Written replies of the participants to the oral proceedings to the question put by Judge Cançado Trindade

AUSTRALIA

Australian Government

INTERNATIONAL COURT OF JUSTICE

SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965 (REQUEST FOR ADVISORY OPINION)

QUESTION PUT BY JUDGE CANCADO TRINDADE 5 SEPTEMBER 2018

Question put by Judge Cancado Trindade:

"As recalled in paragraph (a) of the U.N. General Assembly's request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22.06.2017), the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514 (XV) of 14.12.1960, 2066 (XX) of 16.12.1965, 2232 (XXI) of 20.12.1966 and 2357 (XXII) of 19.12.1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.

In your understanding, what are 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 those General Assembly resolutions?"

Australia's response:

As outlined in its Written Statement of 27 February 2018 and its oral submissions of 4 September 2018, Australia's arguments in this case are limited to the jurisdiction of the Court and to its discretion to decline the advisory opinion requested by the General Assembly in its resolution 71/292. As such, Australia makes no observations in response to the question of Judge Trindade of 5 September 2018.

W. M. Campbell
Representative of Australia
6 September 2018

BOTSWANA AND VANUATU

EMBASSY OF BOTSWANA
Avenue de Tervuren 169
B 1150 Brussels /B[LGIUM

() I32 2 7:15 20 70 ✆1 boleur@gov.bw W + 32 2 735 63 18

7 September 2018

Illis Excellency
Mr Philipc Couvrcur
Registrar
International Court of Justice
Peace Pa lace
Carncgieplein 2
2517 KJ The Hague
NETHERLANDS

Dear Mr Couvreur

Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 (Request for Advisory Opinion)

I have the honour to refer to the opportunity accorded all participants by the Court to reply to the question asked by Judge Canc;ado Trindade (CR 2018/25, p. 58).

The reply of the Republic of Botswana and the Republic of Vanuatu is jointly submitted as attached.

Yours sincerely,

Embassy of the Republic of Botswana

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

(REQUEST FOR ADVISORY OPINIONS)

JOINT RESPONSE OF THE REPUBLIC OF BOTSWANA AND THE REPUBLIC OF VANUATU ON FRIDAY 7 SEPTEMBER 2019

Question (Judge Antônio Augusto Cançado Trindade, CR 2018/25, p. 58):

As recalled in paragraph (a) of the UN General Assembly's Request for an advisory opinion of the International Court of Justice, General Assembly resolution 71/292 of 22 June 2017, the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: 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.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of Participants.

In your understanding, what are 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 those General Assembly resolutions?

Joint Response:

1. The General Assembly resolutions mentioned in Judge Cançado Trindade's question show that the peoples' right to self-determination, as well as the corresponding obligation to respect the peoples' right to self-determination, were already in existence under customary international law during the period of their adoption, i.e., 1960-1967.

2. In order to ensure the compliance with the obligation to respect the peoples' right to self-determination as reflected in the abovementioned General Assembly resolutions:

- **The administering Power** is under an obligation:
  - to immediately take steps to transfer all powers to the peoples of the territories which have not yet attained independence, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom; and
  - to take no action which would dismember the administered territory and violate its territorial integrity.
- **All States** are under an obligation:
  - not to recognize the illegal situation resulting from a violation of the right to self-determination;
  - not to render aid or assistance in maintaining the situation created by such a violation; and
  - to see to it that any impediment, resulting from the violation, to the exercise by the people of its right to self-determination is brought to an end.
- **the United Nations, especially the General Assembly**, is under an obligation to consider what further action is required to bring to and end the illegal situation resulting from the violation of the right to self-determination.

Attorney Chuchuchu Nchunga Nchunga

Deputy Government Attorney, Attorney General's Chambers, Republic of Botswana

Noah Patrick Kouback

Minister Counsellor and Deputy Permanent Representative, Chargé d'Affaires. Permanent Mission of Vanuatu in Geneva

NICARAGUA

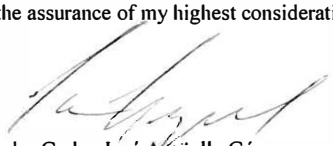
EMBASSY OF NICARAGUA
THE HAGUE

10 September 2018
REF: HOL-EMB-114-2018

Excellency,

I have the honor to refer to the letter 151036 transmitting the question put by Judge Cançado Trindade to all participants of the oral proceedings concerning the request for an advisory opinion on the *Legal consequences of the separation of the Chagos Archipelago from Mauritius in* 1965; and I hereby attach the answer by Nicaragua to the said question.

