INTERNATIONAL COURT OF JUSTICE

Legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965

(Request for Advisory Opinion)

WRITTEN STATEMENT OF GERMANY

January 2018

Chapter 1

INTRODUCTION

1. This Written Statement is filed pursuant to the Court's Order of 14 July 2017 concerning the request for an advisory opinion made by the General Assembly of the United Nations in its Resolution 71/292 of 22 June 2017.

- *Cf.* Annex 1. -

2. The following introductory chapter will briefly discuss the origin of the present request for an advisory opinion since this will provide information pertinent to the terms and scope thereof. It will also outline the structure of the present written statement.

A. Origin of the request

3. The background of the current request for an advisory opinion currently pending before the Court stems from Mauritius' struggle for independence. Mauritius, a British colony since 1810, gained independence in 1968. However, the status under international law of the Chagos archipelago, which formed part of Mauritius during this period, has been a matter of dispute between Mauritius and the United Kingdom ever since.

4. A number of General Assembly resolutions have dealt with the matter of Mauritius and the international legal status of the Chagos archipelago. Based on its Resolution 1514 (XV), the General Assembly in its Resolutions 2066 (XX), 2232 (XXI) and 2357 (XXII) specifically considered the decolonization process with respect to the Chagos archipelago.

5. Notwithstanding these Resolutions, the two States, *i.e.* the United Kingdom and Mauritius, have so far not agreed on a solution as to the future international legal status of the Chagos archipelago.

6. Already in 2016, a request for an advisory opinion, to be eventually submitted by the General Assembly, had been filed with the General Assembly. However, the decision to request such an opinion was postponed due to the ongoing negotiations between the two States.

- *Cf.* UN Doc. A/71/142. -

7. On 22 June 2017 draft General Assembly Resolution A/71/L.73 was tabled by Congo on behalf of the African regional group. This draft resolution was intended to implement an initiative by Mauritius.

8. It ought to be noted in this regard that, as was confirmed by the Court in its advisory opinion on the 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo', it is the underlying intention of the sponsor of a draft resolution aiming to submit a request for an advisory opinion to the Court which is of particular relevance in determining the content, meaning and scope of such a request.

- *Cf.* ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 424, para. 53. -

9. In the case at hand, it was already prior to the date on which the General Assembly was formally seized with the draft resolution that the Permanent Representative of Mauritius had made it clear, in a letter to the Permanent Representative of Germany dated 30 May 2017,

- *Cf.* Annex 2. -

that the advisory opinion to be requested by the General Assembly

> "(…) will contribute to the *work of the General Assembly in the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations*."
> - *Ibid.*, para. 3; emphasis added. -

10. It is Germany's understanding that *mutatis mutandis* identical letters have been sent by Mauritius to all other member States of the United Nations. On the same occasion Mauritius also submitted an Aide-Mémoire to Germany,
- *Cf.* Annex 3. -

in which it stressed that the sole rationale for the envisaged advisory opinion to be eventually rendered by the Court was the General Assembly's

> "(…) direct institutional interest in the matter."
> - *Ibid.*, p. 7, para. 12. -

11. This position was repeated by the representative of Mauritius during the debate of the General Assembly leading to the adoption of General Assembly Resolution 71/292. Mauritius again described the draft resolution as aiming at the exercise of the General Assembly's competences. As Mauritius' representative then stated:

> "(…) Consequently, as there is no prospect of any end to the colonization of Mauritius, the *General Assembly has a continuing responsibility to act*. (…) It is fitting for the General Assembly to fulfil that function on the basis of guidance from the International Court of Justice (…). An advisory opinion *would no doubt contribute significantly to*

> *the work of the General Assembly in fulfilling its functions under Chapters XI to XIII of the Charter of the United Nations.*"
>
> - Statement by Mauritius, UN Doc. A/71/PV.88, p. 7; emphasis added. -

12. The statement of the representative of Congo, formally introducing the draft General Assembly resolution on behalf of the African regional group, similarly made clear, and thus confirmed, that the aim of the requested opinion was to help the General Assembly in exercising its competences under the Charter of the United Nations. As the representative of Congo put it:

> "As everyone is aware, the right to self-determination and the completion of the decolonization process continue to be a central concern of the United Nations as a whole. That is why we firmly believe that *the United Nations would benefit from the guidance of a [sic!] principal judicial organ of the United Nations* (…). An advisory opinion of the International Court of Justice *would assist the General Assembly in its work* (...)."
>
> - Statement by Congo on behalf of the African regional group, UN Doc. A/71/PV.88, p. 6; emphasis added. -

13. It was in light of these statements, and in light of Mauritius' own position on the limited function of the advisory opinion to be eventually rendered, that the General Assembly then, by majority, decided to request the advisory opinion now pending before the Court. The General Assembly thus did so in order to enlighten the General Assembly itself on how to exercise its own competences under the Charter, rather than to address other, bilateral aspects of the overall situation.

B. The Court's Order of 14 July 2017

14. The text of the resolution, as adopted by the General Assembly, was thereafter transmitted to the Court under cover of a letter from the Secretary-General dated 23 June 2017. On 28 June 2017, the Registrar gave notice of the request for an advisory opinion to all States entitled to appear before the Court.

15. By its Order of 14 July 2017, the Court then decided that the United Nations and its member States are considered likely to be able to furnish information on the question submitted to the Court. It fixed 30 January 2018 as the time-limit for the submission of written statements, and 16 April 2018 as the time-limit for the submission of written comments on the other written statements.

16. It is in light of this request by the Court that Germany respectfully submits this written statement in order to provide the Court with Germany's legal position on the request made, namely on the scope and content thereof.

17. It ought to be noted, however, that in this written statement Germany is *not* taking a position as to the merits of the request. Hence, Germany is not providing answers relating to the substance of the questions put to the Court. Rather, it will limit itself to the various, and indeed fundamental, questions that arise with regard to the exact scope of the request, and how the Court ought to interpret this request submitted by the General Assembly.

18. Germany is hereby mindful of the Court's judicial function when dealing with a request for an advisory opinion under Art. 96 of the Charter of the United Nations, the Court being the principal *judicial* organ of the United Nations.

19. At the same time, Germany respectfully reserves its right to provide written comments on written statements made by other member States of the United Nations, as contemplated by the Court's above-mentioned order, including with regard to issues not yet addressed in this written submission.

C. Terms of the Present Request

20. In its Resolution 71/292, the General Assembly decided, in accordance with Article 96 of the Charter of the United Nations, to request the Court, pursuant to Article 65 of the Court's Statute, to render an advisory opinion on the following two 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?"

D. Structure of Germany's Written Statement

21. Germany's written statement consists of six chapters.

22. After this introductory chapter, *Chapter 2* of Germany's written statement will address some more general issues regarding the exercise of the Court's jurisdiction in general, and as far as advisory proceedings are concerned in particular. Germany will do so having taken full cognizance of the Court's jurisprudence concerning the Court's discretion in exercising its advisory jurisdiction.

23. In this context, Germany wishes to invite the Court to focus in its advisory opinion on the task of enlightening the General Assembly as to the latter's own tasks in the process of decolonization.

24. *Chapter 3* will then address more technical and specific issues as to the relationship between the Court and the requesting organ, noting in particular that the General Assembly as the requesting organ, on the one hand, and the Court, on the other hand, are acting within the framework of the concept of 'functional cooperation'. This analysis will support the understanding that requests for advisory opinions submitted by the General Assembly are meant to further the work of the requesting organ, rather than to decide bilateral disputes.

25. *Chapter 4* in turn deals with the Court's competence in general to interpret requests for advisory opinions submitted to the Court. It will be shown that the Court, time and again, has made use of its power to interpret requests submitted to it in order to determine the exact scope and meaning of a request.

26. *Chapter 5* will then further consider what consequences follow from these findings when providing the General Assembly with an answer to the questions contained in General Assembly resolution 71/292, now pending before the Court.

27. *Chapter 6* will briefly summarize Germany's arguments and will also contain Germany's submissions in the proceedings at hand.

Chapter 2

GENERAL CONSIDERATIONS

28. Germany has always been, and continues to be, a fervent supporter of the judicial settlement of international disputes in general, and of the Court in particular. Germany is one of those 73 States that have submitted declarations under Art. 36, paragraph 2, of the Statute of the Court. Germany has also frequently appeared before the Court as applicant,

> - *Cf.* ICJ, Fisheries Jurisdiction (Federal Republic of Germany v. Iceland), ICJ Reports 1972, p. 30; ICJ, LaGrand (Germany v. United States of America), ICJ Reports 2001, p. 466; ICJ, Jurisdictional Immunities of the State (Germany v. Italy; Greece intervening), ICJ Reports 2012, p. 99. –

as respondent,

> - *Cf.* ICJ, Legality of Use of Force (Serbia and Montenegro v. Germany), Preliminary Objections, Judgment, ICJ Reports 2004, p. 720; ICJ, Certain Property (Liechtenstein v. Germany), Preliminary Objections, Judgment, ICJ Reports 2005, p. 6. -

as well as in cases brought before the Court under a special agreement.

