peoples concerned. Fourth he examines the plight of the Chagossians.

3. Judge Robinson argues that an analysis of the General Assembly resolutions over the seven-year period 1950 to 1957 is capable of showing that State practice and *opinio juris* combined to establish the right to self-determination as a rule of customary international law by 1957. He concludes that even though it is arguable that the right to self-determination became a rule of customary international law in 1957, it may be safer to conclude that its crystallization as a rule of customary international law took place in 1960 with the adoption of resolution 1514.

4. In his examination of resolution 1514 Judge Robinson comments on the Court's clarification that its Advisory Opinion is confined to the right to self-determination in the context of decolonization. He argues that the fact that the right to self-determination set out in paragraph 2 of resolution 1514 is not only included in the two Covenants, (International Covenant on Civil and Political Rights (CCPR) and International Covenant on Economic Social and Cultural Rights) but is included as the

first article in both, speaks to its significance not only as a fundamental human right, but as one that is seen as indispensable for the enjoyment of all the rights set out in the two Covenants. In his view, the incorporation of the right to self-determination as the first article in these two international covenants solidifies its development as a fundamental human right, and indeed, the foundation for all other human rights. He concludes that resolution 1514 is a normative laden declaration, rich with ore protective of values fundamental to the international community and that it is as potent a force for liberation and justice as was emancipation following the abolition of enslavement in many parts of the world in the 1830s.

5. Judge Robinson points out that the Court in its Advisory Opinion has offered no comment on the status of the right to self-determination as a norm of *jus cogens*. He conducts an analysis of the case law of the Court and of Article 53 of the Vienna Convention on the Law of Treaties and concludes, using the Court's approach in its case law, the Court should have characterized the right to self-determination as a norm of *jus cogens*. He cites a plethora of evidentiary material which in his view, establishes the peremptory status of the right to self-determination.

6. In light of his characterization of the norm as one of *jus cogens*, he examines the consequences of that characterization having regard to information before the Court in the advisory proceedings. One relevant issue is the Exchange of Notes constituting an Agreement concerning the Availability for Defence Purposes of the British Indian Ocean Territory (with Annexes) between the United Kingdom and the United States. The other is the inclusion in the Exchange of Notes of an obligation on the United Kingdom to remove and resettle the inhabitants of the Archipelago. He concludes that that Exchange of Notes conflicts with the norm of the right to self-determination which has a *jus cogens* character.

7. Turning to the situation of the Chagossians, which he describes as "a human tragedy that has no place in the twenty-first century" he states that the right to return to one's country is a basic human right protected by Article 12 of the CCPR. While noting the apology of the United Kingdom for the treatment of the Chagossians, he pointed to the post World War II development of a body of law based on respect for the inherent dignity and worth of the human person. The United Kingdom itself was a significant actor in that development, which, he argues, must now be made by all those concerned to work to the advantage of the Chagossians.

Declaration of Judge Gevorgian

In his declaration, Judge Gevorgian, while fully agreeing with the Court's reasoning and findings as made in the Opinion, expresses his disapproval with the Court's statement of responsibility made in paragraph 177, which he considers unsupported by the Court's case law. Judge Gevorgian considers that a dispute exists between Mauritius and the United Kingdom concerning sovereignty over Chagos, as shown by Mauritius' attempts to bring this case before the Court by way of contentious proceedings. Accordingly, the Court's task in the present case was to consider the lawfulness of Mauritius' decolonization process and the possible consequences that may arise therefrom, and not to adjudicate State responsibility, a matter that is outside the Court's advisory function.

Declaration of Judge Salam

Judge Salam voted in favour of all the subparagraphs of the operative part of the present Advisory Opinion. Although he essentially concurs with the Court's reasoning, he notes two points that should have been addressed by the Court.

Firstly, Judge Salam observes that in seeking to ascertain at what point the right to self-determination became crystallized as a customary rule in order to answer the first question submitted to it, the Court noted the normative value of General Assembly resolution 1514 (XV). He agrees with this reasoning but thinks that the Court should have gone further. In this regard, Judge Salam recalls several Security Council resolutions which confirm, affirm and reaffirm General Assembly resolution 1514 (XV). He concludes that the fact that it was clearly endorsed by the Security Council attests to its binding nature.

Secondly, Judge Salam considers it regrettable that in answering the second question submitted to it, the Court did not raise the possibility of compensation for the Chagossians. He notes in this regard that the Court has already addressed such question in the past and refers to the Court's Advisory Opinion in the *Wall* case.

Declaration of Judge Iwasawa

1. While Judge Iwasawa agrees with the conclusions drawn by the Court, he wishes to offer his understanding of the Court's reasoning and to elaborate upon his reasons for supporting the conclusions.

2. Judge Iwasawa points out that the free and genuine expression of the will of the people concerned is a cardinal element of the right to self-determination. In response to Question (a), the Court concludes that the process of decolonization of Mauritius was not lawfully completed in 1968. It is Judge Iwasawa's understanding that the Court draws this conclusion on two grounds: first, that the detachment of the Chagos Archipelago was not based on the free and genuine expression of the will of the people concerned; and, second, that the detachment was contrary to the principle of territorial integrity. A separation or split of a non-self-governing territory is not contrary to the principle of territorial integrity as long as it is based on the free and genuine will of the people concerned. The Opinion suggests that, in the case of Mauritius, the detachment of the Chagos Archipelago was contrary to the principle of territorial integrity because it was not based on the free and genuine will of the people concerned.

3. Judge Iwasawa observes that, in response to Question (b), the Court highlights the obligations of the United Kingdom and all Member States under international law relating to decolonization. As the administering Power, the United Kingdom has international obligations with respect to the Chagos Archipelago, including an obligation to respect the right of peoples to self-determination and obligations arising from Chapter XI of the Charter. In the present proceedings, it follows from these obligations that the United Kingdom has an obligation to bring to an end its continued administration of the Chagos Archipelago as rapidly as possible. As the right of peoples to self-determination has an *erga omnes* character, all States have the duty to promote its realization and to render assistance to the United Nations in carrying out its responsibilities to implement that right. In the present proceedings,

it follows from this duty that all Member States have an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.

4. In its Advisory Opinion, the Court states that the decolonization of Mauritius should be completed “in a manner consistent with the right of peoples to self-determination” without elaboration. The Court neither determines the eventual legal status of the Chagos Archipelago, nor indicates detailed modalities by which the right to self-determination should be implemented in respect of the Chagos Archipelago. The Court gives an opinion on the questions requested by the General Assembly to the extent necessary to assist the General Assembly in carrying out its function concerning decolonization. Giving the opinion in this way does not amount to adjudication of a territorial dispute between the United Kingdom and Mauritius.