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



Ambassador Carlos José Argüello Gómez
Representative of Nicaragua

His Excellency
Mr. Philippe Couvreur
Registrar
International Court of justice
Carnegieplein 2
2517 KJ, The Hague

Written Reply of the Republic of Nicaragua to the Question of Judge Cangido Trindade

"My question is addressed to all delegations of participants I these oral advisory proceedings.
As recalled in paragraph (a) of the U.N. General Assembly's request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22/06.2017), the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514 (XV) of 14.12.1960, 2066 (XX) of 16.12.1965, 2232 (XXI) of20.12.1966, and 2357(XXII) of 19.12.1967.
In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.
In your understanding, what are 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 those General Assembly resolutions?"

RESOLUTIONS OF THE UNITED NATIONS GENERAL ASSEMBLY

Resolution 1514 of 14 December 1960 reaffirmed the principles and rules on self-determination contained in the Charter of the United Nations and made a clear enunciation of what this principle involved particularly the respect for the territorial integrity of colonial territories. The reaffirmation of these principles and Charter rules in Resolution 1514 leaves no doubt that they are also principles and rules of customary international law. The principle or rule on self-determination is a fundamental principle of human rights and is thus a peremptory norm from which no derogation is permitted. [1]

Resolutions 2066[2], 2232[3] and 2357[4] are concrete expressions calling for the application and respect of the principles and rules contained in Resolution 1514 to particular cases[5]. These Resolutions are adopted in the exercise of the special faculties that the General Assembly has in all matters of decolonization and self-determination. In this respect they reflect not only the ***opinio juris*** of the Member States but also reflect the ***opinio juris*** and practice of the Organization in charge of decolonization.

---

[1] CR 2018/25, p. 42-44, paras. 38-47(Arguello).
[22] 16 December 1965.
[3] 20 December 1966.
[4] 19 December 1967.
[5] Not only that of Mauritius, but also Seychelles, Solomon Islands and others.

These Resolutions are of obligatory compliance by all Members of the United Nations who have responsibilities for the administration of non-self-governing territories.

LEGAL CONSEQUENCES

The Resolutions in question were adopted on matters relating to self-determination and decolonization which are within the functions and powers of the General Assembly and of obligatory compliance by State Members.

Since the principles and rules on self-determination and decolonization are also principles and rules of customary law, the obligations they entail are obligation for all States, whether or not they are members of the United Nations.

The consequences of these Resolutions and the obligations they reflect were spelled out during the oral proceedings in Nicaragua's pleadings[6] and we reiterate what was there indicated, including the consequences for the United Kingdom and third States.

[6] CR 2018/25, p. 47-48, paras. 65-68 (Arguello).

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

P.atarWllaon OMO
Ambas98dor
I.Inge Voomout 10
21U4 EO The Hague
The Net>lerfands

British Embassy
The Hague

H.E. Mr Phillippe Couvreur
Registrar
Intemafional Court of Justice
Peace Palace
2517 KJ The Hague

10 September 2018

Dear Excellency

Legal Consequences of the Separation of the Chagos Archipelago from Mauritius In 1965 (Request by the United Nations General Assembly for an Advisory Opinion)

I have the honour to refer to the Registry's Note (No. 151036) dated 5 September, regarding the question asked by Judge Cani;ado Trindade during the above proceedings.

I have the further honour to present to the Court the written Response of the United Kingdom of Great Britain and Northern Ireland.

Accept, Sir, the assurances of my highest consideration.

Yours sincerely

Peter Wilson CMG
British Ambassador to the Netherlands

INTERNATIONAL COURT OF JUSTICE

COUR INTERNATIONALE DE JUSTICE

LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965 (REQUEST FOR ADVISORY OPINION)

EFFE!S JURIDIQUES DE LA SEPARATION DEL 'ARCH/PEL DESCHAGOS DE MAURICE EN 1965 (REQUETE POUR AVIS CONSULTAT!F)

Judl7f: Cancado Trindade: As recalled in paragraph (a) of the U.N. General Assembly's request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22.06.2017), the General Assembly refers to obligations enshrined info ***successive pertinent resolutions of its own, as fi·om 1960, namely: General Assembly resolutions !514(XV) of 14.12.[960, 2066(XX) of !6.Il.1965, 2232(XXI) of20.12.!966, and 2357(XXll) f !9.Il.1967.***

In !he course of the present oral advisory proceedings, references were often made to such resolulions by several delegations o.fparticipants.

In your understanding, whm are the legal consequences ensuing Jl"om the formation of customary international law, with the significant presence of opinio juris communis, *for ensuring compliance with Jhe obligations stated in those General Assembly resolutions?*

Response of the United Kingdom of Great Britain and Northern Ireland

L The UK's central contention remains that the Court should exercise its discretion so as not to give an Advisory Opinion in answer to the request put to it by the General Assembly further to its Resolution 711292, adopted on 22 June 2017. The UK's response to the present question is without prejudice to that position.

2. The question is understood to concern the relevance, if any, of four General Assembly resolutions in the present advisory proceedings. The United Kingdom has dealt with this matter at length in its written and oral statements[1].

