

INTERNATIONAL COURT OF JUSTICE

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

**(REQUEST FOR ADVISORY OPINION)**



**WRITTEN STATEMENT  
OF THE REPUBLIC OF NICARAGUA**

**01 March 2018**

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## I. Introduction

1. On 15 June 2017 the Republic of the Congo, on behalf of the Group of African States Members of the United Nations, submitted draft resolution A/71/L.73 entitled the "*Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*" (hereinafter "*Request for the Chagos Advisory Opinion*").

2. During the Seventy-First Session (22 June 2017) the General Assembly adopted Resolution 71/292 which concerned the *Request for the Chagos Advisory Opinion*. In this Resolution the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the International Court of Justice, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following questions:

(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?";

3. On 14 July 2017 the International Court of Justice ('ICJ') issued an Order inviting the United Nations and its Member States to submit written statements concerning the questions submitted to the Court for the *Request for the Chagos Advisory Opinion*. In the same Order the Court fixed 30 January 2018 as the time limit within which written statements may be presented, and 16 April 2018 as the time limit within which States and organizations having

presented written statements may submit written comments on the other written statements. On 17 January 2018, the Court issued a new Order in which it decided to extend to 1 March 2018 the time-limits for the filing of all written statements and to 15 May 2018 the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements<sup>1</sup>. The present written statement of Nicaragua is filed within the time limit so fixed.

## II. Jurisdiction and Admissibility

4. Article 65, paragraph 1, of the Statute of the Court, states that the ICJ “may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.” Consequently, for the Court to proceed with the request addressed to it by the General Assembly in Resolution 71/292, it needs to satisfy itself that a) the advisory opinion has been requested by an organ duly authorized under the UN Charter and that b) the questions formulated in the aforementioned Resolution are legal questions<sup>2</sup> within the meaning of Article 96 of the Charter and Article 65 of its Statute.

- a) Article 96, paragraph 1, of the UN Charter provides that “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question”. This provision not only authorizes the General Assembly to request an advisory opinion, but it also makes it plain that there is no other requisite than the need for the question to be of a legal nature.
- b) Regarding the legal character of the questions, the Court has indicated that questions “framed in terms of law and rais[ing] problems of international law . . . are by their very nature susceptible of a reply based on law”<sup>3</sup>. The questions contained in the *Request for the Chagos Advisory Opinion* meet that criterion. Question A refers to the process of decolonization in accordance to international law, and Question B to the consequences under international law, arising from the continued administration by

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<sup>1</sup> In the same Order the Court informed that the African Union may furnish information on the question submitted to the Court for an advisory opinion.

<sup>2</sup> See *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal, Advisory Opinion*, I.C.J. Reports 1982, pp. 333-334, para. 21.

<sup>3</sup> *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, p. 18, para. 15.

the United Kingdom of Great Britain and Northern Ireland (hereinafter “United Kingdom”) of the Chagos Archipelago. There is no doubt that both questions are of a legal nature and susceptible of a reply based on law.

5. Therefore, Nicaragua, a State with a deep commitment to international law, considers that the Court has jurisdiction to give the advisory opinion in response to the questions submitted by the General Assembly under Resolution 71/292, and that there are no reasons that prevent the Court from giving the requested opinion.

### III. The request

#### A. Question 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?”;*

6. One of the main purposes of the UN Charter is the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples<sup>4</sup>, which can only be achieved through respect of the principle that the Organization and its Member refrain in their international relations from the threat or use of force against the territorial integrity of any State<sup>5</sup>. Additionally, the General Assembly has adopted several Resolutions<sup>6</sup> that not only enforce the principle of respect for the territorial integrity of states, but that also call upon the administering powers to implement without delay the process of decolonization.

7. It is in this regard that the *Declaration on the Granting of Independence to Colonial Countries and Peoples*, Resolution 1514 (XV), recognized the right of self-determination in

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<sup>4</sup> UN Charter, Article 1 (2) and Article 55.

<sup>5</sup> UN Charter, Article 2 (4).

<sup>6</sup> *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 context of decolonization and “the necessity of bringing to a *speedy and unconditional end colonialism* in all its forms and manifestations”<sup>7</sup>. Furthermore, it states 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” and 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.”<sup>8</sup>

8. Following up on Resolution 1514 (XV), and in full recognition of the peoples’ right to self-determination and territorial integrity, the General Assembly adopted in 1970 the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations of 1970* (Resolution 2625 (XXV))<sup>9</sup>, which stressed the need bring to a “speedy end” colonialism<sup>10</sup>.

9. The principle of territorial integrity is a pivotal element of the process of decolonization. The United Nations has been consistent in declaring that any attempt aimed “at the partial or total disruption of the national unity and the territorial integrity of colonial Territories and the establishment of military bases and installations in these Territories *is incompatible* with the purpose and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)”<sup>11</sup>

10. As for the present case, the United Kingdom, prior to granting Mauritius independence in 1968, detached the Chagos Archipelago from Mauritius in order to create the so-called “British Indian Ocean Territory”, thus breaching its international obligation to respect the territorial integrity and unity of Mauritius.

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<sup>7</sup> *Italics added.*

<sup>8</sup> *Italics added.*

<sup>9</sup> Resolution 2625 (XXV).

<sup>10</sup> Resolution 2625 states that “By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter. Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter.”

<sup>11</sup> 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967. See also Resolution 1514 (XV) and Resolution 2625 (XXV). *Italic added.*

11. On 16 December 1965 the General Assembly adopted Resolution 2066 (XX) , which not only put on record the failure of the United Kingdom to “fully implement [...] resolution 1514 (XV)” with regard to Mauritius, but also noted “with deep concern that any step taken by the administering Power [i.e.UK] to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of [resolution 1514 (XV)], and in particular paragraph 6 thereof.”<sup>12</sup> As a result of the lack of implementation of Resolution 1514 by the United Kingdom, the General Assembly called on it to “take effective measures with a view to the *immediate and full implementation of resolution 1514 (XV)*” and “to take no action which would dismember the Territory of Mauritius and [thus] violate its *territorial integrity*”<sup>13</sup>.

12. As is evident from the public record<sup>14</sup>, up to date the United Kingdom has not implemented its obligation to restore the dismembered territory to Mauritius nor has it complied with the full extent of its obligation as stated in Resolution 1514.

13. Taking into account that the United Kingdom has violated the territorial integrity of Mauritius by detaching from it the Chagos Archipelago in order to create the so-called “British Indian Ocean Territory”, the Republic of Nicaragua considers that the process of decolonization of Mauritius has not been lawfully completed to this day.

## **B. Question 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?”;*

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<sup>12</sup> Paragraph 6 reads as follow: “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”.

<sup>13</sup> Resolution 2066 (XX), *italic added*.

<sup>14</sup> See the *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Dissenting Opinion and Concurring Opinion, Judge James Kateka and Judge Rüdiger Wolfrum, para.91, p.23.

14. As stated above, the Republic of Nicaragua considers that the process of decolonization of Mauritius has not been lawfully completed. Thus, Nicaragua is of the opinion that the clear 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. For the United Kingdom to comply with its international obligation it must bring the unlawful situation to an end and provide the means to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin.

#### **IV. Conclusions**

15. For the reasons set out in this Written Statement, the Republic of Nicaragua requests the Court to find that:

- a.* 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;
- b.* 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, 1 March 2018

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