

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)



**WRITTEN COMMENTS
OF THE REPUBLIC OF NICARAGUA**

15 May 2018

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I. Introduction

1. On 01 March 2018 the Republic of Nicaragua submitted its written statement in the Advisory Opinion concerning the *Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*. In total, 31 States and the African Union submitted written statements. In accordance with the Order of the Court dated 17 January 2018, Nicaragua submits its written comments on the submitted written statements, within the time limit so fixed by the Court.

2. The Republic of Nicaragua concluded in its written statement that the Court has jurisdiction to give the advisory opinion in response to the questions submitted by the General Assembly ('UNGA') under Resolution 71/292, and that there are no compelling reasons for the Court to decline to exercise its jurisdiction.¹

3. As stated in the written statement, Nicaragua considers that the United Kingdom ('UK') violated the territorial integrity of Mauritius by detaching from it the Chagos Archipelago in 1965 in order to create the so-called 'British Indian Ocean Territory' ('BIOT'). By its actions, the UK violated its obligations under international law, particularly the principle of territorial integrity and the right to self-determination. Consequently, the process of decolonization of Mauritius has not been lawfully completed to this day and the continued administration of the Chagos Archipelago by the UK constitutes a continuing wrongful act that must be brought to an end immediately.

II. The Right to Self-Determination prior 1968

4. Of the 32 written statements, only the United Kingdom and the United States of America claim that the principle of self-determination did not have a legally binding character in the 1960s² and that no legally binding rules of international law existed in 1965 or 1968 that would have prohibited the establishment of the BIOT and the detachment of the Chagos Archipelago from Mauritius.³ Additionally, the UK stated in its written statement, that the right to territorial integrity as expressed in paragraph 6 of the General Assembly

¹ See paragraph 05.

² USA Written Statement, para. 4.73. UK Written Statement para. 8.24,8.64-8.77.

³ USA Written Statement, para. 4.26 - 4.27, and 4.73. UK Written Statement, para 8.24

Resolution 1514 (XV)⁴ was not part of the legal right to self-determination that existed in 1965/68, nor was it part of customary international law during 1965/1968⁵. By reaching this conclusion, the UK considers that there were no binding obligations that could have been applied to the situation in the Chagos Archipelago in 1965/1968⁶ and, consequently, maintains that the decolonization of Mauritius was lawfully completed in 1968.

5. Nicaragua does not share the position indicated in the previous paragraph. The right to self-determination under customary international law is reflected in the Charter of the United Nations ('UN Charter'), as well as in many Resolutions of the General Assembly of the UN ('UNGA'), the jurisprudence of the International Court of Justice ('ICJ') and in State practice. Article 1 (2) of the UN Charter, signed on 26 June 1945, recognizes as one of its main purposes the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples⁷. Article 55 of the Charter also refers the principle of equal rights and self-determination of peoples, as the basis for the creation of conditions of stability and well-being, which are necessary for peaceful and friendly relations among nations.

6. The principle of self-determination was recognized by the UNGA as a 'fundamental *human right*' in Resolution 421 D (V) of 4 December 1950⁸. In Resolution 545 (VI) of 5 February 1952 the UNGA;

'Decide(d) to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations.

⁴ UK Written Statement, para. 8.27-8.30. Paragraph 6 of Resolution 1514 (XV) reads as follow: '6. 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.'

⁵ UK Written Statement, para. 8.31-8.61

⁶ UK Written Statement, para. 8.62-8.77.

⁷ UN Charter, Article 1 (2) and Article 55. See also THE CHARTER OF THE UNITED NATIONS: A COMMENTARY (Bruno Simma et al.eds., 2012)., pp. 315-316 ("Subsequent development in the UN, in particular the practice of decolonisation, transformed the old (political) principle of self-determination into a collective right – a trend which became more or less irrebuttable with the codification of the right of self-determination in the two UN Human Rights Covenants of 1966. ...Although Art.1(2)... cannot define in detail the content and scope of a right to self-determination, it sets forth beyond dispute that it forms part of the law of the Charter and is binding upon all members of the UN.")

⁸ U.N. General Assembly, 6th Session, Inclusion in the International Covenant or Covenants on Human Rights of an article relating to the right of peoples to self-determination, U.N. Doc. A/RES/545(VI), 5 February, 1952.

This article shall be drafted in the following terms: “All peoples shall have the right to self-determination”, and shall stipulate that all States, including those having responsibility for the administration of Non-Self-Governing Territories, should promote the realization of that right, in conformity with the Purpose and Principle of the United Nations, and that States having responsibility for the administration of Non-Self-Governing Territories should promote the realization of that right in relation to the peoples of such Territories.’

The Resolution clearly indicates that it is not creating a right but ‘reaffirming’ a right that was already consigned in the Charter.

7. The General Assembly continued through the 50s⁹ and 60s¹⁰ to adopt Resolutions referring to the principle of self-determination as a legal right. Resolution 1514 (XV) is particularly important. The title of the Resolution is ‘*Declaration on the Granting of Independence to Colonial Countries and Peoples*’. The text of the Resolution clearly denotes that the UNGA was proceeding on the basis that the right to self-determination and its application to non-self-governing territories, already existed and was part of customary international law. The Resolution acknowledged that ‘[a]ll people have the *right* to self-determination’ and warned that ‘[a]ny 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.’¹¹ The Resolution continues by stating that ‘[t]he subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation’. Clearly, Resolution 1514 (XV) reflected ‘an existing rule of customary law as far as a right of self-determination for colonial countries and peoples is concerned.’¹²

⁹ See also Resolution 738 (VIII), A/RES/837 (IX), 14 December 1954, para.1. ; Resolution 1188 (XII), A/RES/1188 (XII), 11 December 1957, para.1 (a).

