

AFRICAN UNION

الاتحاد الأفريقي



UNION AFRICAINE

UNIÃO AFRICANA

Addis Ababa, Ethiopia P. O. Box 3243 Telephone: +251 11 551 7700 / +251 11 518 25 58/ Ext 2558
Web site: www.au.int

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Date: 13 September 2018

Dear Sir,

I have the honour to refer to your letter dated 5 September 2018 relating to the question put to all participants to the oral proceedings by Judge Cançado Trindade at the end of the afternoon's public sitting of 5 September 2018 and to forward to you the written comments of the African Union on the replies of other participants.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Namira Negm', written over a circular stamp or seal.

Ambassador Dr. Namira Negm

The Legal Counsel
African Union

To: Mr. Philippe Couvreur
Registrar
International Court of Justice
The Hague
Netherlands

**WRITTEN REPLY OF THE AFRICAN UNION TO
JUDGE CANÇADO TRINDADE'S QUESTION**

“As recalled in paragraph (a) of the U.N General Assembly's request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22.06.2017), the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514(XV) of 14.12.1960, 2066(XX) of 16.12.1965, 2232(XXI) of 20.12.1966, and 2357(XXII) of 19.12.1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.

In your understanding, what are the legal consequences ensuing from the formation of customary international law, with the significant presence of opinio juris communis, for ensuring compliance with the obligations in those General Assembly resolutions?”

1. As the African Union emphasised in its Written Statement, its Written Observations as well as its Oral Statement of 6 September 2018 , the evolution of the principle of self-determination of colonial peoples and territories from 1945 until the adoption of Resolution 1514 (XV) in 1960, suggests that there existed, under general international law, a right to self-determination at the time of the adoption of the Resolution. Resolution 1514 crystallised the customary international law on decolonisation and self-determination.

2. The opinio juris communis of States was subsequently confirmed in 1965 in Resolution 2066(XX) of 16 December 1965 but also in other Resolutions such as Resolutions 2232(XXI) of 20 December 1966 and Resolution 2357(XXII) of 19 December 1967.

3. In particular, as the African Union stated during its Oral Statement, Resolution 2066 (XX) was indicative and confirmative of the prescriptions enshrined in Resolution 1514. Resolution 2066 clearly recalled that any attempt aimed at partial disruption of the territorial unit of Mauritius would be contrary to international law.

4. In this regard, the African Union reiterates and fully endorses the positions taken by Argentina, Botswana and Vanuatu as well as Mauritius regarding the legal consequences ensuing from the customary nature of the obligations enshrined in Resolutions 1514(XV), 2066(XX), 2232(XXI) and 2357(XXII).

5. First, the Administering Power is under an obligation to cease its unlawful conduct and any action or omission contrary to the principle of self-determination and territorial integrity of Mauritius.

6. Secondly, by virtue of the customary nature of the right to self-determination and the violation of such right by the administering Power, all States shall refrain from recognising the illegal administration of the Chagos Archipelago and any other action or omission pertaining to such unlawful administration.

7. Thirdly, all international organisations, such as the African Union, must ensure that their members act in compliance with the customary prescriptions of the above-mentioned Resolutions aimed at ending colonialism and by the same token ensuring promotion of peaceful regional integration.

8. Fourthly, the African Union is of the view that the obligation to ensure compliance with international law is also placed upon the system of the United Nations to advance further its mandate on decolonisation in compliance with the above-mentioned Resolutions.

9. To conclude, the African Union respectfully submits that all legal consequences should be drawn from the incomplete decolonisation process of Mauritius and the unlawful continued administration of Chagos by the United Kingdom:

- i. consequences for the United Kingdom under the customary rules of state responsibility;
- ii. consequences for Mauritius, and in particular, reparations that are due to the Chagossians by the United Kingdom;
- iii. consequences for members of the United Nations;
- iv. consequences for third states;
- v. consequences for the United Nations System, including the General Assembly; and
- vi. consequences for the international community as a whole.