

DECLARATION OF JUDGE SALAM

Agreement with the operative part of the Opinion — Broad agreement with the reasoning of the Court — Binding nature of General Assembly resolution 1514 (XV) as a result of its endorsement by Security Council resolutions — Question of the possibility of compensation for the Chagossians.

1. Although I voted in favour of all the subparagraphs of the operative part of the present Advisory Opinion and essentially concur with the Court's reasoning, I consider it necessary to clarify certain points that should have been addressed by the Court.

2. In determining the applicable law, the Court sought to ascertain at what point the right to self-determination became crystallized as a customary rule. Above all, it noted the importance of General Assembly resolution 1514 (XV), which it views as a defining moment in the evolution of the position of States on decolonization. The Court also cited previous and subsequent General Assembly resolutions.

3. I agree with this reasoning, especially since the Court has previously reiterated that "General Assembly resolutions, even if they are not binding, may sometimes have normative value" (see paragraph 151 of the present Advisory Opinion; *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, pp. 254-255, para. 70). However, I think that the Court should have gone further by referring to relevant resolutions of the Security Council.

4. Indeed, apart from the fact that General Assembly resolution 1514 (XV) was adopted by an overwhelming majority, with no votes against and nine abstentions, I would point out that, when dealing with questions relating to decolonization between 1960 and 1965, the Security Council expressly endorsed this resolution. It did so in several resolutions, in particular those relating to the situation in the territories under Portuguese administration. Thus, in resolution 180 (1963), the Security Council "[c]onfirms . . . resolution 1514 (XV)" and "[a]ffirms that the policies of Portugal . . . are contrary to the principles of the Charter and the relevant resolutions of the General Assembly and of the Security Council", before calling upon Portugal to implement the "immediate recognition of the right of the peoples of the Territories under its administration to self-determination and independence". Then, in resolution 183, adopted five months later, the Security Council "[c]alls upon all States to comply with . . . resolution 180 (1963)" which, as indicated above, confirms General Assembly resolution 1514 (XV). Later, in resolution 218, adopted in 1965 on the same question, the Security Council "[r]eaffirms the interpretation of the principle of self-determination as laid down in . . . resolution 1514 (XV)". I would also mention Security Council resolution 217 (1965) on the situation in Southern Rhodesia, which also "[r]eaffirms" resolution 1514 (XV).

5. In addition to its normative value, the fact that resolution 1514 (XV) was clearly endorsed by the Security Council in the above-mentioned resolutions attests to its binding nature. I would recall here that Article 25 of the United Nations Charter provides that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter".

6. Besides, in addressing the second question submitted by the General Assembly, the Court rightly states that “the resettlement on the Chagos Archipelago of Mauritian nationals, including those of Chagossian origin” 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”. Nonetheless, it is regrettable that the Court did not expressly mention, in this context, the possibility of compensation for the Chagossians. Not only did a large number of participants in the proceedings call the Court’s attention to this matter, it is also worth noting that the United Nations Human Rights Committee (as cited in paragraph 126 of the present Advisory Opinion) had recommended that the United Kingdom ensure that

“Chagos islanders can exercise their right to return to their territory and should indicate what measures have been taken in this regard. It should consider compensation for the denial of this right over an extended period.”
[CCPR/C/GBR/CO/6, para. 22.]

7. As a final note in this regard, I would recall the *Wall* case, in which the Court considered that Israel “ha[d] an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons having suffered any form of material damage as a result of the wall’s construction” (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I)*, p. 198, para. 153).

(Signed) Nawaf SALAM.
