

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

Written Comments of the Republic of Guatemala

1. In pursuance of the Court's Order dated 17th January 2018, the Republic of Guatemala submits the following written comments in the proceedings related to the Request for an Advisory Opinion concerning the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965.
2. As per Circular Letter 150097 dated March 5th, 2018, besides the Republic of Guatemala, thirty-one (31) other parties submitted written Statements.
3. The Republic of Guatemala therefore proceeds to furnish its written comments in a manner most respectful to procedural efficiency.

I. Jurisdiction, Admissibility, Propriety

4. The Republic of Guatemala, after carefully scrutinising each written statement, found no reasons to further submit arguments in relation to jurisdiction and admissibility of the Request for an Advisory Opinion, in addition to those set forth in its written statement submitted to the Court on 1st March 2018.
5. Whilst many of the arguments presented by other intervening parties do address matters of jurisdiction, admissibility and propriety, and several of the written statements advocate particularly for the Court to exercise its discretion not to respond¹ to the Request of the United Nations General Assembly, the Republic of Guatemala affirms that, as it was expressed in its written statement, the Court will find itself satisfied with regards to the conditions to be met in order to find *it has jurisdiction to answer the Request for an Advisory Opinion* on the basis of Resolution 71/292. At the same time, and also based on the previously submitted statement points on the matter of discretion, the Court will find *no compelling reasons to exercise its discretion not to render the requested Advisory Opinion*, and thus maintain its unbroken record of fulfilling its advisory role as Principal Judicial Organ of the United Nations.

¹ E.g. written statements by United Kingdom of Great Britain and Northern Ireland, Israel, United States of America, Australia, Chile, Republic of Korea...

II. Guatemala and the Right to Self-determination

6. In its written statement of 1st March 2018, the Republic of Guatemala made it clear it would only make general and preliminary remarks on the substance and matters underlying the two questions that the Request comprises, reserving its right to expound on these were it felt the need to do so, and submit further information at the stage of written comments. Consequently, the Republic of Guatemala submits the following information to the Court at the understanding it is relevant only to the present Request for an Advisory Opinion.
7. Since 1945, Guatemala has had an active stance when it comes to the right of self-determination. Due to the sensitivities present since its emancipation from several centuries of colonial domination, Guatemala has exercised due diligence throughout the emergence and evolution of the said right. Such historical record, places Guatemala – in its own opinion – in a privileged position when it comes to discussing the situation at hand.
8. Being a founding member of the United Nations and active participant of the negotiations of the United Nations Charter in the Conference in San Francisco, Guatemala contributed to the emergence of the right to self-determination within the system of the United Nations. Such right – as expressed in Articles 1(2) and 55 – would become one of the pillars of the process of decolonization.
9. It has been admitted that before the adoption of the Charter of the United Nations self-determination was not considered a fully accepted rule of law, it was characterised as “a principle of justice and liberty, expressed by a vague and general formula”², not to be considered... as [a] positive rule of the Law of Nations”³ and was even denied a full legal nature by early writings of an Ex-President of the International Court of Justice, calling it “essentially a political principle”⁴. However, from the above-mentioned adoption of the United Nations Charter, self-determination emerged and developed into a rule of international law.
10. Back in 1945 Guatemala was particularly active in the negotiations taking place in the Commission II, then dealing with the Trusteeship System. Since then, Guatemala has maintained a sharp attention with regards to the scope of the right to self-determination, as its interventions so evidence⁵.

² Council Resolution of June 24th, 1921. 13th Session. League of Nations

³ Cassese, Antonio. *Self-determination of Peoples, a legal reappraisal*. Cambridge University Press, P.28

⁴ Jennings, R.Y. *The Acquisition of Territory in International Law*. Manchester University Press. P.96

⁵ Documents of the United Nations Conference on International Organization, San Francisco 1945... Vol.X P.477-499

11. Several years forward, in 1960, Guatemala contributed once more and supported the adoption of Resolution 1514(XV). It voted in favour of the Resolution together with 88 other States. During the discussions preceding such vote, Guatemala reaffirmed its 1945 position and put forward an amendment to Paragraph 6 of the draft resolution⁶.
12. Guatemala received full reassurances from the sponsors of the draft resolution, that the underlying concepts of Guatemala's proposal were already fully covered by the existing paragraph 6. With the said reassurances on record⁷, Guatemala withdrew its proposed amendment and voted in favour of the Resolution⁸. The said assurances withstood the test of time, to the extent that several of the States that influenced Guatemala to abandon the proposed amendment, later in history resorted to its interpretation when re-claiming territories under colonial domination, re-incorporated those into their territory, and thus restored their territorial integrity.
13. As expressed in its written submissions, Guatemala made such position evident yet again during the International Court of Justice's *Western Sahara* Advisory Opinion by means of a submission that reiterated its original interpretation of Paragraph 6 of the Colonial Declaration⁹.
14. With its actions, Guatemala persistently tried to avoid the *weaponization* of the right to self-determination. Such abusive use has been discussed by publicists, in cases of external or internal destabilization of countries and governments, fragmentation of States, artificial secessions, and barring the recovery of territories unlawfully submitted to colonialism by imperialist countries under the excuse of self-determination outcomes. Guatemala asserted that territorial integrity of States could not be jeopardized under ill intended exercises of self-determination: "*The principle of national self-determination has been invoked to destroy the sovereign integrity of states and even now threatens many of them*"¹⁰.
15. The case of the Chagos Archipelago falls far from any of the above.

