

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

(REQUEST FOR ADVISORY OPINION)

Written Statement of the Republic of Guatemala to the International Court of Justice

March 2018

1. The Republic of Guatemala hereby submits its written statement on the proceedings related to the request of an advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* pursuant to the Court's Order dated July 14 2017 supplemented by Order dated January 17 2018 all related to the United Nations General Assembly Resolution 71/292 dated June 22 2017 and communicated to the President of the International Court of Justice by letter of the Secretary General of the United Nations dated June 23 2017.

I. Introduction

2. The General Assembly decided – through its Resolution 71/292 dated June 22 2017 – 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 two 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. Notified by the Secretary-General of the United Nations by means of a letter dated June 23 2017, addressed to H.E. the President of the International Court of Justice, the Court issued its Order dated July 14 2017 whereby it decided that “*the United Nations and its Member States, which are likely to be able to furnish information on the question submitted to the Court for an advisory opinion, may do so within the time-limits fixed in this Order*” and fixed January 30 2018 as the time-limit within written statements could be presented to the Court. Upon deciding that the African Union could furnish information on the questions submitted to the Court, the Court decided to “*extend to 1 March 2018 the time-limit within which all written statements on the question may be presented to the Court*”, in accordance with Article 66, paragraph 2, of the Statute.
4. The Republic of Guatemala, being one of the 94 States that voted in favour of Resolution 71/292, in view of the above, and being in receipt of a *special and direct communication* from the International Court of Justice in accordance with Article 66 paragraph 2 of the Statute of the

Court, to that effect, has decided to take part of the proceedings by means of submitting to the International Court of Justice the following written statement.

5. For such purposes, this statement will address firstly the matters of Jurisdiction and Propriety to entertain the request for an Advisory Opinion, and only thereafter refer to the matters content of the two questions.

II. Jurisdiction

6. The Republic of Guatemala contends that the Court has Jurisdiction in this case, to answer the request for an Advisory Opinion as per United Nations General Assembly Resolution 71/292, based on the following grounds:

Article 96 paragraph 1 of the Charter of the United Nations states that:

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question

7. This Article lays down two elements which ought to be fulfilled:
 - a) One of those two United Nations' organs should be the requiring party.
 - b) The request of an advisory opinion must be made on any legal question.

8. In contrast, paragraph 2 of the same Article indicates that:

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

9. Such contrast reveals that, as the Court has stated in various occasions, whilst other organs of the United Nations and the Specialised Agencies authorized to do so, can request the Court to render advisory opinions *only* on questions arising *within the scope of their activities*, the General Assembly and the Security Council may do so on *any* legal question.

10. At the same time, Article 65 of the Statute of the International Court of Justice – which forms an integral part of the Charter of the United Nations – spells out that:

1. The Court 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.

11. On one hand Article 96 paragraph 1 of the Charter grants the possibility to the General Assembly and the Security Council to request the International Court of Justice to give an advisory opinion, whilst on the other, Article 65 of the Statute of the Court, in exchange, allows the Court to render such advisory opinion upon the request of the bodies authorised by the Charter or in accordance with it. Such permission, as it is well established, is a discretionary one, left to the Court itself to decide on whether to act upon it or refrain to do so.
12. Therefore, when seised with a request to render an advisory opinion, the Court must beforehand assess the fulfilment of the conditions stipulated in the above-quoted Articles 96 of the Charter and 65(1) of the Statute, namely:

- a) That the request has been made by an organ granted such power, and
 b) That the question(s) brought to the Court are of a legal nature.
13. In the case at hand, the Court has been seized by the United Nations General Assembly, which is one of the two organs authorised by the Charter of the United Nations to request the Court to render an advisory opinion. It has done so through the adoption of Resolution 71/292 of June 22 2017, which passed with a voting strength of 94 in favour, 15 against and 65 abstentions, in observance of its rules of procedure. Thus, the first of the two conditions must be deemed as met.
14. With regards to the second condition, that the questions must be of a legal nature, the Court expressed in the past 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... and therefore appear to be questions of a legal character”*¹
15. Resolution 71/292 contains two different questions, both of which cannot be construed in any other way but as of a legal nature: the first question queries if the decolonisation of Mauritius was *lawfully* completed at the time it gained independence, meanwhile the second of the questions interrogates about the consequences *under international law* – if any – arising from the administration of the Chagos Archipelago by the United Kingdom, in the light of *international obligations* including those derived from several General Assembly’s resolutions. The Republic of Guatemala purports that the Court will find itself satisfied on the second condition as well: the questions brought to it are of a legal nature.
16. Notwithstanding the above, it seems relevant to note what the Court has also stated consistently through its jurisdiction on the presence of elements of a political nature within the question(s) brought it: the mere fact that a question has political aspects... *“does not suffice to deprive it of its legal character as a ‘legal question’... Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task...”*²
17. For the above reasons, the Republic of Guatemala asserts that the International Court of Justice has jurisdiction to answer the request for an advisory opinion on the basis of Resolution 71/292.