3. In particular, the United Kingdom stated:
   a. General Assembly resolutions are, subject to very few exceptions, not binding under international law and only recommendatory in nature2, The Court itself has

[1] **StGB, paras. 8.27-8.54, 9.6-9.7; Co08, paras, 2.95, 3.21, 4,20-4.26, 4,35-4.43, 4.50; CR 2018/21; CR 2018/21, p. 27, para.** *5* **(Wordsworth); pp, 45-46, paras. 14-16; pp. 47-50, paras. 22-27; p. 52, para. 33 (Webb),**

urged "'all due caution" in examining the content and conditions of a resolution to ascertain whether there is a gradual evolution ol' ***opiniojurii.***

b. Resolution I514(XV) (1960): 111c negotiating records and explanations of vote reveal that there were divided views to its meaning that were not resolved by the time or its adoption[4]. The United Kingdom itself expressed concerns several times during the negotiations[5]. Nine States abstained, including colonial powers (Belgium, France, Portugal. Spain, United Kingdom. and United States). Even States that voted in favour expressed misgivings or emphasised that the resolution was aspirational[6]. When it came to negotiating the Friendly Relations Declaration in 1970, resolution 15)4 was considered and then deliberately omitted[7]. Resolution 1514 marked an important "stage" in the development of international law on self-determination[8], but it did not reflect States' acceptance of a customary obligation at that time.

c. Resolution 2066(XX) (1965): This resolution uses non-binding language, including when referring back to resolution 1514(XV) ("request[ed]" that the provisions of the resolution be observed ln relation to Mauritius). It contains no condemnation of the United Kingdom nor any statement that it acted in breach of binding international law[9]. It was adopted with 18 abstentions, including the United Kingdom.

d, Resolutions 2232(XXI) (1966) and 2357(XXJI) (1967): These were omnibus resolutions on 25 Territories expressing "deep concern", but not creating any binding legal obligations for Member States[10].

---

[1] StGB, paras, 8.32 and 8.67; CoGB, para. 4.20.
; StGB, para. 8.32; *Military and Paramilitary Activilies in and against Nicaragua (Nicaragua v. United States of fAmerica),* Merits, Judgment, ICJ Reports 1986, *p.* 14 at para. 188; Report of the Intematkmal Law Commission on its 70[m] Session, UN Doc, A/73/10 (31 August 2018). p, 14&, para. (6) of the commentary to draft oon<:lusion 12,
'StOB, paras. S.40 -l!,44; CoGB, paras, 4.20-4.23; CR 2018/21, p, 48, para. 24 (Webb).
[5] StGB, para, 8,45,
[6] UN Doc. A/PV.947 (Dec. 14, 1960), para. 60 (The Netherlands) (UN Dossier No. 74); UN Doc. AJPV.946 (Dec:. 14, 1960}, para, 12 (Sweden) (UN Dossier No. 73}; UN Doe. A/PV.94.5 (Dee. 13, 1960), pura. 18& (Austria) (UN Do.s..ier No, 72); ; CR 2018!..!l, p. 4&, para. 24 (Webb).
[7] StOB, paras. 8A? 8.48.
&Western Sahara, Advls&y Opinion, 1.C,J. Reports 1975. p, 12, at para. *56* (quoting *Legal Consequences of the Continued Presence ofSoutlt Africa In Namibia (South West Africa) nnJWithstandfng Security Council Resolution 276 (1970),* *Advisory* *Opinion, 1.CJ. Reports 1971,* p.16, at para. 52).
[9] StGB, paras. 8:.49,.8,54; CoGB, para. 4.50;
[10] StGB, para. 8.7.

4. Even if one or more of the four resolutions provided some evidence of an emerging *opinio juris,* that evidence is not of "the significant presence of *opinio juris communis".* It is, moreover, not supported by the extensive and virtually uniform State practice required for the formation of customary international law[11]. As the International Law Commission's Draft Conclusions on the Identification of Customary International Law provide, "A provision in a resolution adopted by an international organization ... may reflect a rule of customary international law if it is established that the provision corresponds to a *general practice* that is accepted as law *(opinio* jurfa/'.[12] Notably, the General Assembly passed no further resolutions regarding Mauritius and the Chagos Archipelago from 1967 to 2017.

5. The question also asks about the legal consequences for ensuring compliance with the (implied) "obligations stated in those General Assembly resolutions". The United Kingdom observes that the wording of this question ("stated") goes further than the Request in implying that resolutions generate binding obligations under customary international law. Questions (a) and (b) of the Request refer to "obligations reflected in General Assembly resolutions" (emphasis added).