> - *Cf.* ICJ, North Sea Continental Shelf (Federal Republic of Germany/Netherlands; Federal Republic of Germany/Denmark), Judgment, ICJ Reports 1969, p. 3. -

29. Germany even appeared before the Court prior to becoming a member of the United Nations. It has moreover also regularly submitted statements in advisory proceedings brought before the Court.

> - *Cf.* Legality of the Threat or Use of Nuclear Weapons, Letter dated 20 June 1995 from the Ambassador of the Federal Republic of Germany, together with Written Statement of the

Government of the Federal Republic of Germany (20 June 1995); Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Written Statement of the Government of the Federal Republic of Germany (20 September 1994); Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission of Human Rights, Written Statement of the Government of the Federal Republic of Germany (5 October 1998); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territories, Letter dated 29 January 2004 from the Ambassador of the Federal Republic of Germany to the Netherlands, together with the Statement of the Government of the Federal Republic of Germany (30 January 2004); Accordance with International law of the unilateral declaration of independence in respect of Kosovo, Written Statement of Germany (17 April 2009). -

30. It is in light of this support of the Court's work and its role within the international legal system that Germany wishes to voice its concerns with regard to the way in which the current proceedings might be understood, namely as having as their object the hearing and adjudication of a bilateral dispute.

31. At the same time, Germany fully recognizes the role of the United Nations in general, and that of the General Assembly in particular, in the process of decolonization. Germany commends the General Assembly's work in the said field, and specifically when it comes to further developing international law on the matter. This work of the General Assembly over the years has been particularly instrumental in furthering and bringing about the historic process of decolonization.

32. Nevertheless, the question arises of whether the General Assembly had wanted to submit to the Court, by way of a request for an advisory opinion, a broad request, the very subject-matter of which is an ongoing bilateral dispute between two member States of the United Nations. As will be shown in more detail, it cannot be assumed that this was the goal of the General Assembly when it submitted the request for an advisory opinion now contained in General Assembly Resolution 71/292 of 22 June 2017.

33. This concern regarding the scope of the request, which should not be interpreted in an overstretched manner, is even more relevant for the following two mutually reinforcing reasons.

34. Firstly, the Court cannot decide on the bilateral dispute which forms the background of the request for an advisory opinion under its contentious jurisdiction, given the overarching principle of consent which governs the exercise of the Court's contentious jurisdiction.

- *Cf.* on that foundational principle *inter alia* ICJ, Certain Phosphate Lands in Nauru (Nauru v. Australia), Preliminary Objections, ICJ Reports 1992, p. 240 at 260, para. 53; ICJ, Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, ICJ Reports 2006, p. 6 at 36, para. 88; ICJ, Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Preliminary Objections, Judgment, ICJ Reports 2008, p. 412 at 423, para. 33; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russia Federation), Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at 124-126, para. 131. -

35. Secondly, Mauritius had already attempted to have the bilateral issues underlying the present request for an advisory opinion now made by the General Assembly decided upon by an arbitral tribunal under Annex VII to the United Nations Convention on the Law of the Sea (UNCLOS).

- *Cf.* PCA, Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Award of March, 18 2015. -

36. Yet, as confirmed by the said decision, as of today neither the Court nor any other international court or tribunal has jurisdiction to entertain the bilateral dispute between Mauritius and the United Kingdom concerning the legal status of the Chagos archipelago.

37. The apprehension that an unduly extensive reading of a request might lead to a circumvention of the principle of consent, and alter the relationship between the limits of the Court's contentious jurisdiction on the one hand and the exercise of its advisory jurisdiction on the other, has also been expressed, albeit only indirectly, as early as 1951 in the Court's advisory opinion on 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide'.

38. There, the Court confirmed that the existence of a jurisdictional basis for deciding the matter as part of a contentious case does not bar it from exercising its advisory jurisdiction as well. As the Court then put it:

> "The existence of a procedure for the settlement of disputes, such as that provided by Article IX [Genocide Convention], does not in itself exclude the Court's advisory jurisdiction, for Article 96 of the Charter confers upon the General Assembly and the Security Council in general terms the right to request this Court to give an Advisory Opinion (…)"

- ICJ, Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951, p. 15 at 20. -

39. Where, however, as in the case at hand, the opposite is true, and the Court clearly lacks jurisdiction *ratione materiae* when it comes to its contentious jurisdiction, and the matter cannot be brought before any other international court or tribunal as part of a contentious case either, it cannot be presumed that the General Assembly wanted to circumvent those limitations, even though it was fully aware of them.

40. Rather, it should be assumed that the General Assembly's sole aim was to be informed by the Court of the legal parameters of its *own* possible future actions. Were it otherwise the Court would clearly run the risk of facing a significant number of requests for advisory opinions, the actual aim of which might be to obtain a decision on legal issues pending between two States.

41. As a matter of fact, if the Court were not to limit its advisory jurisdiction in such a manner, and hence restrictively interpret the current request, it might in the future be faced with situations where an attempt is first made to bring a matter before the Court as a contentious case, and where later – once the Court has decided it lacks jurisdiction under Art. 36 of the ICJ Statute – the General Assembly or the Security Council might then bring the very same issue before the Court under Art. 96 of the Charter of the United Nations by way of a request for an advisory opinion.

42. A careful understanding of the function of the Court's advisory jurisdiction is also supported by comparing Art. 96 of the Charter of the United Nations with the third sentence of Art. 14 of the Covenant of the League of Nations. The latter provision had, *unlike Art. 96 of the Charter of the United Nations*, also provided that

"(…) [t]he [Permanent] Court [of International Justice] may also give an advisory opinion upon *any dispute* (…) referred to it by the Council [of the League of Nations] or by the Assembly] of the League of Nations]."

- Emphasis added. -

43. In contrast to the Covenant of the League, Art. 96 of the Charter of the United Nations does not refer to disputes, but rather to 'any legal question'. This constitutes a deliberate alteration of the terms of that provision allowing the almost obvious assumption that under the system of the Charter a bilateral dispute should not be made the subject of a request for an advisory opinion.

44. At the same time, Germany submits that the General Assembly has a legitimate interest in requesting advisory opinions to be rendered by the Court to the extent that the Court's answer is of relevance to the work of the General Assembly, and further provided that any such answer provides legal guidance for the General Assembly or indeed for any other organ submitting a question to the Court.

- *Cf. e.g.* ICJ, Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter), Advisory Opinion, ICJ Reports 1948, p. 57 at 61; ICJ, Reparations for injuries suffered in the service of the United Nations, Advisory Opinion, ICJ Reports 1949, p. 174; ICJ, Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, ICJ Reports 1950, p. 4 at 6; ICJ, Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, ICJ Reports 1950, p. 65 at 72; ICJ, Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, ICJ Reports 1962, p. 151 at 155; ICJ,

> Reservations to the Convention on Genocide, Advisory Opinion, ICJ Reports 1951, p. 15 at 19; ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971, p. 16 at 24, para. 32; ICJ, Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12 at 26-27, paras. 39-40; ICJ, Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, ICJ Reports 1989, p. 177 at 187, para. 28; ICJ, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, ICJ Reports 1996, p. 226 at 232-233, paras. 11-12; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136 at 145, paras. 16-17; ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 413-414, paras. 21-24. -

45. This is in particular true when it comes to the issue of decolonization – an issue that has been at the heart of the work of the organization ever since its inception.

46. Indeed, in making the present request, the General Assembly also referred in particular to

> "(…) its resolution 65/118 of 10 December 2010 on the fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples (…)"

in which the General Assembly had reiterated its view

> "(…) that it is incumbent *on the United Nations* to continue to play an active role in the process of decolonization (…)"
> - Emphasis added. -

47. It is in light of these fundamental considerations that the Court should approach the current request for an advisory opinion.

48. While Germany therefore fully acknowledges that the Court, as the principal judicial organ of the United Nations, may render the requested opinion, Germany by the same token also respectfully submits that the Court ought to focus the exercise of its advisory function on those very issues that are necessary and relevant for the General Assembly to exercise its own competences when it comes to issues of decolonization.

49. It is in light of these considerations that this written statement will now address the relationship between the requesting organ (in this case the General Assembly) on the one hand, and the Court on the other.