III. Propriety

18. As stated in its jurisprudence, once the Court has found it has jurisdiction to give the requested opinion, it ought to assess whether *“there is any reason why... in its discretion, should decline to exercise any such jurisdiction”*³.

¹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p.415, para.25

² *Ibid.* p.415, para.27

³ *Legality of the Threat or use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1999(I) p.232, para.10

19. Being mindful of the preceding paragraph, as well as of the fact that the text of Article 65 of the Statute frames the advisory function of the Court as discretionary in nature, the Republic of Guatemala, nevertheless, upholds that the Court should not decline to entertain the request for an advisory opinion brought to it by the General Assembly by means of Resolution 71/292 as there are no *compelling reasons* do so.
20. Firstly, the Court is the *Principal Judicial Organ of the United Nations* and one of the six principal organs of the organisation. As such, the discharge of its different roles is essential for the proper functioning of the Organisation: The inaction of one organ in a role not feasible to be subsumed by another implies the failure of the whole system.
21. In several occasions the Court has highlighted its awareness of this matter. Its answer to a request for an advisory opinion, it has said, “*represents its participation in the activities of the Organization, and, in principle, should not be refused*”⁴ if it can be satisfied that the “*integrity of the Court’s judicial function and its nature as the principal judicial organ of the United Nations*”⁵ are protected. So far, the Court has never refused to reply to a request made by the General Assembly for an advisory opinion in general, nor has it ever on the basis of propriety. The Republic of Guatemala believes the Court will find no grounds in the case at hand, to break its uninterrupted discharge of its advisory function.
22. The argument which might be brought forward by some parties, that the underlying issue is a bilateral dispute and thus not appropriate subject-matter to be considered by the Court in its advisory role, should be discarded. The Court has stated that “*its competence to give an opinion did not depend on the consent of the interested States, even when the case concerned a legal question actually pending between them*” since an advisory opinion is not binding and that it is delivered to the requesting UN organ, not to the States.
23. Furthermore, the Court, when requested to give an advisory opinion, may entertain legal questions either abstract or related to a dispute between States. Enough testimony of such possibility may be taken from Article 102 (3) of the Rules of Court, which mandates in such cases, to trigger the appointment of Judges *ad hoc*:
- 3. When an advisory opinion is requested upon a legal question actually pending between two or more States, Article 31 of the Statute shall apply, as also the provisions of these Rules concerning the application of that Article.*
24. The above should put to rest any argument that, because the subject matter of the advisory opinion entails a bilateral dispute, it should not be pondered by the Court as it would amount to a circumvention of the States’ consent to its judicial function. The Court even has rules covering such scenario.
25. To reinforce the argument whether the Court, by rendering advisory opinions in situations which could be construed as bilateral disputes by some, would allow circumventing the requisite of the States’ consent, it is worthy to note that, in the current proceeding as in others in the past “*the*

⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p.156, para.44

⁵ *Application for Review of Judgment No.158 of the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1973 p.175, para.24

legal questions of which the Court has been seised are located in a broader frame of reference than the settlement of a particular dispute and embrace other elements. These elements, moreover, are not confined to the past but are also directed to the present and the future”⁶.

26. Just as in *The Wall* advisory opinion, the General Assembly has come to the Court looking for clarity and guidance in order to discharge its own functions regarding broader issues than a mere bilateral dispute:

50. The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.⁷

27. Were there be a need for further clarification, in a very fitting wording, the Court has also said that:

The object of the General Assembly has not been to bring before the Court, by way of a request for advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy. The object of the request is an entirely different one: to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory⁸.

28. From the above, it should be abundantly clear that the possible existence of a dispute between some States related to the subject matter of the questions brought to the Court by the General Assembly, should not constitute an obstacle for it to exercise its jurisdiction. It should also be clear from what precedes that the subject matter of the questions is broader than the referred possible dispute among some States, as it touches upon matters dealt with by the General Assembly for decades and has been the content of several milestone Resolutions. Consequently, there is a *manifest useful legal effect* and *applicability* of the answers the Court may give to the questions posed to it through Resolution 71/292.