6. In the United Kingdom's view, the General Assembly's Request in resolution 71/292 (2017) does not provide a legal basis for concluding that the four General Assembly resolutions cited in Question (a) "'reflected" customary international law at the time they were adopted (1960-1967). As the Court stated in the *Kosovo* Advisory Opinion, where a matter is capable of affecting the answer to the question posed, "[i]t would be incompatible with the proper exercise of the judicial function for the Court to treat that matter as having been determined by the General Assembly."[13]

7. The United Kingdom has explained in its written pleadings that this wording seems chiefly to be aimed at pointing the Court to what those who drafted the question

---

[11] CR2018/21, p. 48, para. 23 (Webb).

[12] Report of the International Law Commission on its 70th Session, UN Doc. A/73/10 (31 August 2018), p. 121, draft conclusion 12(3) (emphasis added). Paragraph (8) of the commentary (p 149) points out that "A provision of a resolution cannot be evidence of a rule of customary international law if practice is absent, different or inconsistent."

[13] ***Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010,*** p. 403, at para. 52.

(Mauritius) see as part of the applicable hiw[14]. In doing so, it incorrectly and inappropriately assumes that the content of obligations, if any, "reOected" in lhe named General Assembly resolutions are legally binding on States, includii1g the United Kingdom[15]. This is not the case because of their status as Assembly resolutions, their text, their context, and the circumstances of their adoption[16].

8. As the Court observed in the *Namibia* Advisory Opinion, resolution 1514 (XV) was a "further important stage" in the development of internationaJ law on self-determinution[17]; it was not the culmination of that evolution. To the extent that the language in these resolutions may reflect important steps in the development of customary international Jaw on self-determination, the resolutions do not demonstrate that it was binding customary international law in the period 1960-1%7.

9. If this approach is somehow wrong (it is not) and there were obligations under customary international law reflected in the resolutions in 1960-1967, no legal consequences would ensue in relation to the detachment of the Chagos Archipelago because Mauritius consented to the detachment and reaffirmed its consent on multiple occasions post independence[18],

10. If all the above were somehow wrong (it is not)$_1$ then the legal consequences would have to be based on the 1965 Agreement as Interpreted by the Arbitral Tribunal in its binding Award of 18 March 2015, and in this respect the United Kingdom respectfully refers to paragraph 9,20 of its Written Statement of 15 February 2018.

StGB, paras. 8.7, 9.7.

StGB, para. 9.7; see also cltes to pleadings in footnote 1 above.

{bid.

legal Consequences for States a/the Continued Presence of South Africa in Namibia (Sauth West Afric(l) Notwithstanding Security Council Resolution 176 (1970). Advisory Opinion, LCJ. Reparts 197/, p. 31, para. 52.

u StGB, paras 3.38-3.50; CoGB, paras. 2.86-2.96; CR2018!2I. p. 9, para, 18; p. *15,* para. 41; pp 21-4i, paras. 66-77 (Buckland); pp. 29 30, para, 8; p. 34, para. 15, p. 37, para. 22; p. 39, para. 27; p. 40, para. 30 (Wordswoll1h); p. 44, para. 8 (Webb); p. 54, para. 6; pp. 57-58, paras. 14-18 (Wood)

MAURITIUS

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

10 September 2018

Mr. Philippe Couvreur
Registrar
International Court of Justice (ICJ)
The Hague
Netherlands

Dear Sir,

I have the honour to refer to the Registry's Note Verbale dated 5 September 2018 transmitting the question put by Judge Cançado Trindade to all the participants to the oral proceedings concerning the request for an advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* and to forward to you the reply of the Republic of Mauritius to that question.

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

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

211 East 43rd Street • New York City, NY 10017 • Tel: (212) 949 0190 • Fax: (212) 697 3829 • E-mail: Mauritius@un.int

WRITTEN REPLY OF THE REPUBLIC OF MAURITIUS TO JUDGE CANÇADO TRINDADE'S QUESTION

"As recalled in paragraph *(a)* of the U.N. General Assembly's request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22.06.2017), the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514(XV) of 14.12.1960, 2066(XX) of 16.12.1965, 2232(XXI) of 20.12.1966, and 2357(XXII) of 19.12.1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.

In your understanding, what are 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 those General Assembly resolutions?"

1. Mauritius understands the question to be concerned with the meaning and effects of the obligations referred to in resolutions 1514(XV), 2066(XX), 2232(XXI), and 2357(XXII). As many States, including Mauritius, and the African Union demonstrated in their written and oral submissions:

    (i) the obligations expressed in those resolutions reflected obligations under customary international law, with the significant presence of *opinio juris comunis,* as at 1960, and thus as at 1965;

    (ii) the obligations were addressed to all States, to Members of the United Nations, to all administering powers and, in certain cases, to

the United Kingdom in particular;

(iii) the United Kingdom is bound by those obligations, whether as a State, a Member of the United Nations, or an administering power;

(iiii) because the Chagos Archipelago was detached from Mauritius in 1965 in violation of those obligations, the decolonisation of Mauritius was not and has not been lawfully completed, and the United Kingdom remains in breach of international law.

