

INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR AN ADVISORY OPINION)

WRITTEN STATEMENT

**SUBMITTED BY
THE REPUBLIC OF CYPRUS**

12 FEBRUARY 2018

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	4
II. Jurisdiction of the Court	5
<i>A. The General Assembly is Competent to Make the Request</i>	6
<i>B. The Request is for an Opinion on Legal Questions</i>	7
<i>C. Conclusion</i>	8
III. There Are No Compelling Reasons Preventing the Court from Providing the Requested Advisory Opinion	8
IV. Conclusion	12

WRITTEN STATEMENT

I. Introduction

1. This Written Statement is filed by the Republic of Cyprus in accordance with the Order of the Court dated 14 July 2017 in response to the United Nations General Assembly's request for an advisory opinion contained in resolution 71/292 (A/RES/71/292), dated 22 June 2017.
2. In accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, the General Assembly in resolution 71/292 requested that the Court render an advisory opinion on the following questions:
 - “(a) Was the process of decolonization of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?
 - (b) What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?”
3. The Republic of Cyprus submits this Written Statement for the following reasons. First, as a member of the international community, the Republic of Cyprus holds the view that the international legal framework governing decolonization must be further clarified, *inter alia* due to the *jus cogens* character of the right of self-determination and the *erga omnes* nature of the obligations stemming from it. It considers that decolonization is a proper subject-matter for an advisory opinion given the critical role of the General Assembly in the decolonization process. As a result, the Republic of Cyprus is further of the view that the General Assembly, and the international community, would substantially benefit from an advisory opinion on the legality of the decolonization process of Mauritius and its consequences. To this end, the Republic of Cyprus emphasizes the essential role that the Court serves in issuing advisory opinions on matters requested by authorized bodies, such as the General Assembly.
4. Second, Cyprus is itself a former colony, where at the end of British colonial rule in 1960, the United Kingdom retained two areas of the territory of the island as bases, to be used solely for military purposes. The guidance of the Court on, and the clarification of, the international legal framework governing the decolonization

process and its consequences are therefore of direct interest to the Republic of Cyprus.

5. It is with these considerations in mind that the Republic of Cyprus voted in favour of resolution 71/292 (A/RES/71/292), dated 22 June 2017, containing the General Assembly's request for an advisory opinion.
6. At this stage in the proceedings, the Republic of Cyprus will make reference to the jurisdiction of the Court to render an advisory opinion on the questions set out in General Assembly resolution 71/292 and will submit its views in favour its jurisdiction, fully reserving its right to make any further submissions regarding issues of substance on the said questions at a later stage.

II. Jurisdiction of the Court

7. Article 65(1) of the Statute of the Court provides:

“The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

8. Article 96(1) of the Charter of the United Nations provides:

“The General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question.”

9. In accordance with these provisions, the Court has jurisdiction on the basis that (i) the General Assembly is authorized by Article 96(1) of the Charter to make a request for an advisory opinion and it has done so by General Assembly Resolution 71/292, adopted on 22 June 2017;¹ (ii) the General Assembly is competent to make the request since the request concerns matters within the scope of the General Assembly's activities; and (iii) the request is for an opinion on legal questions. The Republic of Cyprus considers it necessary to comment only in relation to the last two of these points, given that the aforementioned Resolution was passed by a recorded vote of 94 in favour, 15 against, and 65 abstentions, and was thus properly adopted by the required majority of UN Member States present and voting, in accordance with Rule 86 of the General Assembly's Rules of Procedure.²

¹ UN Doc A/RES/71/292.

² Rule 86 of the General Assembly's Rules of Procedure defines the terms “members present and voting” at paragraphs 2-3 of Article 18 of the UN Charter to mean members casting affirmative or negative votes and excluding those that abstain.

A. *The General Assembly is Competent to Make the Request*

10. Paragraph 1 of Article 96 authorizes the General Assembly to make a request for an advisory opinion “on *any* legal question” (emphasis added). The provision does not require that such a request should fall within the scope of the General Assembly’s activities, unlike the power to request advisory opinions given to the organs mentioned in paragraph 2 of the same Article. The Court has clearly drawn this distinction in its previous jurisprudence.³ However, also in previous jurisprudence, the Court has given consideration as to whether the subject-matter of the request concerns the activities of the General Assembly.⁴
11. In the present case, it is clear that the subject-matter of the request relates to the activities of the General Assembly. In accordance with Article 10 of the Charter, the powers of the General Assembly are broad, and encompass the power to “discuss any questions or any matters within the scope of the present Charter”. Articles 1(2) and 55 of the Charter, along with Article 73, as interpreted and applied in what constitutes established practice of the General Assembly over many decades, and in particular against the background of Resolution 1514 (XV) of 1960 and many subsequent resolutions,⁵ clearly establish that questions of self-determination and of the process of decolonization fall within the scope of the Charter and thus within the scope of the activities of the General Assembly.⁶ The General Assembly has in fact specifically concerned itself with the process of decolonization of Mauritius, in particular in Resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.
12. The opinion of the Court on whether the process of decolonization of Mauritius has been lawfully completed, and on the legal consequences of the continued administration of the Chagos Archipelago by the United Kingdom, will be of crucial significance to any further consideration of the process of decolonization of Mauritius