Chapter 3
RELATIONSHIP BETWEEN THE REQUESTING ORGAN AND THE COURT IN ADVISORY PROCEEDINGS

50. Already with regard to the PCIJ eminent writers such as *M. Hudson* had confirmed that the Court's function in providing an advisory opinion was to

> "(…) facilitate the work of the Council of the League of Nations (…)."
>
> - M. Hudson, The Permanent Court of International Justice 1920-1942 (1943), p. 523. -

51. This understanding of the function of advisory proceedings had been established by the PCIJ's advisory opinion in the Mosul case.

> - PCIJ, Article 3, Paragraph 2, of the Treaty of Lausanne (Frontier between Turkey and Iraq), Advisory opinion, Series B, no. 12. -

52. In the said proceedings the PCIJ had been asked to offer guidance to the requesting organ, the Council of the League of Nations, as to the exercise of the latter's competences.

> - *Ibid.* -

53. It was because the request thus aimed to enlighten the requesting organ, the Council of the League of Nations, as to how to exercise its own competences, that the jurisdictional limitations which the PCIJ had developed in the Eastern Carelia proceedings

> - PCIJ, Status of Eastern Carelia, Advisory opinion, Series B, No. 5, p. 29. -

were found *not* to apply.

54. This was confirmed by *B. v. Stauffenberg,* who stated in 1934 in his authoritative Commentary on the PCIJ's Statute:

> "L'affaire de Mossoul (avis n°12; 1925) offrait une certaine analogie avec l'affaire de la Carélie orientale (…). La Cour estima cependant que les circonstances étaient nettement différentes, étant donné que la question posée à la Cour en l'espèce *visait non point le fond de l'affaire mais la compétence du Conseil* [de la Société des Nations], lequel (…) pouvait solliciter sur des points de droit l'avis de la Cour."
> - B. v. Stauffenberg, Statut et Règlement de la Cour Permanente de Justice Internationale – Eléments d'interprétation (1934), p. 458; emphasis added. -

55. With the establishment of the International Court of Justice as the principal judicial organ of the United Nations, forming an integral part of the overall system of the Charter, this role and the consequent function of the Court's advisory opinions as 'serving' the requesting organ have been further strengthened.

56. Eminent authors analysing the current Court's advisory jurisdiction have similarly underlined this function of the Court's advisory opinions.

57. As *K. Keith* thus put it

> "(…) the object of the procedure is that the requesting organ should be advised (…) as to its future course of action."
> - K. Keith, The Extent of the Advisory Jurisdiction of the International Court of Justice (1971), p. 125. -

58. This view was later shared by *C. Espósito* when stating that

> "(…) el propósito de una opinion consultativa es 'guiar a las Naciones Unidas respecto de su propria acción.'"
> - C. Espósito, La Jurisdicción Consultativa de la Corte Internacional de Justicia (1996), p. 61. -

59. More recently, yet still in the same manner, *M. Aljaghoub* stated that

> "(…) [t]he advisory function was primarily designed to assist UN organs in the discharge of their functions and to guide their future course of action (…)"
> - M. Aljaghoub, The Advisory Function of the International Court of Justice 1946 – 2005 (2006), p. 240. -

60. *R. Kolb* has similarly described the Court's role when rendering advisory opinions as

> "(…) a kind of constitutional function (…)",
> - R. Kolb, The International Court of Justice (2013), p. 1020. -

the Court thereby

> "(...) shedding light upon, and clarifying legal questions that arise *in the context of the activities of UN organs* (…) *so as to facilitate their action* (…)."
> - *Ibid.*, p. 1021; emphasis added. -

61. The Court itself has, time and again, confirmed such an understanding of its own function in advisory proceedings, namely that its role is to support and to further the work of the organs of the United Nations in general, and that of the requesting organ in particular.

62. As a matter of fact, as the Court will recall,

> "(…) [t]he Court's Opinion is given not to the States, but to the organ which is entitled to request it (…)."
> - ICJ, Interpretation of Peace Treaties, Advisory opinion, ICJ Reports 1950, p. 65 at 71. -

63. A request for an advisory opinion thus possesses a guiding, serving and supporting function, as already confirmed by the Court in its advisory opinion on 'Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide'. There, the Court found that

> "(…) [t]he object of this request for an Opinion is to guide the United Nations *in respect of its own action*."
> - ICJ, Reservations to the Convention on Genocide, Advisory opinion, ICJ Reports 1951, p. 15 at 19; emphasis added. -

64. In more general terms, the Court reiterated this same idea in an unequivocal statement in the Privileges and Immunities Convention advisory opinion. There the Court found that:

> "(…) [t]he jurisdiction of the Court under Article 96 of the Charter and Article 65 of the Statute, to give advisory opinions on legal questions, enables United Nations entities to seek guidance from the Court *in order to conduct their activities* in accordance with law."
> - ICJ, Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, ICJ Reports 1989, p. 177 at 188, para. 31; emphasis added. -

65. And it was this functional approach which was then reconfirmed in the Kosovo advisory opinion when the Court stated that:

> "(…) the purpose of the advisory jurisdiction is to enable organs of the United Nations and other authorized bodies to obtain opinions from the Court *which will assist them in the exercise of their functions*."
> - ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 421. -

66. It is thus for that specific purpose, and within that scope and that scope only, that the Court's advisory jurisdiction has been established.

67. Furthermore, this understanding of the very object and purpose of requests for advisory opinions is shared by other international courts and tribunals, including the International Tribunal for the Law of the Sea (ITLOS). Hence, the ITLOS has stated that its advisory opinion

> "(…) is given only to the SRFC [Sub-Regional Fisheries Commission], which considers it to be desirable '*in order to obtain enlightenment as to the course of action it should take'* (…). The object of the request by the SRFC is to *seek guidance in respect of its own actions*."
> - ITLOS, Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4 at 26, para. 76. -

68. The ITLOS continued by noting that it gave advisory opinions

> "(...) mindful of the fact that by answering the questions it *will assist the SRFC in the performance of its activities* (…)."

- *Ibid.*, para. 77; emphasis added; footnote omitted. -

69. With regard to the ICJ itself, this understanding of the Court's advisory function is further supported by general considerations of 'functional cooperation'

- *Cf.* generally on that concept V. Gowlland-Debbas, Art. 7 UN Charter, marginal note 27 *et seq.*, in: A. Zimmermann *et al.* (eds.), The Statute of the International Court of Justice – A Commentary (2nd ed., 2012), p. 101-102. -

among the various principal organs of the United Nations established under Art. 7 of the Charter of the United Nations.

70. Art. 7 of the Charter of the United Nations designates all principal organs of the organization without placing one organ above the other. It thereby makes clear that they are firmly and equally established. Yet, since all organs are obliged to reach and to fulfil the aims of the United Nations, they are required to cooperate with each other and to act loyally with respect to each other in order to ensure, to the best of their abilities, the functionality and effectiveness of the whole organization.

71. Accordingly, as it was put by one leading commentator specifically with regard to the exercise by the Court of its advisory jurisdiction,

"(…) [t]he Court's function is therefore [to be] seen as one of assisting the UN organs in their tasks (…)"
- *Cf.* Gowlland-Debbas, *ibid.*, marginal note 27, p. 101. -

72. It is this overall function of the Court's advisory jurisdiction, namely that it is meant to enable the requesting organ to exercise *its respective competences* in line

with international law, that must also guide the Court in the proceedings at hand, *viz.* when interpreting the request submitted by the General Assembly.

73. This function of advisory proceedings has as its corollary the Court's competence to interpret requests for advisory opinions submitted to the Court, as confirmed by the Court's own consistent jurisprudence. Indeed, as will now be shown, the Court is fully in a position to interpret the request submitted to it in order to safeguard its own role and judicial function, as outlined above.

Chapter 4
POWER OF THE COURT TO INTERPRET THE REQUEST

74. Both the PCIJ and the present Court have, time and again, confirmed the competence of the Court, when exercising its judicial function, to interpret, and if appropriate limit, the question(s) submitted to the Court in advisory proceedings.

75. As early as 1923, it was the PCIJ that confirmed that it is empowered to define the precise scope of the requested advisory opinion when stating that

> "(…) it may be well to indicate forthwith in what circumstances the Court has been asked for an advisory opinion upon the question stated in the Request reproduced above, and *what is the exact scope of that question*."
> - PCIJ, Question of Jaworzina (Polish-Czecheslovakian Frontier), Advisory Opinion, Series B, No. 8, p. 16; emphasis added. -

76. In its advisory opinion on the 'Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV)'

> - PCIJ, Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV), Advisory Opinion, PCIJ, Series B, No. 16 (I). -

the Court even went significantly further in that it did not address issues on which the requesting organ could not be assumed to have expected the Court to provide an opinion. It did so even where it might not be easy to discern the intention of the requesting organ.

