INTERNATIONAL COURT OF JUSTICE

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Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965

The Court finds that the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence and that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible

THE HAGUE, 25 February 2019. The International Court of Justice (ICJ), the principal judicial organ of the United Nations, has today given its Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. In that Opinion, 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;

(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;

(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;

(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.

Reasoning of the Court

I. History of the proceedings

The Court begins by recalling 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 on 22 June 2017. It further recalls that those 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. JURISDICTION AND DISCRETION

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

The Court notes that the General Assembly is competent, by virtue of Article 96, paragraph 1, of the Charter, to ask the Court for an advisory opinion on any legal question. It considers that a request for an advisory opinion to examine a situation by reference to international law, as is the case here, falls into this category. It concludes from this 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 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 it to refuse its opinion in response to a request. The Court notes in this regard that some participants in the present proceedings have argued that such reasons exist. Among the reasons raised 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 United Nations Convention on the Law of the Sea 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. After examining these arguments, the Court reaches the conclusion that there are no compelling reasons for it to decline to give the opinion requested by the General Assembly.

III. THE FACTUAL CONTEXT OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS

Before addressing the questions submitted to it by the General Assembly, 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. It notes in this regard 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.

During the talks between the United Kingdom and the United States, which were held from February 1964 onwards, the United States expressed an interest in establishing a military communication facility on Diego Garcia, the principal island of the Chagos Archipelago. The discussions held in 1965 between the Government of the United Kingdom and the representatives of the colony of Mauritius, for their part, concerned the question of the detachment of the Chagos Archipelago from Mauritius. They led to the conclusion, on 23 September 1965, of the Lancaster House agreement, by virtue of which the representatives of Mauritius agreed in principle to the detachment in exchange for, among other things, a sum of £3 million and the return of the archipelago to Mauritius when the need for the military facilities on the islands disappeared. On 8 November 1965, a colony, known as the British Indian Ocean Territory ("BIOT"), and consisting inter alia of the Chagos Archipelago, detached from Mauritius, was established by the United Kingdom. In 1966, an agreement was concluded between the United States and the United Kingdom for the establishment of a military base by the United States on 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. On 16 April 1971, the BIOT Commissioner enacted an Immigration Ordinance, which made it unlawful for any person to enter or remain in the Chagos Archipelago without a permit. 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. That agreement also required Mauritius to procure from each member of the Ilois community in Mauritius a signed renunciation of the claims.

Two feasibility studies were conducted by the United Kingdom to determine whether a resettlement of the islanders was possible and, if so, under what terms. It was concluded that although resettlement was possible, it would pose significant challenges. 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.

IV. THE QUESTIONS PUT TO THE COURT BY THE GENERAL ASSEMBLY

The Court considers that there is no need for it to reformulate the questions submitted to it for an advisory opinion in these proceedings. Furthermore, there is no need for it to interpret those questions restrictively.

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

In order to pronounce on whether the process of decolonization of Mauritius was lawfully completed having regard to international law, the Court explains that 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 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. However, 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 entitled "Declaration on the Granting of Independence to Colonial Countries and Peoples". Indeed, State practice and opinio juris are consolidated and confirmed gradually over time.

The Court turns next to the nature, content and scope of the right to self-determination applicable to the process of decolonization of Mauritius. It begins by recalling that, 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.

The Court notes that the adoption of resolution 1514 (XV) represents a defining moment in the consolidation of State practice on decolonization. There is, in its view, a clear relationship between this resolution and the process of decolonization following its adoption. The Court adds 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". The Court further observes that 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 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. 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 then examines the functions of the General Assembly during the process of decolonization. It notes that 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 observes that it is in this context that it 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. The Court points out in this regard that in resolution 2066 (XX) of 16 December 1965, entitled "Question of Mauritius", the General Assembly invites the United Kingdom "to take no action which would dismember the Territory of Mauritius and violate its territorial integrity". In resolutions 2232 (XXI) and 2357 (XXII), 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. Moreover, it has been the Assembly's consistent practice to call upon administering Powers to respect the territorial integrity of non-self-governing territories.

The Court turns next to the question of whether the detachment of the Chagos Archipelago from Mauritius was carried out in accordance with international law. After recalling the circumstances in which the colony of Mauritius agreed in principle to such a detachment, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned. It takes the view 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 then examines the consequences, under international law, arising from the United Kingdom's continued administration of the Chagos Archipelago (Question (b)). It is of the opinion that this continued administration constitutes a wrongful act entailing the international responsibility of that State. It concludes from this 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. 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.

Composition of the Court

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.

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 CANÇADO TRINDADE appends a separate opinion to the Advisory Opinion of the Court; Judges CANÇADO 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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A summary of the Advisory Opinion appears in the document entitled "Summary No. 2019/2", to which summaries of the declarations and opinions are annexed. This press release, the summary and the full text of the Advisory Opinion are available on the Court's website (www.icj-cij.org), under the heading "Cases" (click on "Advisory proceedings").

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The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the "World Court", it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Court (ICC, the only permanent international criminal court, which was established by treaty and does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an international judicial body with an independent legal personality, established by the United Nations Security Council upon the request of the Lebanese Government and composed of Lebanese and international judges), the International Residual Mechanism for Criminal Tribunals (IRMCT, mandated to take over residual functions from the International Criminal Tribunal for the former Yugoslavia and from the International Criminal Tribunal for Rwanda), the Kosovo Specialist Chambers and Specialist Prosecutor's Office (an ad hoc judicial institution which has its seat in The Hague), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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