

**Request by the United Nations General Assembly for an Advisory Opinion on the
“Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”**

Written comments of the United States of America on the Written Reply of Mauritius
of September 7, 2018 to the question posed by Judge Gaja

1. The United States offers three observations on the Written Reply of Mauritius to the following question posed by Judge Gaja on September 3: “In the process of decolonization relating to the Chagos Archipelago, what is the relevance of the will of the population of Chagossian origin?”
2. First, the United States remains of the view that the Court should exercise its discretion to decline to respond to the questions referred by the General Assembly. To respond to those questions would require the Court to examine a number of issues that bear directly on the main points of the dispute between Mauritius and the United Kingdom, including the role of consent of the elected representatives of Mauritius. These would not be appropriate inquiries in an advisory proceeding.
3. Second, as discussed in detail in our written and oral submissions, by the Court’s own standards for determining the existence of a rule of customary international law, no rule had crystallized by 1965 or 1968 that would have prohibited the establishment of the British Indian Ocean Territory.¹
4. Third, in its response to Judge Gaja’s question, Mauritius continues to make questionable or erroneous assertions. As we noted in our Written Comments, for example, it should not simply be taken as fact that the present-day people of Mauritius represent the wishes of all Chagossians throughout the world. In this respect, the United States directs the Court’s attention to paragraph 4.4 of the United States Written Comments of May 15, 2018, in which we addressed this assumption, which appeared in several written statements from the first round of submissions:

¹ See United States Written Statement, Chapter IV; United States Written Comments, Chapter III; United States Oral Presentation, paras. 35–66.

[S]everal statements assumed that any unexercised right of self-determination with respect to the Chagos Archipelago would belong to the present-day people of Mauritius.¹⁵¹ If, however, the Court were to determine that any right of self-determination exists in these circumstances and remains to be exercised, the holder of that right may not be the modern people of Mauritius.¹⁵² As the Republic of Seychelles highlighted in its submission, a significant Chagossian population is present in the Seychelles.¹⁵³ Chagossians are also living in the United Kingdom.¹⁵⁴ As such, determining who may hold the right of self-determination with respect to the Chagos Archipelago today would be an exceedingly complicated undertaking.

5. In the view of the United States, such an undertaking is not appropriate in the context of an advisory opinion given its direct relationship to issues at the heart of a bilateral sovereignty dispute. If it were undertaken, it is difficult to see how the Court could resolve the question in the absence of detailed submissions by States on this specific issue during the earlier stages of these proceedings.

¹⁵¹ *See, e.g.*, African Union Written Statement, paras. 66, 224; Argentina Written Statement, para. 51; Belize Written Statement, para. 4.2; Djibouti Written Statement, para. 42; Mauritius Written Statement, para. 6.3(5); Namibia Written Statement, pp. 3–4; Serbia Written Statement, para. 50; South Africa Written Statement, para. 85.

¹⁵² *See, e.g.*, STEPHEN ALLEN, *THE CHAGOS ISLANDERS AND INTERNATIONAL LAW* 286 (2004) (“The Chagos Islanders ... qualify as the beneficiaries of the entitlement to self-determination in relation to the BIOT.”).

¹⁵³ Seychelles Written Statement, paras. 4, 6 (noting that “a significant number of the Chagossians were brought to the Seychelles” and requesting “that the unique perspectives and legitimate concerns of the Seychellois Chagossian community be taken into due consideration”).

¹⁵⁴ United Kingdom Written Statement, para.1.5 n. 7; *id.*, para. 4.38.