77. Even at that date, the Court stressed that it must search for and identify the 'real question' that had been asked, while at the same time discarding

disputed bilateral issues which went beyond the questions defined by the Court. As the Court then put it:

> "The Court (…) considers that, as the letter referred to [requesting the Court's opinion] does not exactly state the question upon which its opinion is sought, it is essential that it should determine what this question is and formulate an exact statement of it, *in order more particularly to avoid dealing with points of law upon which it was not the intention of the Council or the Commission to obtain its opinion.* (…)
> By expressing in this form the question contemplated (…), the Court is in a position to reply to the request for an opinion submitted to it, always *keeping within the scope of the question thus formulated*. It follows that, in so far as the points in dispute between the interested Governments *fall outside the scope of the question as set out above, the Court cannot deal with them*."
> - *Ibid.,* p. 14-16; emphasis added. -

78. The current Court continued this line of reasoning. As early as 1950, in its advisory opinion on the 'International Status of South West Africa', the Court found that it was even in a position to completely disregard one of the questions put to it by the General Assembly, finding that it was

> "(…) not necessary to consider the general question separately (…)"
> - ICJ, International Status of South West Africa, Advisory opinion, ICJ Reports 1950, p. 128 at 131. -

and thus the Court immediately began to examine the *remaining* particular questions.

- *Ibid.* -

79. Soon thereafter, in 1956, the Court found that it was empowered to

> "(…) indicate the Court's understanding of the question submitted for its opinion."
>
> - ICJ, Admissibility of Hearings of Petitioners by the Committee on South West Africa, Advisory Opinion, ICJ Reports 1956, p. 23 at 25. -

80. As a result, the Court limited the expression "grant oral hearings to petitioners", as used in the request submitted by the General Assembly, as solely encompassing those persons who had submitted written petitions to the relevant committee of the General Assembly in accordance with its Rules of Procedure.

> - *Ibid.* -

81. Generally speaking, as the Court put it in 1962 in its Certain Expenses advisory opinion,

> "(…) [i]t is not to be assumed that the General Assembly would (…) seek to fetter or hamper the Court in the discharge of its judicial functions (…)."
>
> - ICJ, Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, ICJ Reports 1962, p. 151 at 157; confirmed in ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 425, para. 54. -

82. Accordingly, this Court reconfirmed in 1980 the PCIJ's position that it may disregard the specific formulations in a request in order to seek out the 'true legal question' asked by the given requesting organ

> - *Cf.* ICJ, Interpretation of the Agreement of 25 March 1951 between the WHO und Egypt, Advisory Opinion, ICJ Reports 1980, p. 73 at p. 88, para. 35. -

which must then

> "(…) be considered to be the legal question submitted to it by the request."
> - *Ibid.* -

It did so in order

> "(…) to remain faithful to the requirements of its judicial character in the exercise of its advisory jurisdiction (…)"
> - *Ibid.* -

and hence had to

> "(…) ascertain what are the legal questions really in issue in questions formulated in a request (…)."
> - *Ibid.*, references omitted. -

83. Soon thereafter, namely in 1982, the Court went further when stating that it might even be *mandatory* for the Court to identify the actual question asked in order to be able to exercise its advisory jurisdiction at all. As the Court stated unequivocally it had to

> "(…) turn to the actual question on which its opinion is requested (…)
> - ICJ, Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1982, p. 325 at 348, para. 46. -

in order to find out

> "(…) whether, *in the form in which it has been submitted*, it is one which the Court can properly answer."
> - *Ibid.*; emphasis added. -

84. In particular, the Court found that it was duty-bound to determine whether

> "(…) the question as framed really corresponds to the intentions of the [requesting organ] in seising the Court."
> - *Ibid.* -

85. This was reconfirmed in 1987, when the Court found that

> "(…) [i]n considering what questions are 'really in issue', the Court must of course have regard also to the intentions of the requesting body as they emerge from such records as may be available of the discussions leading up to the decision to request an opinion."
> - ICJ, Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal, Advisory Opinion, ICJ Reports 1987, p. 18 at 42. -

86. This is fully in line with the Court's prior holding in its advisory opinion on 'Voting Procedure on Questions relating to Reports and Petitions

concerning the Territory of South West Africa', where the Court had already confirmed that it was duty-bound to inquire into the intention of the requesting organ when stating that it had to refer to the French version of the request since

> "(…) [t]he French version seems to express more precisely the intention of the General Assembly in submitting the matter to the Court for its Opinion."
> - ICJ, South West Africa Voting Procedure, Advisory Opinion, ICJ Reports 1955, p. 67 at 72. -

87. Summarizing and reconfirming, in 2004, the Court's overall jurisprudence, the Court found generally that it may be

> "(…) required to broaden, interpret and even reformulate the questions put (…)."
> - ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136 at 153, para. 38; references omitted. -

88. The Court's most recent statements on this issue go even further. Having recalled that in the past

> "(…) it has departed from the language of the question put to it (…)"
> - ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 423, para. 50. -

the Court confirmed that even where

> "(…) the question posed by the General Assembly is *clearly* formulated (…)"
> - *Ibid.*, para. 51.; emphasis added. -

and is

> "(…) narrow and specific (…)"
> - *Ibid.*-

the Court may nevertheless reformulate the question itself despite the fact that such reformulation has an impact on the very outcome of the request.

89. Thus, the Court found in its advisory opinion concerning the 'Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo' that the question put to it, namely whether "the unilateral declaration of independence *by the Provisional Institutions of Self-Government of Kosovo*",

> - *Ibid.*, para. 52; emphasis in the original. -

had to be reformulated. It did so notwithstanding the fact that this very reformulation of the General Assembly's question, by the Court, constituted

> "(…) a matter which [was] capable of affecting the answer to the question (…)".
> - *Ibid.* -

90. As a matter of fact, any alleged exclusion of the Court's power to reformulate the question, and therefore to treat the formulation of a given question as having been definitively determined by the General Assembly

> "(…) would be incompatible with the proper exercise of the [Court's] judicial function (…)."
>
> - *Ibid.* -

91. Hence, absent a clear indication to the contrary, it cannot be assumed that the requesting organ wanted to exclude or restrict the Court's power to reformulate the question put to it. Put in other terms, unless the General Assembly has explicitly stated otherwise, it cannot be assumed that the General Assembly wanted to limit the Court's competence to interpret a request to render an advisory opinion, such competence otherwise unequivocally being established in the Court's jurisprudence.

> - *Cf. ibid.*, para. 53. -

92. The Court's jurisprudence thus demonstrates that the Court has consistently assumed it possesses the power to interpret, specify and even reformulate the questions put to it under Article 96 of the Charter of the United Nations and that, furthermore, the Court has actually exercised such power time and again.

93. The Court has thereby ensured that the requesting organ actually asks the Court questions that fall within the competence of that organ, and that the Court is not called upon to adjudicate upon aspects that would infringe upon the rights of third States, or even upon the competence of the Court itself. As rightly put by one author, it is therefore

> "(…) [t]he Court's interpretation of the question (…) [that] determines (…) the kind of guidance offered to the political organ concerned."
>
> - M. Pomerance, The Advisory Function of the International Court in the League and U.N. Eras (1973), p. 278. -

94. Accordingly, the Court is now called upon to interpret the request for an advisory opinion which is pending before the Court. To this end the Court should, as it has in the past, carefully balance the interests of the requesting organ, *viz.* the General Assembly, in submitting any legal question necessary for it to fulfil its own functions, while at the same time protecting the interests of those affected by the respective proceedings.

Chapter 5
CONSEQUENCES FOR THE PRESENT REQUEST

95. Germany respectfully submits that in the current proceedings this requires the Court to carefully interpret the legal question brought before it. Such interpretation must be undertaken to the extent and in the manner required by the very function of such proceedings, and in order to safeguard the Court's own position as the principal judicial organ of the United Nations.

96. Such interpretation takes place against the background of the competences of the requesting organ with regard to the issue that forms the subject-matter of the request. The aim and focus of these proceedings is thus to enlighten the General Assembly as to any future steps of its *own* that it might consider taking.

97. As a matter of fact, issues of decolonization have constituted a prominent part of the Court's jurisprudence, starting with the Court's 1950 advisory opinion on the international status of South West Africa.

> - ICJ, International Status of South West Africa, ICJ Reports 1950, p. 128. -

98. It is telling, however, that, as early as 1950, in the said advisory opinion, the Court disregarded the first question put to it relating to the international legal status of what was then still referred to as South West Africa. Rather, it instead focused on the various *specific* issues concerning the relationship between the mandatory power on the one hand, and the League of Nations and the United Nations on the other.

> - *Ibid.*, p. 131. -

99. In the same vein, the request for an advisory opinion on the voting procedure in the General Assembly when dealing with matters related to

South West Africa/Namibia was similarly intrinsically linked to the work of the United Nations itself.

