

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

(REQUEST FOR ADVISORY OPINION)

**Written statement addressed to the International Court of Justice
by the Principality of Liechtenstein
Pursuant to the Order of the Court of 14 July 2017**

1. On 22 June 2017 the United Nations General Assembly adopted resolution 71/292 by which it decided, in accordance with Article 96 of the Charter of the United Nations and pursuant to Article 65 of the Statute of the Court, to request the International Court of Justice (“Court”) to render an advisory opinion on the following two questions:

(1) “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 (XXV) of 14 December 1960, 2066 (XXX) of 16 December 1965, 2232 (XXXI) of 20 December 1966 and 2357 (XXXII) of 19 December 1967?”

(2) “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 of the Chagos Archipelago of its nationals, in particular those of Chagossian origin?”

2. By an Order of 14 July 2017, the International Court of Justice decided: “the United Nations and its Member States, which are likely to be able to furnish information on the question submitted to the Court for an advisory opinion may do so within the time-limits fixed by this Order.”

3. Liechtenstein wishes to take advantage of this possibility and submits the following observations to the Court within the time limit and in due form.

I. Introduction

4. Liechtenstein’s interest in providing a submission is based on its view of the important role that the Court serves in rendering advisory opinions and its general interest in strengthening the rule of law at the international level, for which purpose the Court can play an essential role.

5. Liechtenstein abstained from the vote on resolution 71/292, which is the source of the request for an advisory opinion. The Resolution was, however, adopted by the General Assembly on 22 June 2017, and thus the matter has been duly referred to the Court.

6. Liechtenstein attaches great importance to public international law and the function of the Court in addressing matters of international law. With this submission, it wishes to contribute its views on the Court’s competence and the exercise of its discretionary power to give the advisory opinion that has been requested.

II. Competence of the Court

(a) The Court has jurisdiction to issue an advisory opinion pursuant to Article 65(1) of the Statute of the Court because it has been requested to do so by the duly authorized United Nations General Assembly

7. Article 65(1) of the Statute of the Court sets out its advisory jurisdiction, allowing the ICJ to provide advisory opinions on legal questions upon request by bodies authorized by the UN Charter.¹ Under Article 96(1) of the UN Charter, the General Assembly is one such authorized body.²

8. Pursuant to Resolution 71/292, on 22 June 2017, the General Assembly requested that the ICJ issue an advisory opinion on the two questions detailed above, thereby meeting the requirements of Article 65(1) of the Statute of the Court and Article 96 of the UN Charter.

9. Resolution 71/292 passed by a recorded vote of 94 in favor, 15 against, and 65 abstentions.³ The Resolution was thus properly adopted by the required majority of the members of the United Nations present and voting on the matter, and therefore is a legally valid decision.⁴

(b) Resolution 71/292 posed legal questions to the Court.

10. To fall within the Court's jurisdiction, the request for an advisory opinion must pose a "legal question." The ICJ has held that questions which are "framed in terms of law and [which] raise problems of international law" are "by their very nature susceptible of a reply based on law."⁵

11. Legal questions that may have a political dimension still fall within the jurisdiction of the Court.⁶ Indeed, in the *Kosovo* Advisory Opinion, the Court found that,

"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

¹ Article 65(1) ("The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.").

² Article 96 ("The General Assembly ... may request the International Court of Justice to give an advisory opinion on any legal question.").

³ See *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, p. 16, at 22 ("A resolution of a properly constituted organ of the United Nations which is passed in accordance with that organ's rules of procedure, and is declared by its President to have been so passed, must be presumed to have been validly adopted.").

⁴ Resolution 71/292, on 22 June 2017.

⁵ *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*, I.C.J. Reports 1996, para. 13; *Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, para. 15.

⁶ See, e.g., *Legal Consequences on the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, para. 41.

the political nature of the motives which may have inspired the request or the political implications which its opinion might have.”⁷

12. Likewise, a question that asked for the Court’s opinion on the “legal consequences” of Israel’s construction of a wall in Occupied Palestinian Territory was deemed to be within the Court’s jurisdiction since it requested that the Court “identify the existing legal principles and rules, interpret them and apply them ... thus offering a reply to the question posed based on law.”⁸

13. The questions set out in Resolution 71/292 are of a legal nature because they concern whether the decolonization of Mauritius was completed in accordance with international law and the legal consequences that follow if it was not lawfully completed. To address these legal questions, the Court will need to assess the steps that are required for decolonization to be completed under international law and the consequences if it was not lawfully completed.

III. Discretionary power of the Court to give the advisory opinion requested

(a) The Court should answer the questions that have been referred to it by the General Assembly.

14. Under Article 65(1) of the Statute of the Court, the ICJ retains discretionary authority to decline to issue an opinion even where it otherwise has jurisdiction.⁹ With respect to Resolution 71/292, there is no compelling reason for the Court to decline to issue an advisory opinion.

15. The Court’s discretion to decline to issue an opinion is used very sparingly. As the Court held, “The 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.”¹⁰ The Court has further held that only “compelling reasons” should serve as a basis for the Court to decline to issue an opinion.¹¹

16. The questions put to the ICJ are both urgent and relevant, and are likely to have a practical and contemporary effect in light of the General Assembly’s role in overseeing decolonization as well as to contribute to the general development of international law.¹² The request raises important issues relating to the right to self-determination, including as to whether decolonization was lawfully completed with respect to Mauritius, and the legal consequences if it has not been lawfully completed.

(b) The Court should not decline to address the General Assembly’s questions.

Even if there is an underlying bilateral aspect to a question that is posed to the Court, the jurisprudence is clear that it should still issue an Advisory Opinion if the matter is “deemed to be

⁷ *Accordance With International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 22 July 2010, para. 27.

⁸ *Legal Consequences on 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).

⁹ *Id.* at para. 44.

¹⁰ *Interpretation of Peace Treaties with Bulgaria, Hungary and Rumania*, First Phase, Advisory Opinion, I.C.J. Reports 1950, p. 65 at 71.

¹¹ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, para. 14; *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, Advisory Opinion, I.C.J. Reports 1956, p. 86.

¹² *See Western Sahara*, Advisory Opinion, I.C.J. Reports 1975, p. 12.

directly of concern to the United Nations.”¹³ This is certainly the case here, where the request concerns decolonization, a matter that falls within the core competence of the General Assembly.

17. The United Nations, as a whole, and the General Assembly, in particular, would benefit from the guidance of the principal judicial organ of the United Nations on the legality of the decolonization process and its consequences. And the General Assembly has indeed decided to formally request such guidance from the Court by way of an advisory opinion on the above-referenced legal questions.

IV. Conclusions

18. In conclusion, the Court has jurisdiction to answer the above-referenced questions and there are no compelling reasons for the Court to decline to give an advisory opinion.

Vaduz, 20 February 2018



Director
Office for Foreign Affairs
of the Principality of Liechtenstein

¹³ See *Construction of a Wall*, ICJ Advisory Opinion, 9 July 2004, para. 50-51, p. 159 (“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.”).