2. Resolution 1514(XV), which crystallised the customary international law on decolonisation, sets forth obligations for "all States", including Members of the United Nations and administering powers. Paragraph 7 provides that:

> "All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity."

3. The language is drafted in mandatory terms. The obligations are recognised to reflect obligations under customary law, and to have a peremptory and *erga omnes* character. The obligations include:

(i) The obligation (under paragraph 5 of resolution 1514) to take "[i]mmediate steps" 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 enable them to enjoy complete independence and freedom";

(ii) The obligation (under paragraph 6 of resolution 1514) not to dismember non-self-governing territories prior to their independence: "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"; and

(iii) The obligation under Article 73 of the United Nations Charter to regard the interests of the people of the non-self-governing territory as paramount, and exercise authority in sacred trust for their well-being, until independence is attained in accordance with the freely exercised will and desire of those people.

4. The legal obligations reflected in resolution 1514(XV) are reaffirmed in resolutions 2066(XX), 2232(XXI) and 2357(XXII).

5. Resolution 2066(XX) specifically addresses the decolonisation of Mauritius and the obligations of the United Kingdom. It "*[i]nvites* 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." The reference to resolution 1514(XV) – a resolution that sets out mandatory obligations – makes clear that compliance with resolution 2066(XX) is intended to be obligatory as a matter of international law.

6. Resolution 2232(XXI), concerning the decolonisation of certain non-self-governing territories, including Mauritius, "*[c]alls upon* the administering Powers to implement without delay the relevant resolutions of the General Assembly," including obligations set out in resolution 1514(XV) and resolution 2066(XX).

7. Similarly, resolution 2357(XXII), dealing with the decolonisation of non-self-governing territories, including Mauritius, "*[c]alls upon* the administering Powers to implement without delay the relevant resolutions of the General Assembly." These include resolutions 1514 (XV), 2066 (XX) and 2232 (XXI).

8. The breaches of the obligations set forth in these resolutions give rise to a number of legal consequences for the United Kingdom, as administering power, and for all other States and international organisations, including:

(i) The obligation of the administering power to cease forthwith its internationally wrongful conduct. This means that the administering power must immediately terminate its unlawful colonial administration of the Chagos Archipelago, return the Archipelago to Mauritius in order to restore Mauritius' territorial integrity, and allow Mauritius to exercise sovereignty over its entire territory.

(ii) The obligation of the administering power to cease to impair or interfere with Mauritius' exercise of its sovereignty over the Chagos Archipelago, including the implementation of Mauritius' desire to allow for the settlement or resettlement of the Mauritian people, including those of Chagossian origin, in the islands of the Archipelago.

(iii) During the period prior to withdrawal of the unlawful colonial administration, which must be as brief as practically possible, the obligation of the administering power to treat the interests of the people of Mauritius, including those of Chagossian origin, as paramount, and to conduct all of its activities in sacred trust for their well-being.

(iiii) In conformity with well-established rules of customary international law, as confirmed by the Court in its prior judgments and advisory opinions, the obligations for all other States and international organisations to not recognise the legitimacy of the existing colonial administration, either directly or indirectly, and not to aid or assist the United Kingdom in maintaining it, either directly or indirectly.

GUATEMALA

t,OIIIEIINO I)E IA I!EI'(Jnl.ICA DE
GUATEMALA
11\'ISTEHI(I IJE I\EI,\(:J< I ES EXTEIilt IHI:S
0111,\I:\II,\ JJE <I :1\TE\\E\I,\ ANTI
EL I!EI:-J(I J'il' I.< IS I':\iSES I_I\I(>S.(I H I I A\ I I]\i

393-18-01

Mr Registrar

On behalf of the Republic of Guatemala, it is an honour to address you within the context of the procedures of the request for an advisory opinion on the Legal consequences of the separation of the Chagos Archipelago in 1965 of Mauritius, and refer to the question of H.E. Judge Cmu;;ado Trinidade, namely:

> *"As recalled in paragraph (a) of the U.N. General Assembly's request for an Advisory Opinion of the lntemational Court of justice (General Assembly resolution* 711292 *of* 22.06.2017), *the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from* 1960, *namely: General Assembly resolutions* 1514(XV) *of* 14.12.1960, 2066 ***(XX)*** *of* 16.12.1965, 2232 ***(XXI)*** *of* 20.12.1966, *and* 2357 ***(XXII)*** *of* 19.12.1967.
>
> *In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.*
>
> *In your understanding, what are the legal consequences ensuing from the formation of custommy international law, with the significant presence* of opinio juris communis, *for ensuring compliance with the obligations stated in those General Assembly resolutions?"*