- ICJ, South West Africa Voting Procedure, Advisory Opinion, ICJ Reports 1955, p. 67. -

100. As far as the advisory opinion on the 'Admissibility of Hearings of Petitioners by the Committee on South West Africa'

- ICJ, Advisory Opinion, ICJ Reports 1956, p. 23. -

is concerned – again a request for an advisory opinion relating to an issue of decolonization – it was the issue of whether the Committee on South West Africa, established by the General Assembly, had the right to grant oral hearings to petitioners on matters relating to the territory of South West Africa. The Court found that this was the case if such a course was necessary for the maintenance of effective international supervision of the mandated territory. It was thus again the scope of the competences of the General Assembly that formed the very subject-matter of the request rather than any bilateral issues.

101. It is of course true that the Court's advisory opinion on the 'Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)' had a wider scope and was also concerned with legal consequences more broadly.

102. Yet, it must be noted that in that instance – unlike in the case at hand – the Security Council had *expressly* asked the Court to take a position as to the legal consequences *for States* of the continued presence of South Africa in Namibia. It did so, however, only in order to enlighten member States of the

United Nations as to how to implement the relevant decisions taken by organs of the United Nations.

103. Furthermore, it should be noted that with regard to Namibia, the United Nations had a *direct* and immediate responsibility for the territory as a former mandate territory. Once again, therefore, the advisory opinion, as requested, had an immediate link to the exercise of the competences of the organization, and indeed was limited to such issues.

104. Moreover, the requesting organ, *viz.* the Security Council, had on various occasions previously referred to the continued occupation of the territory of Namibia by South Africa as an

> "(…) encroachment on the authority of the United Nations (…)"
> - *Cf.* SC Resolution 269 (1969), preambular paragraph 3. -

and had already called upon member States to take specific action as far as the presence of South Africa in Namibia was concerned.

- *Cf.* e.g. Security Council Resolutions 276 (1970) and 283 (1970). -

105. This close and intrinsic relationship between the legal status of the territory of Namibia and the exercise, by the United Nations, of its own competences had already become apparent during the debate of the Security Council leading to the adoption of the resolution requesting the Court's opinion. During the debate it was *inter alia* Spain that had stated that it

> "(…) expect[ed] this further action by the Security Council to contribute decisively to (…) the respect for the decisions of the Organization in discharging its *special responsibility* toward the Territory of Namibia."
> - S/PV.1550, p. 12, para. 117, emphasis added. -

106. It has therefore to be understood in light of this background that the request from the Security Council concerning Namibia was, unlike the current request, broadly formulated since even this broad request was inherently linked to the exercise by the Security Council of its competences under the Charter of the United Nations. At the same time, this may be explained by the *specific* relationship that existed at the time between the United Nations on the one hand, and the former mandate territory of South West Africa/Namibia on the other.

107. As far as the advisory opinion on Western Sahara is concerned, the Court unequivocally confirmed that the purpose of the advisory opinion was *not* to decide a bilateral dispute. Rather, the request and the ensuing advisory opinion were solely meant to provide legal guidance to the extent such guidance was necessary for the requesting organ, *i.e.* the General Assembly, to exercise its powers under the Charter. As the Court then put it unequivocally:

> "(…) 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 territory."
> - ICJ, Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12 at 26-27, para. 39; emphasis added. -

108. Once again, therefore, the Court perceived its role, when rendering an advisory opinion, as exclusively one of providing guidance to the requesting organ, but not as settling bilateral issues, even if connected with the exercise, by the General Assembly, of its powers under the Charter of the United Nations.

109. At first glance, the Court's 2004 advisory opinion on the 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory' might be perceived as going beyond those limited parameters. As is well-known, in that advisory opinion the Court determined that it had been requested to deal not only with the legal consequences of the construction of a wall in the Occupied Palestinian Territory for the United Nations itself, but also with the legal consequences for Israel, as well as for third States.

110. A more careful analysis, however, confirms that this is due to both the precise content of the request and, once again, the specific legal situation of the territory in question.

111. In particular, it must be noted *first* that the General Assembly itself had, in its request, included a specific reference to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention). This implied that the General Assembly had thereby also wanted to make specific reference to obligations of third States arising under

Art. 1 of the Fourth Geneva Convention to which the Court accordingly then also alluded in its advisory opinion.

> - ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136 at 172 and 183 *et seq*., paras. 89 and 120 *et seq*. -

112. The General Assembly had thus – unlike in the case at hand – *specifically* asked the Court to enlighten it also as to legal obligations incurred by both Israel and third States.

113. *Secondly*, the occupied Palestinian territory, like Namibia in the past, constitutes a question of direct and specific relevance to the United Nations, falling within the scope of its responsibility, almost since the organization's inception. This has been consistently confirmed by decisions of the political organs of the United Nations ever since the adoption of General Assembly Resolution 184 (1948). As the Court itself said in its 2004 advisory opinion:

> "(…) The responsibility of the United Nations in this matter also has its origin in the Mandate and the Partition Resolution concerning Palestine (…). This responsibility has been described by the General Assembly as 'a permanent responsibility towards the question of Palestine until the question is resolved in all its aspects in a satisfactory manner in accordance with international legitimacy' (General Assembly resolution 57/107 of 3 December 2002). Within the institutional framework of the Organization, this responsibility has been manifested by the adoption of many Security Council and General Assembly resolutions, and by the creation of several subsidiary bodies specifically established to assist in the realization of the inalienable rights of the Palestinian people."

- ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136 at 159, para. 49. -

114. In consequence, as in the case of Namibia, the responsibility of the organization and its organs relative to the territory of Palestine not only encompasses the exercise of its own functions *stricto sensu*, but also includes action taken by both Israel and third States.

115. It is for these two cumulative reasons that the Court adopted a broad understanding of and approach to the question then asked by the General Assembly with regard to the legal consequences of the construction of a wall in the Occupied Palestinian Territory. However, this broad interpretation was based on the unique circumstances of the situation, and is not comparable to the present situation regarding the Chagos archipelago.

116. Yet, even in this unique situation concerning Palestine, the necessary linkage between the functions of the General Assembly when seeking an advisory opinion by the Court on the one hand, and the interpretation of the request for an advisory opinion on the other, had already been stressed during the debate in the General Assembly which led to the adoption of the respective General Assembly resolution. Thus, to provide but one example, notwithstanding the peculiar and specific situation of Palestine vis-à-vis the United Nations, Singapore had stated in the debate leading to the adoption of the request that:

"(…) [t]he purpose of seeking the advisory opinion of the ICJ must be to assist or facilitate the work of the General Assembly."
- *Cf.* Statement by Singapore, A/ES-10/PV. 23, p. 1 at 22. -

117. This point of view was echoed in the Separate Opinion of *Judge Owada* who, while agreeing with the Court that it could render the advisory opinion sought – a position also taken by Germany in the current proceedings – rightly argued that

> "(…) the existence of a bilateral dispute should be a factor to be taken into account by the Court in determining the extent to which, and the manner in which, the Court should exercise jurisdiction in such advisory proceedings."
>
> - ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, Separate Opinion Judge Owada, *ibid.*, at 263, para. 10. -

118. Finally, the most recent advisory opinion which is of relevance for a proper understanding of the scope of the current request is the Court's 2010 advisory opinion on the 'Accordance with international law of the unilateral declaration of independence in respect of Kosovo'.

119. In that opinion, the Court stressed in particular that, whenever the requesting organ expects the Court to provide guidance on a *very broad* set of issues, it must request such guidance expressly.

> - ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 423-424, para. 51. -

120. To put it another way, as the Court had implied in its earlier advisory opinions, it should not be assumed that the General Assembly wants to be provided with answers to legal issues unless it specifically refers to them itself in its request, and unless further provided that such answers are relevant for its work. In its Kosovo opinion, the Court thus confirmed,

referring to its own prior jurisprudence in the Namibia and the Wall opinions, that whenever the General Assembly expects an answer to a specific issue it has

> "(…) framed the question in such a way that this aspect is *expressly* stated (…)."
>
> - ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, ICJ Reports 2010, p. 403 at 424, para. 51; emphasis added and references omitted. -

121. It is thus worth recalling that the wording of the current request does *not* refer to legal consequences for States. This is fully in line with the drafting history of the request as set out above, and is also in line with the underlying intentions of its main sponsors who were interested in the practical consequences of the Court's findings *for the work of the General Assembly* only. Hence, unlike other previous requests, it possesses a relatively limited and narrow scope.

122. To sum up, especially when it comes to territorial issues and issues of decolonization, but also more generally, both the Security Council and the General Assembly have requested advisory opinions with the aim of receiving legal guidance on questions falling within the proper scope of their own competences.

