

INTERNATIONAL COURT OF JUSTICE

Legal consequences of the separation of the

Chagos Archipelago from Mauritius in 1965

(Request for Advisory Opinion)

WRITTEN STATEMENT OF GERMANY

January 2018

Annex 1

General Assembly Resolution 71/292 of 22 June 2017

[without reference to a Main Committee ([A/71/L.73](#) and Add.1)]

71/292. Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

The General Assembly,

Reaffirming that all peoples have an inalienable right to the exercise of their sovereignty and the integrity of their national territory,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular paragraph 6 thereof, which states 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,

Recalling also its resolution 2066 (XX) of 16 December 1965, in which it invited the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV) and to take no action which would dismember the Territory of Mauritius and violate its territorial integrity, and its resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

Bearing in mind its resolution [65/118](#) of 10 December 2010 on the fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reiterating its view that it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and noting that the process of decolonization is not yet complete,

Recalling its resolution [65/119](#) of 10 December 2010, in which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism, and its resolution [71/122](#) of 6 December 2016, in which it called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Noting the resolutions on the Chagos Archipelago adopted by the Organization of African Unity and the African Union since 1980, most recently at the twenty-eighth ordinary session of the Assembly of the Union, held in Addis Ababa on 30 and 31 January 2017, and the resolutions on the Chagos Archipelago adopted by the Movement of Non-Aligned Countries since 1983, most recently at the Seventeenth Conference of Heads of State or Government of Non-Aligned Countries, held on Margarita Island, Bolivarian Republic of Venezuela, from 13 to 18 September 2016, and in particular the deep concern expressed therein at the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago,

Noting also its decision of 16 September 2016 to include in the agenda of its seventy-first session the item entitled “Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”, on the understanding that there would be no consideration of this item before June 2017,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

(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?”.

*88th plenary meeting
22 June 2017*

Annex 2

**Letter of H.E. Ambassador J. Koonjul, Permanent
Representative of Mauritius to the UN to H.E.
Ambassador H. Braun, Permanent Representative of
Germany to the UN of 30 May 2017**



PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

30 May 2017

Excellency, *Dear Harald*

I have the honour to draw your attention Item 87 of the agenda of the 71st Session of the General Assembly, entitled "Request for an Advisory Opinion of the International Court of Justice (ICJ) on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", which was included by consensus in September 2016 on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.

Mauritius will shortly be requesting for action on that item in the General Assembly. In that regard, I am attaching a draft resolution which Mauritius will be submitting for adoption by the General Assembly. I am also enclosing for your information an Aide Mémoire providing background information on the item.

I wish to emphasize that the issue raised by Item 87 concerns decolonization which is of interest to the whole UN System as explained in our aide memoire, and an advisory opinion by the ICJ will contribute to the work of the General Assembly in the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations.

We also wish to point out that in seeking a favourable vote on the draft resolution on the request for an advisory opinion of the ICJ, we are not seeking for a vote against any member state but a vote in favour of upholding the principles of the UN Charter, the rule of law and the effective functioning of our institutions.

I therefore seek your support for the adoption of the resolution and look forward to your active participation in the debate on the item during its consideration in the General Assembly.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in blue ink, appearing to read 'Jagdish D. Koonjul'.

Jagdish D. Koonjul, G.O.S.K.
Ambassador
Permanent Representative

H.E. Mr. Harald Braun
Permanent Representative of Germany
to the United Nations
New York

Annex 3

Republic of Mauritius

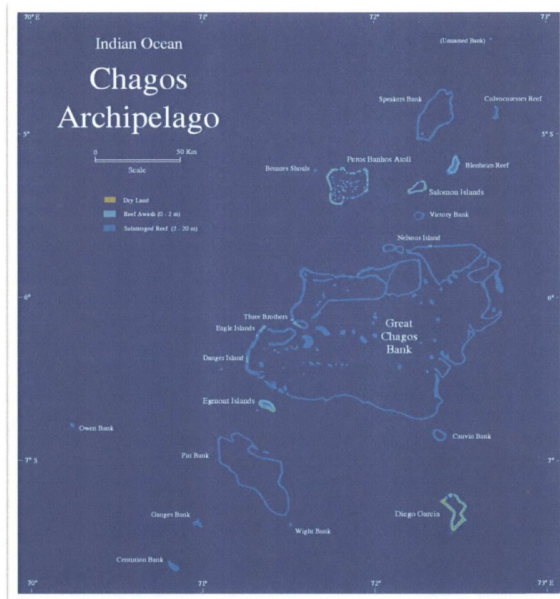
Aide-Mémoire: Item 87 of the Agenda of the 71st

