

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

Written statement by the Republic of Chile

28 February 2018

1. The International Court of Justice has been seized of a request for an advisory opinion by Resolution 71/292 adopted on 22 June 2017 by the General Assembly of the United Nations. The application formulates two questions, which read as follows:

(a) "Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard 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?";

(b) "What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?";

2. In its Order of 14 July 2017, the Court set 30 January 2018 as the date for expiry of the period within which written statements on the application may be submitted to the Court in accordance with Article 66 (2) of its Statute. In its Order of 17 January 2018, the Court decided to extend this period until 1 March. Following these Orders, the Republic of Chile has considered that it would be useful for it to transmit the present Observations to the Court. This is without prejudice to the important legal issues arising in these proceedings. The Republic of Chile would also like to recall its abstention in the vote on Resolution 71/292 of 22 June 2017.

3. In line with the position it had already adopted with regard to the Final Document of the XVII Summit of the Non-Aligned Countries Movement held in Venezuela on 17 and 18 September 2016, Chile reiterated its position regarding the Office Communiqué Coordinating Committee on Agenda Item 87 of the 71st Session of the United Nations General Assembly, and abstained from voting on Resolution 71/292.

4. This abstention is due to the fact that Chile is not fully convinced that the request for an advisory opinion supports all the questions that have been put before the Court. While matters that concern the nature and scope of certain United Nations General Assembly resolutions constitute an area of interest to the international community, other questions raised in the request relate to a territorial bilateral dispute between Mauritius and the United Kingdom which should be settled by appropriate means.

5. Chile is aware of the fact that the request for an advisory opinion relates to a territorial dispute currently arising between Mauritius and the United Kingdom, which do not recognize the jurisdiction of the Court to settle it, and that this fact by itself does not deprive the Court of its competence to know in the framework of an advisory

procedure. But it is also essential to consider that the lack of consent of the Parties to the contentious jurisdiction of the Court could, in certain cases, be such as to convince it that there are "decisive reasons" for not answering the question put to it in the context of a request for an advisory opinion. This has been stated by the Court in 1975, in the *Western Sahara* case, where the Court recalled¹, that it had:

"... recognized that the lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an opinion. In short, the consent of an interested State continues to be relevant, not for the Court's competence, but for the appreciation of the propriety of giving an opinion.

An instance of this would be when the circumstances disclose that to give a reply 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."

6. On the other hand, there is no doubt that the principle of the right of peoples to self-determination is a normative principle firmly established, in particular by the Declaration 1514 (XV). This principle has, moreover, been 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.

7. Chile wishes to recall that it has voted in favor of resolutions 1514 (XV), 2066 (XX), 2232 (XXI) and 2357 (XXII). It has always supported the right of peoples to self-determination and the process of decolonization promoted by the United Nations General Assembly through these resolutions. Chile today remains an unconditional follower of this process where it has not yet been completed.

8. For these reasons, while strongly supporting the decolonization process to which Mauritius has been entitled and its full conclusion in accordance with international law, Chile has already made known its view that the nature and scope of the current bilateral dispute between the United Kingdom and Mauritius should be addressed by other means under international law.

9. On the basis of these analyzes, it is hereby stated that being the advisory opinion an appropriate procedure to deal with questions of legal concern for the international community, matters of a purely bilateral nature between two sovereign states, should be handled by the appropriate means reflecting the consent of the interested parties.

¹Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p.25, paras 32-33.

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