123. Where, in exceptional cases, such requests have also included issues related to possible legal consequences for States more generally, the requesting organs have explicitly included such issues, and, in addition, they have done so only where and when the United Nations bore a *specific* responsibility for the territory in question.

124. Given that the General Assembly is of course aware of the Court's jurisprudence as outlined above, it cannot be assumed that in the present case the General Assembly wanted to request the Court (and indeed has requested the Court) to provide a comprehensive answer regarding the legal status of the territory in question and the legal consequences for States of action taken with regard to the said territory. Otherwise, the General Assembly would have (and ought to have) clearly said so. However, the General Assembly chose not to make such a request. Rather, to recall the words of the sponsors of the request for an advisory opinion already mentioned above, the General Assembly only sought guidance as to the exercise of its own competences under Chapters XI and XIII of the Charter of the United Nations, while not requesting the Court to provide an answer as to possible legal consequences for States.

125. By the same token, such an approach to the request brought before the Court ought not to be misunderstood as a possible curtailment of the powers of the General Assembly under Art. 96 of the Charter of the United Nations. On the contrary, only a narrow interpretation of the question now put before the Court by the General Assembly is in line with the principle of functional cooperation underlying Art. 7 of the Charter of the United Nations, which as an overarching provision must also guide the interpretation of Art. 96 of the Charter of the United Nations.

126. What is more, it is only such a narrow interpretation of the question that is in line with the 'real question' the General Assembly must have had in mind when putting the request before the Court, as confirmed by the drafting history of the General Assembly resolution.

127. Accordingly, as already noted by *Judge Owada* earlier, the question of whether certain aspects of a situation brought before the Court also form part of a bilateral dispute, is not to be considered by the Court only when it comes to the admissibility of the request as such.

128. Rather, it is also when interpreting the question(s) put before it that the Court must take into account whether the underlying dispute possesses a bilateral nature, and if so to what extent.

129. *Judge Owada* rightfully argued that

> "(…) a reply in the form of an advisory opinion on the subject-matter of the request should not be tantamount to adjudicating on the very subject-matter of the underlying concrete bilateral dispute that (…) exists (…)"
> - ICJ, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Reports 2004, p. 136, Separate Opinion Judge Owada, *ibid.*, at 263, para. 13. -

between two States. *Judge Owada* accordingly concluded that

> "(…) this fact should have certain important bearing on the *whole proceedings* that the Court is to conduct (…) in the sense that the Court (…) should focus its task on offering its objective findings of law *to the extent necessary and useful to the requesting organ*, the General Assembly, *in carrying out its functions relating to this question, rather than adjudicating on the subject-matter of the dispute between the parties concerned*."
> - *Ibid.*, para. 14; emphasis added. -

130. It is respectfully submitted that these considerations should *a fortiori* inform the interpretation by the Court of the current request given that the territory concerned, unlike Palestine or Namibia, does not constitute a territory for which the United Nations as a whole bears a *specific* responsibility above and beyond the general responsibility of the United Nations with regard to issues of decolonization.

131. In narrowly interpreting the request, limiting it to issues that are relevant for the General Assembly with regard to the overall process of decolonization, the Court must take into account the very wording of the request, which, as previously mentioned, specifically makes reference to the "active role in the process of decolonization" that the United Nations is meant to play with respect to the Chagos archipelago.

132. It is also recalled that the text of the request does *not* refer to the consequences *for States* that might arise from the continued administration of the Chagos archipelago by the United Kingdom.

133. As the PCIJ stated many years ago in its advisory opinion on Exchange of Greek and Turkish Populations, if

> "(…) the [General Assembly] (…) *had wished* also to obtain the Court's opinion on this point (…) [it] would not have failed to say so *in terms*. In these circumstances the Court does not consider that is has cognizance of this question."
>
> - *Cf. mutatis mutandis* PCIJ, Exchange of Greek and Turkish Populations (Lausanne Convention VI, January 30th 1923, Art. 2), Advisory opinion, Series B, No. 10, p. 2 at 17; emphasis added. -

134. The Court ought thus, in line with its prior jurisprudence, take into account the very intention of the States sponsoring the request. As previously mentioned those States, and in particular Mauritius itself, the State most closely concerned, have themselves confirmed that the only intention in submitting the request was to provide the General Assembly with the necessary legal parameters to guide the work of the General Assembly itself.

135. It is only by acting in such manner that the Court would also act in line with its own jurisprudence, and in particular the principle set out in its Western Sahara advisory opinion, namely that its advisory jurisdiction was not designed, to paraphrase the Court in Western Sahara, to rule on a dispute or legal controversy by way of a request for advisory opinion. Rather, its function is to enable a requesting organ to obtain from the Court an opinion which is of assistance to the requesting organ itself for the proper exercise of its functions. In the present instance, the Court's advisory opinion would thus serve to assist the General Assembly in its actions relative to the decolonization of the Chagos archipelago, should the Court consider that the process of decolonization of Mauritius has not yet been lawfully completed.

- *Cf. mutatis mutandis* ICJ, Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12 at 26-27, para. 39. -

136. By interpreting the request in such a manner, the Court would also take into account the fact that neither the Court, nor indeed any other international court or (arbitral) tribunal, has jurisdiction to entertain a contentious case when it comes to the dispute as such.

137. The necessity of limiting the scope of the advisory opinion to be rendered by the Court to those aspects of the overall situation of relevance for the General Assembly itself, rather than adjudicating upon the underlying

bilateral dispute *in toto*, does not however stem solely from the fundamental principle of consent underlying the Court's exercise of its jurisdiction.

138. Such a reading of the request is also warranted by the circumstances under which a request for an advisory opinion is argued before the Court, which differ from those of a contentious case. While fully acknowledging the Court's practice in advisory proceedings of allowing the States most concerned to present their views somewhat more extensively during the oral hearing, it is only in contentious proceedings that both parties may argue their cases in full, both on jurisdictional issues, and on the merits of the case.

139. Despite the Court's attempts to hear concerned States in advisory proceedings, a right to be heard and to exchange arguments cannot be fully and adequately guaranteed in such proceedings, if only due to the number of participants. To prevent a situation from arising in which *de facto* respondent States could have their case decided not only against their will, but also with fewer procedural rights and safeguards, the Court must limit requested advisory opinions to those issues that are of direct concern to the requesting organ, in the present instance the General Assembly, and of relevance for the exercise of that organ's own competences.

140. It is therefore submitted that for this additional reason, too, the intention of the General Assembly could not have been to seek an opinion on the broader issues connected with the request, since this would bring about a situation in which the procedural rights of the States most concerned by the request, as interpreted most broadly, would be significantly more limited than they would be if the Court had jurisdiction to rule on the matter as part of a contentious case.

141. To summarize, while Germany is of the opinion that all issues which need to be addressed in order for the General Assembly to fulfil its tasks with respect to the process of decolonization are covered by the request, the bilateral aspects of this request ought to not be dealt with by the Court.

142. The Court should thus refrain from dealing with such aspects in order to avoid adjudicating a bilateral dispute, since it cannot be assumed that the General Assembly had, in violation of the principle of functional cooperation with the Court underlying Art. 7 of the Charter of the United Nations, wanted to bring such dispute before the Court by way of an advisory opinion.

143. Should the Court therefore find that it has jurisdiction to entertain the request, and should it further find that the decolonization of the territory in question has not yet been lawfully completed – on which latter question Germany does not take a position – the Court should only consider the legal consequences *for the United Nations* generally, and *for the General Assembly* in particular, that might then derive from the continued administration of the territory in question by the United Kingdom.

144. Hence, the Court might then provide legal guidance as to how the General Assembly, and possibly its Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (also known as the Special Committee on Decolonization or the 'Committee of 24') should deal with the prevailing situation.

145. By the same token, the Court ought *not*, however, consider what legal consequences might then arise for States, including for third States, from any such determination.

146. In doing so the Court would avoid taking a position on those aspects of the overall situation that only concern the resolution of a dispute between the States directly involved, namely the United Kingdom and Mauritius. Rather, the Court ought to focus solely on the legal consequences that might arise for the United Nations generally, the General Assembly specifically, and in particular its Special Committee on Decolonization.

147. Finally, the Court should also refrain from considering what remedies, if any, would follow from any violations of international law that might have been committed by the States involved, especially with regard to the question of the resettlement of the Chagossians. Once again, this cannot be assumed to have been within the realm of what the General Assembly, as an organ seeking guidance for its own future work, had in mind when requesting the present advisory opinion. This is because this latter aspect, too, relates to a bilateral dispute between Mauritius on the one hand, and the United Kingdom on the other, while the General Assembly, as shown, had in mind only the possible consequences for its own future work within the framework of Chapters XI and XIII of the Charter of the United Nations.