³ See, e.g., *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, para. 19 (quoting *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*, Advisory Opinion, I.C.J. Reports 1982, para. 21).

⁴ See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, para. 21; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, para.16; *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, paras 11–12; *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase*, Advisory Opinion, I.C.J. Reports 1950, p. 65 at p. 70.

⁵ See, e.g., General Assembly Resolutions 1654 (XVI) of 27 November 1961; 43/47 of 22 November 1988; 55/146 of 8 December 2000; 65/118 of 10 December 2010; 65/119 of 10 December 2010; 71/122 of 6 December 2016; the annual resolutions regarding dissemination of information on decolonization; as well as the work of the so-called ‘Committee of 24’ established by Resolution 1654 (XVI) to monitor the implementation of Resolution 1514 (XV) and in continuous operation since then.

⁶ See also *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, paras 54 *et seq.*

by the General Assembly, within the scope of its powers, including its power to make recommendations on the matter.

B. *The Request is for an Opinion on Legal Questions*

13. Under Article 96(1) of the UN Charter and Article 65(1) of the Statute, the Court's advisory opinion may be given only on a "legal question". The Court has held that questions "framed in terms of law and rais[ing] problems of international law" are "by their very nature susceptible of a reply based on law."⁷ Resolution 71/292 requests the Court to interpret rules and principles of international law regarding fundamental aspects of the international legal order and of the United Nations system, including decolonization and self-determination. The questions asked in the Resolution are, indisputably, eminently legal in nature.
14. To address the above-referenced questions, the Court will need to analyze the requirements for the lawful completion of decolonization under international law, including UN Resolutions and jurisprudence, and the consequences of any departure from this process. The questions are, therefore, of a legal character.
15. The fact that a question may also have "political aspects", does not negate jurisdiction.⁸ The Court has observed that a question's "political aspects do [] not suffice to deprive it of its character as a legal question."⁹ It has also made clear that "in determining the jurisdictional issue of whether it is confronted with a legal question," it "is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have."¹⁰

⁷ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Reports 1996*, para. 13 (quoting *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, para. 15).

⁸ See, e.g., *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 41; *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973*, para. 14.

⁹ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, para. 27.

¹⁰ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010*, para. 27 ("The Court has repeatedly stated that the fact that a question has political aspects does not suffice to deprive it of its character as a legal question. Whatever its political aspects, the Court cannot refuse to respond to the legal elements of a question which invites it to discharge an essentially judicial task, namely, in the present case, an assessment of an act by reference to international law. The Court has also made clear that, in determining the jurisdictional issue of whether it is confronted with a legal question, it is not concerned with the political nature of the motives which may have inspired the request or the political implications which its opinion might have (*Conditions of Admission of a State in Membership of the United Nations (Article 4 of the Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948*, p. 61, and *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, p. 234, para. 13).")

16. Thus, the Court found it had jurisdiction over a request that asked whether the “use of nuclear weapons by a State” would “be a breach of its obligations under international law,” despite the political context in which it was generated and the political motives behind it, because it raised “a legal question.”¹¹ Likewise, the Court accepted as a legal question, a request asking it to pronounce on the “legal consequences” of Israel’s construction of a wall in Occupied Palestinian Territory. The Court found that it had jurisdiction, because the request required it to “identify the existing legal principles and rules, interpret them and apply them ... thus offering a reply to the question posed based on law.”¹²

17. In the present case, the General Assembly has requested the Court for its opinion as to whether the process of decolonization of a particular territory has been completed in accordance with the relevant rules of international law, and as to the legal consequences stemming from a State’s continued administration of a particular territory. The questions require the Court to identify the existing legal principles and rules regarding lawful completion of the process of decolonization, interpret them, and apply them. As such, the questions invite the Court to “discharge an essentially judicial task”.¹³

C. Conclusion

18. It follows that, in the present case, the Court has jurisdiction to render an advisory opinion, since this was requested by the General Assembly as a duly authorized organ and in relation to its activities, and concerns legal questions, thus satisfying the conditions of Article 65(1) of the Statute of the Court and Article 96(1) of the Charter.