In that regard, the Republic of Guatemala would like firstly to thank the Court and Judge Ca111;ado Trinidade for the question and submits the following reply:

A. *The Republic of Guatemala would like to point out that it* is *its understanding, the formation of customaiy intemational law comprises not only opinion juris but also generalised practice.*

B. *At the same time, as con.finned by the Court and the Intemational Law Commission, the United Nations Resolutions do not create norms of Intemational CustomanJ Law, albeit thetJ may give evidence of the said.*

C. *Whilst certain norms may c1ystallize into customary intemational law* "instantly", *some othe'r go through longer processes (not necessarily* inveterata consuetudo) *during which, obligations may or may not be de'ivedf 'om the said norm. 11tat matter ought to be assessed on a case by case basis and rathe' carefully, particularly when practice* is *yet to be generalised*

HE
Mr Philippe Couvreur
Regish-m·
International Court oflust,ce
Peace Palace
The Hague, 11le Netherlands

Javastraat 44, 2585 AP, La Haya, Paises Bajos - Telefonos: +31 70 302 02 53 / +31 70 369 8589
'embpaisesbajos@minex.gob.gt

GOBIERNO DE LA REPUBLICA DE
GUATEMALA
MINISTERIO DE RELACIONES EXTERIORES
EMBAJADA DE GUATEMALA ANTE
EL REINO DE LOS PAÍSES BAJOS (HOLANDA)

D. *In the case of the referred United Nations Resolutions, they all derive from U.N. General Assembly Resolution 1514(XV) and the said, constituted back then a statement of what was happening in practice through the self-determination-driven process of decolonization the world witnessed from 1950's and onwards. As such, Resolution 1514 cannot be construed as progressive development of international law, but a codification resolution if anything.*

E. *With regards to Paragraph 6 of Resolution 1514(XV) the Republic of Guatemala has clarified its position abundantly both in its written observations as in its intervention during the oral proceedings of the Request for an Advisory Opinion, as it did during the* Western Sahara Opinion *too.*

F. *The General Assembly Resolutions 2066 (XX), 2232(XXI) and 2357 (XXII) utilise language sufficiently clear in their operative paragraphs 2 and 4, as to the obligations they refer to, the contraventions they denounce, and the level of compliance the General Assembly requested from the Administering Powers.*

G. *The Republic of Guatemala reserves its position on any question concerning the substance of the principles set out in these resolutions, as well as its right to further expound on the above on the basis of the replies filed by other participants.*

The Republic of Guatemala remains at the Court's disposal for any further matters related to the Request for an Advisory Opinion at hand.

I take this opportunity to renew to you Mr Registrar, the assurances of the Republic of Guatemala's and my own assurances of our highest esteem and consideration.

The Hague, Monday 10th of September, 2018

Lesther Antonio Ortega Lemus
Co Representative

Javastraat 44, 2585 AP, La Haya, Países Bajos - Teléfonos: +31 70 302 02 53 / +31 70 369 8589
embpaisesbajos@minex.gob.gt

UNITED STATES OF AMERICA

Embassy of the United States of America
Office of the Legal Counselor
John Adams Park 1
2244 BZ Wassenaar, the Netherlands

Telephone: +31 (070) 310 2373
https://nl.usembassy.gov

September 10, 2018

Sir,

With reference to the question put to the States participating in the oral proceedings concerning the request for an advisory opinion on the Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 by Judge Cançado Trindade at the end of the public sitting of September 5, 2018, I have the honor to forward to you the written reply of the United States of America.

Accept, Sir, the assurances of my highest consideration.

Paul Dean
Legal Counselor
U.S. Embassy, The Hague

Enclosure:
As stated.

Mr. Philippe Couvreur,
Registrar,
International Court of Justice,
Peace Palace,
The Hague

Question put by Judge Cançado Trindade:

My question is addressed to all delegations of participants in these oral advisory proceedings.

As recalled in paragraph *(a)* of the UN General Assembly's Request for an advisory opinion of the International Court of Justice, General Assembly resolution 71/292 of 22 June 2017, the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: 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.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of Participants.

In your understanding, what are 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 those General Assembly resolutions?"

Thank you, Mr. President.

Written reply of the United States of America:

Question (a) of the U.N. General Assembly's request for an advisory opinion referred to "obligations reflected in" a number of General Assembly resolutions.[1] However, as framed, Question (a) improperly seeks to prejudge the legal answer.[2] It does so by suggesting that the General Assembly resolutions referenced therein reflected international legal obligations binding on the United Kingdom that would have prohibited it from establishing the British Indian Ocean Territory (BIOT). As the Court explained in *Kosovo*, where a matter is capable of affecting the answer to the question posed, "[i]t would be incompatible with the proper exercise of the judicial function for the Court to treat that matter as having been determined by the General Assembly."[3] The Court must therefore reach its own determination as to whether the resolutions cited in the request for an advisory opinion reflected international legal obligations.