Chapter 6
SUMMARY OF ARGUMENTS AND SUBMISSIONS

A. Summary of Germany's arguments

148. To sum up, Germany continues to fully support the process of decolonization. At the same time, it feels obliged to raise certain points with regard to the specific advisory proceedings now brought before the Court.

149. It does so in order to safeguard the specific role and competences of the various organs of the United Nations, namely those of the General Assembly and of the Court itself.

150. The General Assembly has, time and again, actively played its paramount role in the process of decolonization. Legal guidance by the Court could thus assist the General Assembly with regard to any possibly incomplete decolonization processes, including the particular situation concerning the Chagos archipelago, as well as with regard to possible consequences arising therefrom for the General Assembly.

151. However, certain aspects of the questions submitted to the Court, if too broadly interpreted, may touch upon issues that concern only the two States involved, namely Mauritius and the United Kingdom, or possibly third States. Bearing this in mind, Germany is of the opinion that a request for an advisory opinion ought not to be interpreted in a manner that would circumvent the fundamental principle that the Court's jurisdiction is based upon the consent of both States.

152. As shown, the Court has, time and again, made use of its power to interpret, clarify, and reformulate requests for advisory opinions in order to identify the real question asked and the intent of the organ requesting it.

153. Germany therefore submits that it must be assumed that the General Assembly did not intend to put the Court in a position in which it would have to adjudicate a bilateral dispute, but that it rather intended to obtain from the Court solely those answers which were necessary for the General Assembly to perform its own tasks in relation to a decolonization process, should this be considered incomplete.

154. The Court should thus interpret the question before it to encompass only those aspects that concern the work of the United Nations, and especially of the General Assembly as the organ having submitted the request.

B. Submissions

155. For the reasons set out in this written statement, Germany therefore respectfully submits:

(i) that the Court has jurisdiction to entertain the request to render an advisory opinion contained in General Assembly Resolution A/71/L.73, and that it may render the advisory opinion requested;

(ii) that the Court must, in line with the underlying intention of the General Assembly, limit its advisory opinion to those aspects of the request that are of relevance for the General Assembly in order for it to exercise its competences on issues of decolonization;

(iii) that the Court accordingly ought *not* to provide an answer

a) to the question of what legal consequences for States, including third States, might arise from any determination as may

be made by the Court on the question of whether the decolonization of Mauritius has been lawfully completed or not;

b) to the question of which remedies, if any, would follow from any possible violations of international law, especially with regard to the question of the possible resettlement of the Chagossians.

Berlin, 15 January 2018

Ambassador Dr. Michael Koch
- The Legal Adviser, German Federal Foreign Office -

Annex 1

General Assembly Resolution 71/292 of 22 June 2017

[*without reference to a Main Committee (A/71/L.73 and Add.1)*]

71/292. 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

The General Assembly,

Reaffirming that all peoples have an inalienable right to the exercise of their sovereignty and the integrity of their national territory,

Recalling the Declaration on the Granting of Independence to Colonial Countries and Peoples, contained in its resolution 1514 (XV) of 14 December 1960, and in particular paragraph 6 thereof, which states that 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,

Recalling also its resolution 2066 (XX) of 16 December 1965, in which it invited the Government of the United Kingdom of Great Britain and Northern Ireland 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 violate its territorial integrity, and its resolutions 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967,

Bearing in mind its resolution 65/118 of 10 December 2010 on the fiftieth anniversary of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reiterating its view that it is incumbent on the United Nations to continue to play an active role in the process of decolonization, and noting that the process of decolonization is not yet complete,

Recalling its resolution 65/119 of 10 December 2010, in which it declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism, and its resolution 71/122 of 6 December 2016, in which it called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Noting the resolutions on the Chagos Archipelago adopted by the Organization of African Unity and the African Union since 1980, most recently at the twenty-eighth ordinary session of the Assembly of the Union, held in Addis Ababa on 30 and 31 January 2017, and the resolutions on the Chagos Archipelago adopted by the Movement of Non-Aligned Countries since 1983, most recently at the Seventeenth Conference of Heads of State or Government of Non-Aligned Countries, held on Margarita Island, Bolivarian Republic of Venezuela, from 13 to 18 September 2016, and in particular the deep concern expressed therein at the forcible removal by the United Kingdom of Great Britain and Northern Ireland of all the inhabitants of the Chagos Archipelago,

Noting also its decision of 16 September 2016 to include in the agenda of its seventy-first session the item entitled "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", on the understanding that there would be no consideration of this item before June 2017,

Decides, 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?".

88th plenary meeting
22 June 2017

Annex 2

Letter of H.E. Ambassador J. Koonjul, Permanent Representative of Mauritius to the UN to H.E. Ambassador H. Braun, Permanent Representative of Germany to the UN of 30 May 2017

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

30 May 2017

Excellency, Dear Harald

I have the honour to draw your attention Item 87 of the agenda of the 71st Session of the General Assembly, entitled "Request for an Advisory Opinion of the International Court of Justice (ICJ) on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", which was included by consensus in September 2016 on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.

Mauritius will shortly be requesting for action on that item in the General Assembly. In that regard, I am attaching a draft resolution which Mauritius will be submitting for adoption by the General Assembly. I am also enclosing for your information an Aide Mémoire providing background information on the item.

I wish to emphasize that the issue raised by Item 87 concerns decolonization which is of interest to the whole UN System as explained in our aide memoire, and an advisory opinion by the ICJ will contribute to the work of the General Assembly in the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations.

We also wish to point out that in seeking a favourable vote on the draft resolution on the request for an advisory opinion of the ICJ, we are not seeking for a vote against any member state but a vote in favour of upholding the principles of the UN Charter, the rule of law and the effective functioning of our institutions.

I therefore seek your support for the adoption of the resolution and look forward to your active participation in the debate on the item during its consideration in the General Assembly.

Please accept, Excellency, the assurances of my highest consideration.

Jagdish D. Koonjul, G.O.S.K.
Ambassador
Permanent Representative

H.E. Mr. Harald Braun
Permanent Representative of Germany
to the United Nations
New York

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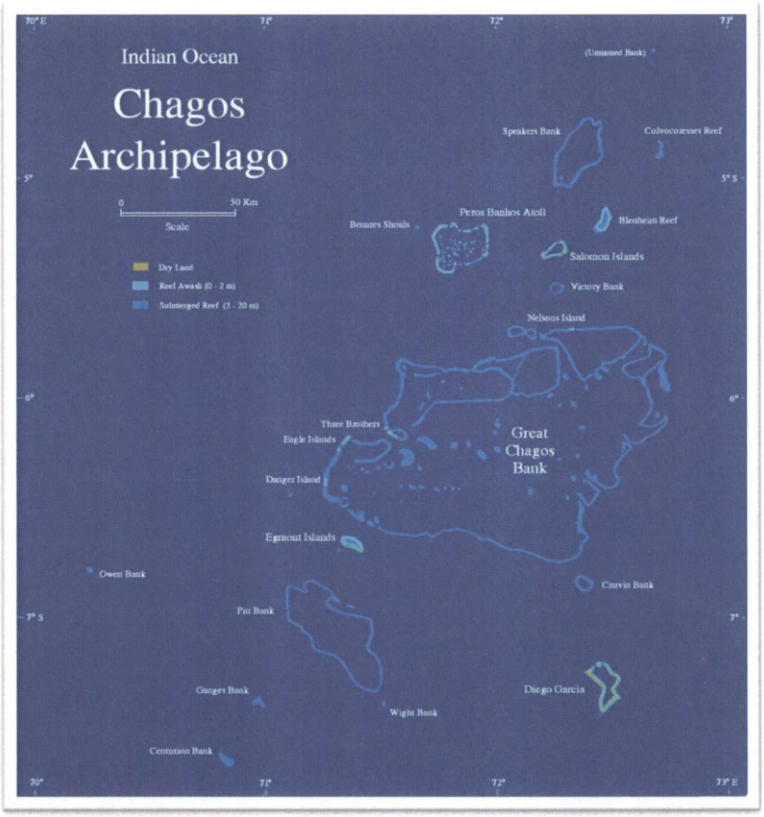
Annex 3

Republic of Mauritius

Aide-Mémoire: Item 87 of the Agenda of the 71st Session of the UN General Assembly, May 2017

REPUBLIC OF MAURITIUS

Aide Memoire



ITEM 87 OF THE AGENDA OF THE 71ST SESSION OF THE UN GENERAL ASSEMBLY

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

MAY 2017

1. On 16 September 2016, the UN General Assembly (UNGA) decided to include an item entitled "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" on the agenda of its current session, on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.