¹⁰ The right to self-determination was recalled in article 1 of the 1966 Covenant on Civil and Political rights as well as in Article 1 of the 1966 Covenant on Economic, social and Cultural rights. Both Covenants recognize the principle as a ‘right’ that belongs to ‘all people’.

¹¹ *Italics* added.

¹² D. Raic, *Statehood and the Law of Self-Determination* (2002), p. 217 (Annex 145 to Mauritius Written Statement).

8. It is clear that the right to self-determination was a legally binding principle of International Law recognized by the international community in the Charter of the UN and reaffirmed in numerous resolutions by the UNGA.

9. Therefore, the right to self-determination was a well-recognized principle of international law at the time the UK detached the Chagos Archipelago from Mauritius in 1965. It is the principle of territorial integrity and the right to self-determination which required the UK, as the administering power, to have granted independence to Mauritius as a whole territorial unit. The fact that so much argument has been addressed by these States to the question of the origin of, and the legal effects of, the principle of self-determination evinces that the question of the right to self-determination is the paramount question before the Court and that it is simply not a question of a bilateral dispute as addressed below.

III. The Question before the Court is not a bilateral dispute

10. The UK considers that the Request for the Advisory Opinion concerns a longstanding bilateral dispute with Mauritius. The UK stressed that it does not and will not consent to the bilateral dispute being submitted for judicial settlement, and that ‘the giving of an advisory opinion would not be consistent with judicial propriety, including because it would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent.’¹³

11. It is not the first time the Court faces a similar situation. For example, in the *Wall* case, Israel contended that ‘the subject-matter of the question posed by the General Assembly [was] ‘an integral part of the wider Israeli-Palestinian dispute concerning questions of terrorism, security, borders, settlements, Jerusalem and other related matters’.¹⁴ Israel submitted that the Court should decline to give the Advisory Opinion, because ‘the request concern[ed] a contentious matter between Israel and Palestine, in respect of which Israel has not consented to the exercise of that jurisdiction’.¹⁵

12. The Court rejected the Israel position. In accordance to the Court the request for an Advisory Opinion could not have been considered ‘as only a bilateral matter between

¹³ UK Written Statement, para.7.21, p.116

¹⁴ *Construction of a Wall (Advisory Opinion)*, p. 157, para. 46.

¹⁵ *Ibid.*, p. 157, para. 46.

Israel and Palestine,'¹⁶ '[g]iven the powers and responsibilities of the United Nations in questions relating to international peace and security, it is the Court's view that the construction of the wall must be deemed to be directly of concern to the United Nations.'¹⁷

13. In regard to consent to the Court's jurisdiction to give an advisory opinion, the ICJ clarified in the *Wall* case, that the:

'lack of consent to the Court's contentious jurisdiction by interested States has no bearing on the Court's jurisdiction to give an advisory opinion. In an Advisory Opinion of 1950, the Court explained that: [...] "The situation is different in regard to advisory proceedings even where the Request for an Opinion relates to a legal question actually pending between States. The Court's reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take. The Court's Opinion is given not to the States, but to the organ which is entitled to request it; the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be refused." (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, ICJ Reports 1950, p.71; see also Western Sahara, ICJ Reports 1975, p.24, para. 31*).'¹⁸

14. The Court determined that the object of a request for an advisory opinion:

'is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion; decline to give an opinion on that ground.'¹⁹

15. In the *Chagos Advisory* request, the Court is not facing a bilateral dispute. On the contrary the legal questions before the Court concern decolonisation, the right to self-determination, fundamental human rights and the principle of territorial integrity. The obligations flowing from the right to self-determination runs towards all states, as a result of

¹⁶ *Ibid.*, pp. 158-159, para. 49

¹⁷ *Ibid.*, p. 159, para. 49

¹⁸ *Ibid.*, p.157-158, para. 47.

¹⁹ *Ibid.*, p. 159, para. 50.

its *erga omnes*²⁰ character and cannot be regarded as simply a bilateral matter. By answering the questions put forward by the UNGA, the ICJ would assist the General Assembly in carrying out its functions in supervising the decolonization process, and in fulfilling one of its most important functions under the UN Charter.

16. There is of course patently a bilateral dispute pending between Mauritius and the UK, but the Court is being asked questions from the perspective of the principle of self-determination and other principles of international law of vital importance to the international community and the UNGA. Whatever bilateral dealings the UK may have had with its colony Mauritius before independence are only being considered from the point of view of decolonization. The question is whether the process of decolonization was lawfully completed and not the legal effects of any arrangements between the UK and its subject people.

17. The continued administration of the Chagos Archipelago by the UK violates the most fundamental human rights and contravenes international law which states that any disruption, partial or total, of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of international law.

IV. Conclusions

18. For the reasons set out in this Written Comments, the Republic of Nicaragua reiterates its requests and asks the Court to find that:

- a. The Court has jurisdiction to give the Advisory Opinion requested by the UNGA and that there are compelling reasons for it to do so.
- b. In accordance 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, the process of decolonization of Mauritius has not been lawfully completed to this day, because of the partial disruption of its territory, and;

²⁰ *East Timor (Portugal v. Australia)*, Judgment, I. C.J. Reports 1995,p.102.

- c. The consequence under international law is that the unlawful situation must be brought to an end immediately and full sovereignty over the Chagos Archipelago should be restored to Mauritius.

The Hague, 15 May 2018

Carlos J. Argüello-Gómez
Representative of the Republic of Nicaragua