Under the terms of the U.N. Charter, General Assembly resolutions—with limited exceptions not applicable here—are not themselves legally binding.[4] The fact that the General Assembly cited particular resolutions in the question referred to the Court does not alter the resolutions' nonbinding nature. Nor do General Assembly resolutions themselves create customary international law. General Assembly resolutions may provide evidence of a rule of customary international law if they reflect an *opinio juris* among States that existed at the

---

[1] U.N.G.A. Res. 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 (June 22, 2017).

[2] *See* United States Written Statement, para. 4.14.

[3] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, p. 403, para. 52.

[4] United States Written Statement, para. 4.14, n. 98.

relevant time,[5] provided such *opinio juris* was accompanied by "extensive and virtually uniform" state practice.[6] Only where these two elements are satisfied can the Court identify a rule of customary international law.[7]

As explained in the United States written submissions and oral presentation, there was no *opinio juris* at the time Resolution 1514 was adopted, or through the end of the 1960s, to support the conclusion that customary international law prohibited the United Kingdom from establishing the BIOT.[8] This lack of *opinio juris*, by itself, compels the conclusion that the General Assembly resolutions cited did not reflect international legal obligations. Moreover, here, the other prerequisite for a rule of customary international law was also missing: there was not extensive and virtually uniform State practice during the relevant period.[9]

Thus, the resolutions cited in the questions were not themselves binding, nor did they reflect relevant customary international law existing at the time the BIOT was established or when Mauritius became independent, and could not give rise to legal consequences.

---

[5] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 70. *See* United States Written Statement, para. 4.28; United States Written Comments, para. 3.14.

[6] *North Sea Continental Shelf, Judgment, I.C.J. Reports 1969*, p. 3, para. 77.

[7] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), I C.J. Reports 2012*, p. 99, para. 55.

[8] *See* United States Written Statement, paras. 4.32-4.64.

[9] *See* United States Written Statement, paras. 4.65-4.72.

ARGENTINA

Embassy
of the
Argentine Republic

NOTE OI 54/2018

The Hague, September 10th 2018.

Dear Registrar,

I have the honour to refer to the Note of 5 September 2018, concerning the question put to all the participants to the oral proceedings by Judge Cançado Trindade within the framework of the request for an advisory opinion submitted to the International Court of Justice by the General Assembly of United Nations on the question of the *"Legal Consequences of the separation of Chagos from Mauritius in 1965"*.

In this regard, and on behalf of the Government of the Argentine Republic, I have the honour to enclose the written reply of the Argentine Republic.

Please accept the assurance of my highest consideration.

Nicolás F. VIDAL
Minister

REGISTRAR OF THE INTERNATIONAL COURT OF JUSTICE
MR. PHILIPPE COUVREUR

Ministerio de Relaciones Exteriores y Culto
de la República Argentina

Buenos Aires, 10 of september 2018

Excellency,

I have the honour to refer to the question put by Judge Cançado Trindade to all the participants to the oral proceedings concerning the request for an advisory opinion submitted to the International Court of Justice by the General Assembly of the United Nations on the question of the "Legal Consequences of the separation of Chagos from Mauritius in 1965".

In this regard, an on behalf of the Government of the Argentine Republic I hereby submit a written reply to the above mentioned question.

I avail myself of this opportunity to renew to you the assurances of my highest consideration.

Mario Oyarzábal
Legal Adviser

Mr. Phillipe Covreur
Registrar
International Court of Justice
Peace Palace
THE HAGUE

LEGAL CONSEQUENCES OF
THE SEPARATION OF CHAGOS FROM MAURITIUS IN 1965
(REQUEST FOR ADVISORY OPINION)

Answer of the Argentine Republic to the question put by Judge Cançado Trindade

Question by Judge Cançado Trindade:

As recalled in paragraph (a) of the UN General Assembly's Request for an advisory opinion of the International Court of Justice, General Assembly resolution71/292 of 22June 2017, the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20December 1966, and 2357 (XXII) of 19 December 1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of Participants.

In your understanding, what are 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 those General Assembly resolutions?*

Answer by Argentina

1. The question relates to the obligations stated in General Assembly resolutions 1514 (XV), 2066 (XX), 2232 (XXI) and 2357 (XXII). These resolutions are the expression of the *opinio iuris communis* and also interpret obligations stemming from both conventional law (the Charter of the United Nations in particular) and customary law. Resolution 1514 (XV) is of general character and interprets and applies fundamental principles of International Law relating to colonialism. The three other General Assembly resolutions refer to the particular situation of Mauritius (2066 (XX), 2232 (XXI) and 2357 (XXII)).

