

## JOINT DECLARATION OF JUDGES CANÇADO TRINDADE AND ROBINSON

1. In addition to our respective Separate Opinions, we consider it appropriate to present this Joint Declaration, given the significance that we attach to the normative content of the relevant resolutions of the United Nations General Assembly on the matter dealt with in the present Advisory Opinion. The Court should have paid more attention to the value of key resolutions of the General Assembly, such as resolutions 1188(XII) of 11.12.1957, 1514(XV) of 14.12.1960, 2621(XXV) of 12.10.1970, and 2625(XXV) of 24.10.1970. In not doing so, the Court has, in our view, diminished the value of these resolutions in the development of the fundamental right to self-determination in general international law.

2. The resolutions that were adopted by the General Assembly before 1960<sup>1</sup> reflect a strong commitment to fundamental human rights by affirming the dignity and worth of the human person and respect for the principle of equal rights. These resolutions provided a foundation that was essential for the right to self-determination that was definitively elaborated in the General Assembly's landmark resolution 1514(XV) on 14.12.1960 (hereinafter the "1960 Declaration"). The 1960 Declaration marked an important step for humankind in the evolution of international law as to the right of peoples to self-determination. Given that in 1960 one-third or more of the world's population lived under colonial domination, the Declaration must be seen as a giant leap for liberation and justice. Along with the creation of the Special Committee entrusted with monitoring its implementation on 27.11.1961<sup>2</sup>, the 1960 Declaration demonstrates the clear intention of the General Assembly to make effective the right of peoples to self-determination in international law. Indeed, the 1960 Declaration was an affirmation of the right to self-determination as a universally applicable norm from which there can thus be no derogation.

3. The General Assembly had a very significant impact in ensuring the completion of the decolonization process throughout the world, notably through the adoption of several resolutions reaffirming the 1960 Declaration and monitoring its implementation throughout the years<sup>3</sup>.

4. The 1960 Declaration crystallized the right of peoples to self-determination in general international law. Its paramount importance was subsequently confirmed by the Court in its Advisory Opinion of 1975 on *Western Sahara*, in which it notably stated that it "provided the basis

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<sup>1</sup> Cf., e.g., G.A. resolution 9(I), *Non-Self-Governing Peoples*, of 09.02.1946; G.A. resolution 566(VI), *Participation of Non-Self-Governing Territories in the Work of the Committee on Information from Non-Self-Governing Territories*, of 18.01.1952; G.A. resolution 545(VI) D, *Inclusion in the Covenant(s) on Human Rights of an Article on the Right of Peoples to Self-Determination*, of 05.02.1952, referring to G.A. resolution 421(V) of 04.12.1950; G.A. resolution 637(VII) A, *The Right of Peoples and Nations to Self-Determination*, of 16.12.1952; G.A. resolution 738(VIII), *The Right of Peoples and Nations to Self-Determination*, of 28.11.1953; G.A. resolution 1188(XII), *Recommendations concerning International Respect for the Right of Peoples and Nations to Self-Determination*, of 11.12.1957; G.A. resolution 1466(XIV), *Participation of the Non-Self-Governing Territories in the Work of the United Nations and of Specialised Agencies*, of 12.12.1959.

<sup>2</sup> G.A. resolution 1654 (XVI), *The Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*.

<sup>3</sup> Cf., *inter alia*, e.g., G.A. resolution 1654(XVI) of 27.11.1961, *The Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*; G.A. resolution 1956(XVIII) of 11.12.1963, *The Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*; G.A. resolution 2189(XXI) of 13.12.1966, *Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples*.

for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations”<sup>4</sup>.

5. The Declaration on Principles of International Law Concerning Friendly Relations, adopted in 1970, (hereinafter the “Declaration of 1970”) reaffirmed the fundamental elements of the right of peoples to self-determination, notably, the obligation to respect the territorial integrity of Non-Self-Governing territories, and the defining element of the free will of the people concerned to achieve the completion of decolonization<sup>5</sup>. The Declaration of 1970 constituted another example of the great value of General Assembly resolutions in the affirmation of the right of peoples to self-determination as a right in general international law.

6. In emphasizing over the years the fundamental right of peoples to attain freedom and independence as a cardinal rule of international law, the General Assembly has effected through its resolutions and their implementation an almost complete decolonization around the world. The present Advisory Opinion of the Court is to be viewed within this historical framework.

7. After all, given the importance of General Assembly resolutions to the issues raised in the proceedings before the Court, greater emphasis should have been placed on the *value* of General Assembly resolutions. Undoubtedly, General Assembly resolutions on the matter have a normative value in that they demonstrate the continuing development of the *opinion juris communis* in customary international law.

8. In the present Advisory Opinion, the Court should have devoted more of its reasoning to highlight the importance of General Assembly resolutions in the consolidation of the right of peoples to self-determination, and, given the relevance of *jus cogens* to the issues raised in the proceedings, the Court should have pronounced on the *jus cogens* character of the right of peoples to self-determination.

(Signed) Antônio Augusto CANÇADO TRINDADE.

(Signed) Patrick ROBINSON.

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<sup>4</sup> *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, para. 57.

<sup>5</sup> G.A. resolution 2625(XXV), *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, of 24.10.1970.