III. There Are No Compelling Reasons Preventing the Court from Providing the Requested Advisory Opinion

19. Even if the conditions for jurisdiction are met, the Court has interpreted Article 65(1) of its Statute as giving it discretion to render or refuse to render the opinion requested.¹⁴ However, the present Court has never refused to give an advisory opinion

¹¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996 (I), paras. 16-17.

¹² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, para. 38 (quoting *Nuclear Weapons*, I.C.J. Reports 1996, para. 13).

¹³ *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, para. 27.

¹⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, para. 44 (citing *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, para. 14).

through the exercise of this discretion.¹⁵ As the Court has repeatedly held, “[t]he reply of the Court, itself an ‘organ of the United Nations’, represents its participation in the activities of the Organization, and, in principle, should not be refused.”¹⁶ The Court has further held that only “compelling reasons” should serve as a basis for the Court to exercise its discretion to decline to issue an opinion.¹⁷

20. The purpose of advisory opinions is to furnish the organ which has made the request with the elements of law necessary for its action.¹⁸ In the present case, there are no compelling reasons for the Court to decline to issue an advisory opinion. Advisory opinions regarding questions of decolonization are of great importance to the General Assembly. They are sought to assist the General Assembly in its activities; and they are given to the requesting organ, rather than to States. Indeed, the Court has found that the motives of individual States sponsoring or voting in favour of a resolution requesting an advisory opinion “are not relevant to the Court’s exercise of its discretion whether or not to respond”.¹⁹ Motives are thus as irrelevant with respect to

¹⁵ Its predecessor court, the Permanent Court of International Justice, did so only once, in 1923: *Status of Eastern Carelia, Advisory Opinion*, 1923, P.C.I.J., Series B, No. 5. However, the particular circumstances which prompted the Court to refuse to give an advisory opinion in that case were that the question directly concerned an existing dispute, one of the parties to which was neither a party to the Court’s Statute nor a member of the League of Nations, objected to the proceedings and refused to take part in them (see *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, para. 14). Indeed, the lack of competence of the League to deal with a dispute involving a non-member State which refused its intervention was “a decisive reason” for the Court declining to render an advisory opinion in that case (see *Western Sahara, Advisory Opinion*, I.C.J. Reports 1975, para. 30). In the present case, the focus is not on an existing dispute but rather on the lawful completion of the process of decolonization of a particular territory and the legal consequences stemming from the continued administration of a territory by a State that is both party to the Court’s Statute and a founding member of the United Nations, and which, further, is taking part in the proceedings.

¹⁶ *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion*, I.C.J. Reports 1950, p. 65 at 71. See also *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, para. 30; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, para. 44.

¹⁷ *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, Advisory Opinion, I.C.J. Reports 1956, p. 77, at 86; see also *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, I.C.J. Reports 1996, p. 226, para. 14 (same). The United Kingdom also acknowledged in its Written Statement in the *Wall* advisory opinion that, as the Court held in *Legality of the Threat or Use of Nuclear Weapons*, “only ‘compelling reasons’ should lead it to refuse to give an opinion when requested to do so by a competent organ or agency,” and that “[o]n no occasion amongst the 23 requests for an advisory opinion considered by the Court prior to this date has the Court found such compelling reasons to exist . . .”. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, Written Statement of the United Kingdom of Great Britain and Northern Ireland, 30 January 2004, para. 3.4.

¹⁸ In its *Opinion concerning Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (I.C. J. Reports 1951, p. 15, at 19) the Court observed: “The object of this request for an Opinion is to guide the United Nations in respect of its own action.”

¹⁹ See *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion*, I.C.J. Reports 2010, para. 33.

the Court's discretion to render an advisory opinion as they are with respect to the Court's jurisdiction (see also paragraph 14, *supra*).

21. The Court has further found that it is for the requesting organ to determine whether it needs a particular advisory opinion for the proper performance of its functions. In the present case, it is clear that the questions put to the Court by the General Assembly are both urgent and relevant to the work of the Assembly, and are likely to have a practical and contemporary effect in light of the General Assembly's critical role in eliminating the vestiges of colonization.²⁰ General Assembly Resolution 65/119 of 10 December 2010 declared the period 2011–2020 the Third International Decade for the Eradication of Colonialism. Furthermore, Resolution 71/122 of 6 December 2016 called for the immediate and full implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. The General Assembly continues to oversee the process of decolonization in accordance with its powers, and is working towards its ultimate completion.
22. The requested Advisory Opinion would advance these goals as the request directly relates to these resolutions and raises important issues specified in paragraphs 3, *supra*, and 25, *infra*. The opinion will provide guidance for the General Assembly in the exercise of its responsibilities regarding decolonization.
23. In the debate on the draft which became General Assembly Resolution 71/292, and in their explanations of vote, certain States raised the issue that the subject-matter of the advisory opinion is a bilateral matter between Mauritius and the United Kingdom, and sought to cast doubt on the motives of States supporting the Resolution as seeking to circumvent the principle of consent to the judicial resolution of disputes between States or a bilateral territorial dispute between the two States, and sought to cast doubt on the motives of States supporting the Resolution as seeking to circumvent the principle of consent to the judicial resolution of disputes between States.²¹
24. As the Court has stated in the *Peace Treaties* Advisory Opinion, consent is not the basis of its advisory jurisdiction, even where the request relates to a legal question actually pending between States.²² However, the Court does regularly examine the opposition of interested States in the context of issues of judicial propriety,²³ as “[i]n