2. The period between September 2016 and June 2017 was intended to allow time for Members to ascertain whether progress could be made on the issues raised by the item, which relates to the completion of the process of decolonization of Mauritius, thereby enabling Mauritius to exercise its full sovereignty over the Chagos Archipelago. Unfortunately, no progress has been possible. Accordingly, action should now be taken by the UNGA.

Background

3. The Chagos Archipelago is a group of islands in the Indian Ocean. They have been part of Mauritius since at least the eighteenth century, when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.

4. Prior to granting independence to Mauritius on 12 March 1968, the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK") unlawfully dismembered Mauritius in 1965 by excising the Chagos Archipelago from its territory to create the so-called "British Indian Ocean Territory."

5. This excision was carried out in violation of international law and UNGA Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Resolution 2066 (XX),

dealing specifically with Mauritius, required the administering Power to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV) and invited "the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity."

6. Dismemberment occurred, and its effects continue to this day. Subsequent efforts to seek the return of the Chagos Archipelago to the effective sovereign control of Mauritius have been unsuccessful. The United Kingdom claims that it exercises sovereignty lawfully over the Chagos Archipelago, yet it also tacitly admits the impropriety of its actions, stating that it will return the Chagos Archipelago to Mauritius once it is no longer required for defence purposes without providing any clarity on the date of return, while the criteria to determine when defence needs will cease to exist keep on changing.

7. In 2015, an Arbitral Tribunal acting under Part XV of the UN Convention on the Law of the Sea (UNCLOS) unanimously found that this commitment to return the Chagos Archipelago to Mauritius is binding under international law,[1] acknowledging that Mauritius has inalienable legal rights with respect to the Chagos Archipelago and that the process of decolonization remains incomplete. Two members of the Tribunal found, *inter alia*, that the excision of the Chagos Archipelago from Mauritius in 1965 showed 'a complete disregard for the territorial integrity of Mauritius by the United Kingdom',[2] in violation of the right to self-determination. No contrary view was put forward by any other members of the Tribunal.

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[1] In the Matter of the Chagos Marine Protected Area (Mauritius v. United Kingdom), Annex VII Arbitral Tribunal Award (18 March 2015), para. 448.

[2] *Ibid*, Dissenting and Concurring Opinion of Judges Kateka and Wolfrum, para. 91. The other three members of the Tribunal considered that the Tribunal lacked jurisdiction over the issue, and therefore expressed no view on that part of the case.

Actions taken by the United Kingdom in violation of international law

8. Following the illegal excision of the Chagos Archipelago, the United Kingdom has purported to take a number of actions in respect of the Chagos Archipelago which give rise to serious violations of international law, including human rights and international environmental law. These actions, which are inconsistent with the commitment to decolonization, include, but are not limited to:

i. Conclusion in December 1966 of a fifty-year agreement between the United Kingdom and the United States of America ("United States" or "US") concerning the availability for defence purposes of the Chagos Archipelago. While a limited naval communications facility was initially intended to be set up by the United States in Diego Garcia, which forms part of the Chagos Archipelago, it was subsequently developed into a support facility of the US Navy and later on into a full-fledged military base. The United Kingdom initially contended that the Chagos Archipelago was required for the defence of the West. Now that the Cold War is over and the threat from the Soviet Union no longer exists, the United Kingdom argues that the Chagos Archipelago is needed for the fight against terrorism and piracy.

ii. Forcible eviction of the former inhabitants of the Chagos Archipelago ("Chagossians") in total disregard of their fundamental human rights.

iii. Continued and systematic denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago, including through the creation of a 'marine protected area' around the Chagos Archipelago. Mr. Colin Roberts of the United Kingdom Foreign and Commonwealth Office is reported to have told a Political Counsellor at the US Embassy in London on 12 May 2009 that "establishing a marine reserve would, in effect, put paid to resettlement claims of the archipelago's former residents"[3].

[3] Cable from US Embassy, London, on UK Government's proposal for a marine reserve covering the Chagos Archipelago, May 2009, published on "WikiLeaks" website in December 2010.

iv. Use of Diego Garcia – which, according to the United Kingdom, hosts a joint UK-US military base – as a transit point after September 2001 for rendition of persons to countries where they risked being subjected to torture or ill-treatment.

v. Unilateral creation of a 'marine protected area' ("MPA") around the Chagos Archipelago on 1 April 2010. The Arbitral Tribunal constituted in the case brought by Mauritius against the United Kingdom to challenge the legality of the 'MPA' ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.

vi. Pollution of the waters of the Chagos Archipelago with sewage and human waste by vessels acting under the authority or consent of the United Kingdom, including the *Pacific Marlin*, a patrol vessel used by the United Kingdom.

vii. Hydro blasting of ships in the lagoon adjoining Diego Garcia.

9. The following further unilateral actions have purportedly been taken by the United Kingdom without the prior involvement and consent of Mauritius since the ruling of the Arbitral Tribunal in the case of *Mauritius v United Kingdom,* which concluded at para. 298 of its Award that "the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned." These include:

i. the conduct by the UK Government of a public consultation exercise on resettlement in the Chagos Archipelago from 4 August to 27 October 2015;

ii. the UK Government's decision in November 2016 against resettlement of the former inhabitants of the Chagos Archipelago and the automatic roll over of the purported UK-US agreement in respect of the Chagos Archipelago for a further period of 20 years until 30 December 2036. These purported decisions were announced barely a week after the first round of talks held between Mauritius and the United Kingdom following the understanding reached in New York last

September to defer, at the United Kingdom's request, consideration of item 87 of the UNGA agenda; and

iii. the organization of a significantly expanded programme of visits for Mauritians of Chagossian origin to the Chagos Archipelago as part of a purported £40 million package announced by the UK Government in November 2016, which is said to be intended to support improvements to the livelihoods of Chagossians. This purported initiative was also taken barely three weeks after the third round of talks held between Mauritius and the United Kingdom following the above-mentioned understanding reached in New York last September.

Talks between Mauritius and the United Kingdom

10. Three meetings have been held between Mauritius and the United Kingdom following the understanding reached in New York last September, during which the United Kingdom made the following two proposals:

(a) joint environmental stewardship of the outer islands of the Chagos Archipelago, excluding the island of Diego Garcia (environmental protection, conservation and promotion of marine and land biodiversity; development of sustainable management of fishery stocks in the waters of the Chagos Archipelago; and observation of natural phenomena in the region); and

(b) bilateral defence engagement between Mauritius and the United Kingdom (training and defence cooperation, covering areas including maritime and aviation security, port security, and governance).

Mauritius has made clear to the United Kingdom that neither of these proposals is acceptable as they do not address the very objective of the talks, namely the completion of the decolonization process of Mauritius and the exercise of full sovereignty by Mauritius over the Chagos Archipelago. The UK's proposal of joint stewardship does not include the island of Diego Garcia and its surrounding maritime zones and is limited to environmental

management only. Mauritius has nevertheless conveyed to the United Kingdom that it is prepared to consider the two proposals in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius.

11. In addition, Mauritius has addressed the security and defence needs invoked by the United Kingdom by reaffirming that it has no objection to the continued use of Diego Garcia for defence purposes in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius. Following the stand recently taken by the United Kingdom that the military base in Diego Garcia is a joint US-UK base, Mauritius has responded that it would be willing, within the framework of the completion of the decolonization process, to guarantee to the United Kingdom and the United States in a binding agreement their continued use of Diego Garcia for defence purposes. Mauritius will stand by this commitment.

The rationale for an advisory opinion

12. The General Assembly has a direct institutional interest in this matter. It has played a historic and central role in addressing decolonization, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations. Under its 1960 Resolution 1514 (XV)[4] on the granting of independence to colonial countries and peoples, the General Assembly declared that a denial of fundamental human rights is contrary to the Charter; that the integrity of the national territory of dependent peoples shall be respected; and that any attempt at the disruption of the territorial integrity of a colonial country is incompatible with the purposes and principles of the Charter.[5]

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[4]General Assembly Resolution 1514 (XV) (14 December 1960), paras.1, 4, & 6.
[5]General Assembly Resolution 2066 (XX) (16 December 1965), para. 3.

13. In 2010, on the fiftieth anniversary of the adoption of UNGA Resolution 1514 (XV), the General Assembly noted with deep concern that "fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated". It further declared "that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law," and considered it "incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization."[6]

14. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965.

15. By having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the members of the United Nations, namely to complete the process of decolonization.

16. The Government of Mauritius will be submitting a draft resolution pertaining to the request from the General Assembly for an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

17. The Government of Mauritius would be grateful for the support of all Member States in its endeavour.

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[6] General Assembly Resolution 65/118 (20 January 2011), pmbl.,paras. 2 & 9.