2. The response by Argentina will start by identifying those obligations in each of the abovementioned resolutions (**A**). It will continue by outlining which are the legal consequences envisaged in customary law stemming from these obligations, including the conduct that the international legal order requires for ensuring compliance (**B**).

A. Obligations enshrined in resolutions 1514 (XV), 2066(XX), 2232 (XXI) and 2357 (XXII)

3. We start with *resolution 1514 (XV)*. Its paragraph 1 considers colonialism as contrary to the United Nations Charter. It follows, as a consequence, the obligation to put an end to colonialism. Paragraph 2 defines the right of peoples to self-determination. It follows as a consequence that those human communities that are recognized as "peoples" and are then holder of this right determine their political status and freely pursue their economic, social and cultural development. As a result, States have the obligation to respect this right.

Paragraph 4 reflects the obligation to cease all armed actions or repressive measures against dependent peoples, in order to enable them to exercise peacefully and freely their right to complete independence, and to respect the integrity of their national territory. Paragraph 5 sets out the obligation to take immediate steps to transfer all powers to the peoples of territories that have not yet attained independence, without any conditions or reservations. Paragraph 6, by reaffirming 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 United Nations Charter, states the obligation to respect the territorial integrity of any country, which includes both States and dependent peoples victims of colonialism. Paragraph 7 also reaffirms the obligation to observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the Declaration containing in resolution 1514 (XV). It is to be noticed that the Universal Declaration of Human Rights was adopted by another General Assembly resolution having declaratory effect, also with abstentions, which did not hinder the Court from referring to it without any further analysis[1].

4. *Resolution 2066 (XX)* reaffirmed the right of Mauritius to freedom and independence and "invited" the United Kingdom to take effective measures for the immediate and full implementation of resolution 1514 (XV), to take no action which would dismember the territory and Mauritius and violate its territorial integrity, and to report to the Decolonization Committee on the implementation of the present resolution. Clearly, these "invitations" are to respect existing substantial and procedural obligations, not a matter left to the discretion of the administering Power. The resolution also requested the Decolonization Committee to keep this question under review and to report to the General Assembly.

5. *Resolutions 2232 (XXI) and 2357 (XXII)* reaffirmed the right of peoples to self-determination and independence, reiterated that any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial territories and the installation of military bases is incompatible with the Charter and with resolution 1514 (XV), and called upon the administering Powers to implement without delay the relevant General Assembly resolutions.

B. Legal Consequences for ensuring compliance with the abovementioned obligations

6. The legal consequences arising from the obligations reflected in these resolutions are: **(a)** those established by customary International Law in the field of responsibility of States, **(b)** those stemming from the obligation to settle international disputes through peaceful

[1] "Wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights" *United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports 1980,* p. 42, para. 91

means, (c) those resulting from the practice of the United Nations in the field of decolonization and (**d**) those incumbent to the United Nations themselves.

7. (**a**) By virtue of the law of State responsibility, administering Powers in breach of the obligations referred to in the resolutions enunciated by Judge Cançado Trindade in his question must cease their illegal conduct, restore the territorial integrity of the peoples concerned, allow the peoples entitled to self-determination to exercise their right, and make appropriate reparation for their illegal conduct. Given the nature of these obligations, all States are under the obligation not to recognize the illegal situation resulting from those breaches and to refrain from rendering any aid or assistance that would help maintain the colonial situation;

8. (**b**) By virtue of the customary (as well as conventional) obligation to settle international disputes through peaceful means, the administering Power has the obligation to negotiate with the subject concerned (in this case with the Republic of Mauritius) the completion of its decolonization without conditions, whether of timing or otherwise. This obligation is reinforced by "the duty (...) [t]o bring a speedy end to colonialism", as established by the Declarations adopted by General Assembly resolutions 1514 (XV), 2625 (XXV) and as stressed by the Court in its 1975 Advisory Opinion.[2]

9. (**c**) By virtue of the powers of the United Nations in the field of decolonization, there are obligations of substantial and of procedural nature. States have the obligation not to take unilateral measures that may affect the process of decolonization, such as dismembering the territory, exploiting its natural resources, or using its territory for military purposes. States must also respect the competences of the United Nations in the field of decolonization, exercised through the General Assembly and its Decolonization Committee. In particular, State conduct must be in line with the resolutions taken by the said organs regarding the manner to put an end to the colonial situation, without conditions and without delay.

10. (**d**) Given the specific functions and powers of the United Nations, and especially of the General Assembly, this organ but also the Security Council, should consider what further action is required to bring to an end illegal situations resulting from the breaches of the different obligations included in the general obligation to put an end, unconditionally and without delay, to colonialism in all its forms and manifestations and in all pending cases.

MARIO OYARZÁBAL
CONSEJERO LEGAL

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