²⁰ See Standard set out in *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 37, para. 73; see also Resolution 1514 (XV) of 14 December 1960; Resolution 2066 (XX) of 16 December 1965; Resolution 2232 (XXI) of 20 December 1966; Resolution 2357 (XXII) of 19 December 1967; Resolution 2625 (XXV) of 24 October 1970.

²¹ See UN Doc. A/71/PV.88 of 22 June 2017.

²² *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 71.

²³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 47.

certain circumstances . . . the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character".²⁴

25. In this connection, the Republic of Cyprus submits that, as the Court stated in the *Kosovo Advisory Opinion*, and as already discussed in paragraph 19, *supra*, the motives of individual States sponsoring or voting in favour of a resolution requesting an advisory opinion "are not relevant to the Court's exercise of its discretion whether or not to respond".
26. Furthermore, as the Court pointed out in the *Wall* and *Namibia Advisory Opinions*, while interested States have expressed divergent views on the questions on which the present advisory opinion is sought, such differences of views on legal issues have existed in practically every advisory proceeding.²⁵ In any case, the subject-matter of the present request for an advisory opinion cannot be regarded as a purely bilateral matter between Mauritius and the United Kingdom. Matters pertaining to decolonization are proper subjects for an advisory opinion, given the critical role of the General Assembly in this process, the *jus cogens* nature of self-determination, and the *erga omnes* nature of the obligations with respect to decolonization. The UN, as a whole, and the General Assembly in particular, shall benefit substantially from the guidance of and clarification by the UN's principal judicial organ on the legality of the decolonization process and its consequences. This is undoubtedly a matter of direct concern to the United Nations.
27. Finally, as the Court stated in *Western Sahara*, and as explained above, the object of the advisory opinion requested in this case is for the General Assembly to obtain an opinion which it deems of assistance to it for the proper exercise of its functions concerning decolonization, and in particular the decolonization process of a specific territory.²⁶ This legitimate interest of the General Assembly in obtaining an opinion with respect to its own future action cannot be prejudiced by the fact that there may exist a legal question, or even a dispute, actually pending between States and raising issues related to those contained in the request for an advisory opinion.²⁷
28. In conclusion, whether the Court issues an advisory opinion on a matter of direct concern to the United Nations, and its General Assembly, does not and may not depend on the consent of any particular State or States. This would defeat the purpose

²⁴ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, paras 32-33.

²⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 47; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I. C. J. Reports 1971*, para. 34.

²⁶ *See Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, paras 39-40.

²⁷ *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, para. 41.

of the authorized organs' requests, which are made when the organ is in need of assistance from the UN's principal judicial organ when a matter is "deemed to be directly of concern to the United Nations."²⁸

29. There are thus no compelling reasons why the Court should not render the advisory opinion, which has been requested of it. Indeed, the advisory opinion will be of crucial significance to the work of the General Assembly of the United Nations.

IV. Conclusion

30. The Republic of Cyprus accordingly submits that:

- a. The General Assembly's request for an advisory opinion satisfies the conditions of the Statute of the Court and the United Nations Charter both as regards the competence of the requesting organ and as regards the substance of the request; and the Court accordingly has jurisdiction in this case.
- b. There are no "compelling reasons" why the Court should not render the advisory opinion which has been requested of it.

The Republic of Cyprus reserves the right to furnish information and/or to make any further submissions on the questions submitted to the Court for an advisory opinion in a possible second written statement, the time – limit for which has been fixed for 15 May 2018.

²⁸ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, para. 50 ("The object of the request before the Court is to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions. The opinion is requested on a question which is of particular acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute. In the circumstances, the Court does not consider that to give an opinion would have the effect of circumventing the principle of consent to judicial settlement, and the Court accordingly cannot, in the exercise of its discretion, decline to give an opinion on that ground.")