29. It is important to set aside any worries that the requested advisory opinion may be used to further the interests of one State – even perhaps vis-à-vis another. The Court has stated that advisory opinions are not a form of judicial recourse for States since the opinion is not given to States but the organ which has requested it:

[P]recisely for that reason, the motives of individual States which sponsor, or vote in favour of, a resolution requesting an advisory opinion are not relevant to the Court's exercise of its discretion whether or not to respond⁹.

⁶ *Western Sahara*, Advisory Opinion, 1.C.J. Reports 1975, p.18, para.38

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p.159, para.50

⁸ *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p.18, para.39

⁹ *Kosovo*. p.417 para.33

30. To buttress further the criterion advanced above, one can revisit what the Court said on its Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons of 1996*:

“[O]nce the Assembly has asked, by adopting a resolution, for an advisory opinion on a legal question, the Court, in determining whether there are any compelling reasons for it to refuse to give such an opinion, will not have regard to the origins or to the political history of the request, or to the distribution of votes in respect of the adopted resolution”¹⁰

31. In conclusion, the Republic of Guatemala contends that the Court will find no *compelling reasons* to exercise its discretion not to render the requested advisory opinion and by that it will maintain its unbroken record of fulfilling its advisory role as Principal Judicial Organ of the United Nations.

IV. Questions

32. With regards to the substance of the two questions proposed to the Court by the General Assembly, the Republic of Guatemala wishes to make at this stage only some general and preliminary remarks, reserving its right to expound further on the legal concepts, doctrines and evolution of those – were they dealt with by other States on their written statements – on its own written observations to be submitted to the Court no later than May 15 2018.
33. On the first question “*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?*” the Republic of Guatemala considers that the answer to which the Court should arrive after its assessment, is a negative one.
34. There is ample evidence that the Chagos Archipelago formed part of Mauritius before it was severed from it by the United Kingdom of Great Britain and Northern Ireland ahead of granting independence to Mauritius. There is also sufficient evidence of the United Kingdom’s attempts to disguise its actions as lawful albeit being aware they were contrary to what was mandated through the United Nations’ guided process of decolonialization, especially regarding the principle of territorial integrity as consecrated in the Charter of the United Nations and United Nations General Assembly Resolution 1514 (XV). For those reasons and any other that may be submitted as written observations in due course, the Republic of Guatemala believes the Court should find that the process of decolonization of Mauritius was NOT lawfully completed in 1968.
35. The Court should thoroughly examine in particular, all the available national documents and correspondence produced in and by the United Kingdom in relation to Mauritius, its independence and the amputation of Chagos Archipelago, to throw light on the underlying motivations and actions that resulted in the current *status quo*.
36. On the second question “*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*

¹⁰ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1. C.J. Reports 1996, p.237 para.16

origin?” the Republic of Guatemala expects the Court to find that the continued administration of the Chagos Archipelago by the United Kingdom constitutes a continued wrongful act and it must be brought to an end in order to attain a complete decolonization of Mauritius; and that, consequently, the Chagos Archipelago must return immediately to Mauritius control and sovereignty as the only means to restore its territorial integrity. The remaining consequences ought to be listed by the Court in the light of the general principles of international law, customary international law, the law of state responsibility, the relevant provisions of the Charter of the United Nations, the different applicable Resolutions of the General Assembly and any other body of law the Court deems relevant under the principle of *iura novit curia*.

37. The Republic of Guatemala cannot overstate the importance it attaches to the full respect of the principles of territorial integrity and sovereign equality of States, the two pillars on which the international system rests upon. Consistently with it, the Republic of Guatemala wishes to draw the attention of the Court to its written statement filed on March 11 1975 on the proceedings of the request for an advisory opinion on *Western Sahara*, a document in record of the Court.
38. For the above reasons the Republic of Guatemala respectfully submits to the International Court of Justice that:
 - a. The Court should find it has jurisdiction to entertain the request for an advisory opinion contained in the United Nations General Assembly Resolution 71/292
 - b. The Court should find no compelling reasons to exercise its discretion not to render the requested advisory opinion
 - c. The Court should find the decolonization of Mauritius has not been lawfully completed in 1968 because the Chagos Archipelago was severed from its territory and remains under the administration of the United Kingdom
 - d. The Court should find that the continued administration of the Chagos Archipelago by the United Kingdom constitutes a continuing wrongful act that ought to end by means of returning the Archipelago to Mauritius immediately and thus restore its territorial integrity.

H.E. Gladys Marithza Ruiz Sánchez de Vielman
Ambassador Extraordinary and Plenipotentiary
of the Republic of Guatemala in the Kingdom of the Netherlands