Session of the UN General Assembly, May 2017



REPUBLIC OF MAURITIUS

Aide Memoire



ITEM 87 OF THE AGENDA OF THE 71ST SESSION OF THE UN GENERAL ASSEMBLY

*Request for an advisory opinion of the International Court of Justice on the
legal consequences of the separation of the Chagos Archipelago from
Mauritius in 1965*

MAY 2017

1. On 16 September 2016, the UN General Assembly (UNGA) decided to include an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965" on the agenda of its current session, on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.
2. The period between September 2016 and June 2017 was intended to allow time for Members to ascertain whether progress could be made on the issues raised by the item, which relates to the completion of the process of decolonization of Mauritius, thereby enabling Mauritius to exercise its full sovereignty over the Chagos Archipelago. Unfortunately, no progress has been possible. Accordingly, action should now be taken by the UNGA.

Background

3. The Chagos Archipelago is a group of islands in the Indian Ocean. They have been part of Mauritius since at least the eighteenth century, when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.
4. Prior to granting independence to Mauritius on 12 March 1968, the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK") unlawfully dismembered Mauritius in 1965 by excising the Chagos Archipelago from its territory to create the so-called "British Indian Ocean Territory."
5. This excision was carried out in violation of international law and UNGA Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Resolution 2066 (XX),

dealing specifically with Mauritius, required the administering Power to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV) and invited “the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity.”

6. Dismemberment occurred, and its effects continue to this day. Subsequent efforts to seek the return of the Chagos Archipelago to the effective sovereign control of Mauritius have been unsuccessful. The United Kingdom claims that it exercises sovereignty lawfully over the Chagos Archipelago, yet it also tacitly admits the impropriety of its actions, stating that it will return the Chagos Archipelago to Mauritius once it is no longer required for defence purposes without providing any clarity on the date of return, while the criteria to determine when defence needs will cease to exist keep on changing.

7. In 2015, an Arbitral Tribunal acting under Part XV of the UN Convention on the Law of the Sea (UNCLOS) unanimously found that this commitment to return the Chagos Archipelago to Mauritius is binding under international law,¹ acknowledging that Mauritius has inalienable legal rights with respect to the Chagos Archipelago and that the process of decolonization remains incomplete. Two members of the Tribunal found, *inter alia*, that the excision of the Chagos Archipelago from Mauritius in 1965 showed ‘a complete disregard for the territorial integrity of Mauritius by the United Kingdom’,² in violation of the right to self-determination. No contrary view was put forward by any other members of the Tribunal.

¹ In the Matter of the Chagos Marine Protected Area (Mauritius v. United Kingdom), Annex VII Arbitral Tribunal Award (18 March 2015), para. 448.

² *Ibid.*, Dissenting and Concurring Opinion of Judges Kateka and Wolfrum, para. 91. The other three members of the Tribunal considered that the Tribunal lacked jurisdiction over the issue, and therefore expressed no view on that part of the case.

Actions taken by the United Kingdom in violation of international law

8. Following the illegal excision of the Chagos Archipelago, the United Kingdom has purported to take a number of actions in respect of the Chagos Archipelago which give rise to serious violations of international law, including human rights and international environmental law. These actions, which are inconsistent with the commitment to decolonization, include, but are not limited to:
- i. Conclusion in December 1966 of a fifty-year agreement between the United Kingdom and the United States of America ("United States" or "US") concerning the availability for defence purposes of the Chagos Archipelago. While a limited naval communications facility was initially intended to be set up by the United States in Diego Garcia, which forms part of the Chagos Archipelago, it was subsequently developed into a support facility of the US Navy and later on into a full-fledged military base. The United Kingdom initially contended that the Chagos Archipelago was required for the defence of the West. Now that the Cold War is over and the threat from the Soviet Union no longer exists, the United Kingdom argues that the Chagos Archipelago is needed for the fight against terrorism and piracy.
 - ii. Forcible eviction of the former inhabitants of the Chagos Archipelago ("Chagossians") in total disregard of their fundamental human rights.
 - iii. Continued and systematic denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago, including through the creation of a 'marine protected area' around the Chagos Archipelago. Mr. Colin Roberts of the United Kingdom Foreign and Commonwealth Office is reported to have told a Political Counsellor at the US Embassy in London on 12 May 2009 that "establishing a marine reserve would, in effect, put paid to resettlement claims of the archipelago's former residents"³.

³ Cable from US Embassy, London, on UK Government's proposal for a marine reserve covering the Chagos Archipelago, May 2009, published on "WikiLeaks" website in December 2010.