⁶ United Nations General Assembly Document A/L.325

⁷ United Nations General Assembly Document A/PV.945 p.1271

⁸ Ibid. p.1273-1274

⁹ *Western Sahara* Advisory Opinion, Written Statement of the Government of Guatemala, dated 11 March 1975

¹⁰ Trinidad, Jamie. *Self-Determination in Disputed Colonial Territories*. Cambridge University Press 2018. p.11

III. Self-Determination and the Chagos Archipelago

16. The record of Chagos Archipelago's history¹¹ leaves no room for doubt regarding Mauritius' entitlement to the full extent of the territory it comprised whilst remaining a colony: From uninhabited territory, to Dutch presence, passing to French colonization, thereafter to British colonization and finally to a self-determination-driven independence... with a caveat: the amputation of the Chagos Archipelago.
17. Until its detachment, the Chagos Archipelago was never viewed as a separate unit, nor administered as such in practice. Therefore, allegations that by being called a "dependency" the Archipelago acquired a distinct existence or constituted a separate entity¹², should be discarded.
18. By the time the world witnessed the crystallization of the right of self-determination, there were no doubts whatsoever with respect of the extension of the territory of Mauritius – which of course included the Chagos Archipelago – nor were there any doubts of its treatment as a single unit. No other State disputed such facts or made claims opposed to such affirmation.
19. It is then (by the emergence and crystallization of the right of self-determination), and in that extension (the whole of Mauritius' colonial extension), that Mauritius should have comprised a self-determination unit, Chagos Archipelago included, and any dismemberment from it, an act against the process of decolonization. And so it was.
20. Resolution 2066 (XX) makes it clear that the excision of the Chagos Archipelago was done against Resolution 1514 (XV) and the mandated process of decolonization: There were no valid justifications, entitlements, pending litigations or disputes that could explain the separation of the Chagos Archipelago other than the negation of the right of Mauritius to self-determination in its full expression.
21. British documents of the time – prior to the excision, during the excision, after the excision – portray candidly the understanding of the colonial ruler of its own actions and the sharp contrast between those and the standing rules regarding decolonization. Qualifications are superfluous when the documents speak so clear and bluntly about the actions, motivations and goals.

¹¹ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, written statement by Mauritius

¹² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, written statement by United Kingdom of Great Britain and Northern Ireland. P.2.12-2.29

22. The Chagos Archipelago constituted – and constitutes – part of Mauritius territory, the Chagossians constituted – and constitute – part of Mauritius *peoples*. The forceful removal of the Chagossians from the Archipelago makes it more evident that their well-being – as required by Article 73 of the Charter of the United Nations – was not considered, nor was the *free and genuine expression of the will of the peoples*¹³ (Chagossian, Mauritian) ascertained or respected.

IV. The Questions

23. To fulfil its advisory function, without stepping into its adjudicative role, the Court must address the matters presented to it in the questions, from the perspective of providing guidance and assist the General Assembly in the discharge of its own work.
24. Accordingly, what the General Assembly requires guidance on – with regards to the first question – narrowly, is if, in the case of Mauritius, the decolonization process mandated by Resolution 1514 (XV) and the successive relevant Resolutions and applicable principles and norms, has (lawfully) concluded or not, taking into consideration the separation of the Chagos Archipelago in 1965.
25. As stated in its written statement, the Republic of Guatemala is convinced that the Court will find a negative answer to the question at hand, based on the assessment of the relevant principles, norms, instruments and facts, chiefly among the latter the continued administration of the Chagos Archipelago by the United Kingdom. Before the detachment of Chagos, and until then, the Archipelago (territory and population) was always within the domain of the colonial entity of Mauritius.
26. Given the high repute the authors of the Separate and Dissenting Opinions of the Chagos Arbitration, Guatemala respectfully requests the Court to lend its attention to what was expressed there in terms of the detachment of the Chagos Archipelago and the forceful removal of the Chagossians¹⁴.
27. As to the second question, Guatemala would like to refer to its written statement in terms that the Court finds the continued administration of the Chagos Archipelago by the United Kingdom as a wrongful act which has subsisted since its excision from Mauritius and continues so until today and until finally the United Kingdom restitutes the Chagos Archipelago to Mauritius.

¹³ *Western Sahara* Advisory Opinion, ICJ. Para.55

¹⁴ *Chagos Marine Protected Area Arbitration* (Mauritius v. United Kingdom) Permanent Court of Arbitration. Judges Kateka and Wolfrum, Separate and Dissenting Opinion, <https://pcacases.com/web/sendAttach/1570>

28. The Court will surely find further consequences under international law derive from establishing a negative answer to the first question. The Court can of course expound on these, whilst keeping in mind its answer is also directed to the General Assembly, as guidance in order to assist it in the discharge of its own work.
29. For the above reasons, Guatemala respectfully insists in submitting to the International Court of Justice that:
- a. The Court should find it has jurisdiction to entertain the request for an Advisory Opinion contained in the United Nations General Assembly Resolution 71/292
 - b. The Court should find no compelling reasons to exercise its discretion not to render the requested Advisory Opinion
 - c. The court should find that the decolonization of Mauritius has not been lawfully completed in 1968 due to the excision of the Chagos Archipelago and its continued administration by the United Kingdom
 - d. The court should find that the continued administration of the Chagos Archipelago by the United Kingdom constitutes a continued wrongful act and that it ought to end by means of immediate restitution of the Chagos Archipelago to Mauritius, restoring its territorial integrity.

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