- iv. Use of Diego Garcia – which, according to the United Kingdom, hosts a joint UK-US military base – as a transit point after September 2001 for rendition of persons to countries where they risked being subjected to torture or ill-treatment.
 - v. Unilateral creation of a ‘marine protected area’ (“MPA”) around the Chagos Archipelago on 1 April 2010. The Arbitral Tribunal constituted in the case brought by Mauritius against the United Kingdom to challenge the legality of the ‘MPA’ ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.
 - vi. Pollution of the waters of the Chagos Archipelago with sewage and human waste by vessels acting under the authority or consent of the United Kingdom, including the *Pacific Marlin*, a patrol vessel used by the United Kingdom.
 - vii. Hydro blasting of ships in the lagoon adjoining Diego Garcia.
9. The following further unilateral actions have purportedly been taken by the United Kingdom without the prior involvement and consent of Mauritius since the ruling of the Arbitral Tribunal in the case of *Mauritius v United Kingdom*, which concluded at para. 298 of its Award that “the United Kingdom’s undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius’ interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned.” These include:
- i. the conduct by the UK Government of a public consultation exercise on resettlement in the Chagos Archipelago from 4 August to 27 October 2015;
 - ii. the UK Government’s decision in November 2016 against resettlement of the former inhabitants of the Chagos Archipelago and the automatic roll over of the purported UK-US agreement in respect of the Chagos Archipelago for a further period of 20 years until 30 December 2036. These purported decisions were announced barely a week after the first round of talks held between Mauritius and the United Kingdom following the understanding reached in New York last

September to defer, at the United Kingdom's request, consideration of item 87 of the UNGA agenda; and

- iii. the organization of a significantly expanded programme of visits for Mauritians of Chagossian origin to the Chagos Archipelago as part of a purported £40 million package announced by the UK Government in November 2016, which is said to be intended to support improvements to the livelihoods of Chagossians. This purported initiative was also taken barely three weeks after the third round of talks held between Mauritius and the United Kingdom following the above-mentioned understanding reached in New York last September.

Talks between Mauritius and the United Kingdom

10. Three meetings have been held between Mauritius and the United Kingdom following the understanding reached in New York last September, during which the United Kingdom made the following two proposals:

- (a) joint environmental stewardship of the outer islands of the Chagos Archipelago, excluding the island of Diego Garcia (environmental protection, conservation and promotion of marine and land biodiversity; development of sustainable management of fishery stocks in the waters of the Chagos Archipelago; and observation of natural phenomena in the region); and
- (b) bilateral defence engagement between Mauritius and the United Kingdom (training and defence cooperation, covering areas including maritime and aviation security, port security, and governance).

Mauritius has made clear to the United Kingdom that neither of these proposals is acceptable as they do not address the very objective of the talks, namely the completion of the decolonization process of Mauritius and the exercise of full sovereignty by Mauritius over the Chagos Archipelago. The UK's proposal of joint stewardship does not include the island of Diego Garcia and its surrounding maritime zones and is limited to environmental

management only. Mauritius has nevertheless conveyed to the United Kingdom that it is prepared to consider the two proposals in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius.

11. In addition, Mauritius has addressed the security and defence needs invoked by the United Kingdom by reaffirming that it has no objection to the continued use of Diego Garcia for defence purposes in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius. Following the stand recently taken by the United Kingdom that the military base in Diego Garcia is a joint US-UK base, Mauritius has responded that it would be willing, within the framework of the completion of the decolonization process, to guarantee to the United Kingdom and the United States in a binding agreement their continued use of Diego Garcia for defence purposes. Mauritius will stand by this commitment.

The rationale for an advisory opinion

12. The General Assembly has a direct institutional interest in this matter. It has played a historic and central role in addressing decolonization, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations. Under its 1960 Resolution 1514 (XV)⁴ on the granting of independence to colonial countries and peoples, the General Assembly declared that a denial of fundamental human rights is contrary to the Charter; that the integrity of the national territory of dependent peoples shall be respected; and that any attempt at the disruption of the territorial integrity of a colonial country is incompatible with the purposes and principles of the Charter.⁵

⁴General Assembly Resolution 1514 (XV) (14 December 1960), paras.1, 4, & 6.

⁵General Assembly Resolution 2066 (XX) (16 December 1965), para. 3.

13. In 2010, on the fiftieth anniversary of the adoption of UNGA Resolution 1514 (XV), the General Assembly noted with deep concern that “fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated”. It further declared “that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law,” and considered it “incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization.”⁶
14. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965.
15. By having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the members of the United Nations, namely to complete the process of decolonization.
16. The Government of Mauritius will be submitting a draft resolution pertaining to the request from the General Assembly for an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.
17. The Government of Mauritius would be grateful for the support of all Member States in its endeavour.

⁶ General Assembly Resolution 65/118 (20 January 2011), pmbi., paras. 2 & 9.