

INTERNATIONAL COURT OF JUSTICE

**LEGAL CONSEQUENCES OF THE SEPARATION
OF THE CHAGOS ARCHIPELAGO FROM
MAURITIUS IN 1965
(REQUEST FOR ADVISORY OPINION)**

**WRITTEN STATEMENT OF
THE PEOPLE'S REPUBLIC OF CHINA**

1 MARCH 2018

1. On 22 June 2017, the United Nations General Assembly adopted resolution 71/292 in which, pursuant to Article 65 of the Statute of the International Court of Justice, the General Assembly requested the International Court of Justice (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?”.

2. On 14 July 2017, the Court made an order stating that the United

Nations and its Member States may present written statements on the above-mentioned questions.

3. When the General Assembly voted on the draft resolution that has now become resolution 71/292, China abstained in the voting and made an explanatory statement, reiterating “China’s firm support for the decolonization process and its understanding of the position of Mauritius on the question of decolonization”. The statement proceeded:

Recently, the countries concerned made efforts, through consultation and negotiation, to seek solutions to the question concerning the Chagos archipelago. China notes that the aforementioned negotiation has not yielded progress. China calls upon the countries concerned to continue to make efforts in good faith and to continue to carry out bilateral negotiations and consultations, so as to seek an appropriate solution to the question of Chagos archipelago as soon as possible.

4. China would like to further elaborate its positions on the international law issues involved in this case for the reference of the Court when rendering its advisory opinion.

5. Decolonization has been an important function of the United Nations.

Article 1 of the Charter of the United Nations at the outset declares that one of the purposes of the United Nations is “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace”. The relevant provisions and institutional arrangements stipulated in Chapter IX (“International Economic and Social Co-operation”), Chapter XI (“Declaration regarding Non-Self-Governing Territories”), Chapter XII (“International Trusteeship System”) and Chapter XIII (“The Trusteeship Council”) of the Charter have ensured progress in promoting the self-determination of peoples and the process of decolonization after World War II. As the Chinese delegation pointed out on 6 October 2003 at the Special Political and Decolonization Committee of the 58th Session of the General Assembly, “it has remained a cardinal goal in the endeavour made by the United Nations to help the colonial countries and peoples to exercise their right to self-determination and strive for independence”.

6. The principle of self-determination of peoples has gradually crystallized as a principle of international law in the course of the decolonization movement. A large number of countries in Asia, Africa and Latin America, which were under colonial rule or foreign occupation at the end of World War II, have since exercised their right to

self-determination and declared independence. This right has been accepted by States as an inalienable right conferred by international law upon peoples under colonial domination or foreign occupation. The provisions on the principle of self-determination of peoples in the Charter of the United Nations have been continuously improved and enriched in the decolonization process championed by the United Nations. On 14 December 1960, the General Assembly adopted the historic resolution 1514 (XV), "Declaration on the Granting of Independence to Colonial Countries and Peoples", which strongly condemned colonialism and emphasized that "all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". The resolution also confirmed the application of the principle of self-determination of peoples to all Trust and non-self-governing territories. Resolution 1514 (XV) was reaffirmed in a large number of resolutions subsequently adopted by the General Assembly. The Court also considered this resolution as "a further important stage" in the development of international law in regard to non-self-governing territories and "the basis for the process of decolonization" (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at paras. 56-57). On 27 November 1961, the General Assembly adopted resolution 1654 (XVI), setting up a Special Committee to monitor the implementation of the Declaration on the

Granting of Independence to Colonial Countries and Peoples.

7. To supplement resolution 1514 (XV), the General Assembly on 15 December 1960 adopted resolution 1541 (XV), "Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73 e of the Charter", clarifying the international obligation of the Administering Members to transmit information in respect of territories whose peoples have not yet attained a full measure of self-government. It provides the modes, and sets forth objective and operable criteria, for the peoples of the non-self-governing territories to exercise the right to self-determination.

8. On 24 October 1970, the General Assembly adopted resolution 2625 (XXV), "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations", which clearly recognizes the principle of self-determination of peoples as an important principle of international law. The declaration emphasizes that "the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States, based on respect for the principle of sovereign equality", and

stipulates that, “every State has the duty to promote ... realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle, in order ... to bring a speedy end to colonialism, having due regard to the freely expressed will of the peoples concerned”.

9. The Court, as the principal judicial organ of the United Nations, has dealt with issues related to decolonization and self-determination on a number of occasions, and played an important role in the performance of the United Nations’ function of decolonization. In its 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)*, the Court stated that:

The ... development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them. The concept of the sacred trust was confirmed and expanded to all “territories whose peoples have not yet attained a full measure of self-government” (Art. 73). Thus it clearly embraced territories under a colonial régime. (*I.C.J.*

Reports 1971, p. 16, at para. 52.)

10. In the *Western Sahara* advisory opinion, the Court reiterated that the principle of self-determination is applicable to non-self-governing territories and observed that the principle of self-determination was “defined as the need to pay regard to the freely expressed will of peoples” (*I.C.J. Reports 1975*, p. 12, at para. 59.), and that “the right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized” (*ibid.*, at para. 71). And the Court noted that the object of the request there was “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” (*ibid.*, at para. 39).

11. Furthermore, in its judgment in *East Timor (Portugal v. Australia)* the Court held that the assertion that the right of peoples to self-determination “has an *erga omnes* character” is “irreproachable”, and “the principle of self-determination of peoples has been recognized by the United Nations Charter and in the jurisprudence of the Court [;] it is one of the essential principles of contemporary international law” (*I.C.J. Reports 1995*, p. 90, at para. 29). In its advisory opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian*

Territory, the Court pointed out that the obligation to respect the right to self-determination is an obligation “*erga omnes*” (*I.C.J. Reports 2004*, p. 136, at para. 155).

12. Once a victim of aggression and oppression under imperialism and colonialism, China sympathizes with the peoples under colonial rule and knows full well their sufferings. The Constitution of the People’s Republic of China solemnly states in its preamble that “China consistently opposes imperialism, hegemonism and colonialism, works to strengthen unity with the people of other countries, supports the oppressed nations and the developing countries in their just struggle to win and preserve national independence and develop their national economies, and strives to safeguard world peace and promote the cause of human progress”. On the international stage, China firmly supports the efforts made by the United Nations to help colonial countries and peoples exercise their right to self-determination and achieve independence, takes an active part in the United Nations’ work of decolonization, and gives strong support, both politically and economically, to colonial countries and peoples, including African countries.

13. Based on the above-mentioned position, China has fully understood and supported Mauritius’ legitimate quest for decolonization. China notes

that the General Assembly has adopted several resolutions on the decolonization of Mauritius, including resolution 2066 (XX) of 16 December 1965, resolution 2232 (XXI) of 20 December 1966 and resolution 2357 (XXII) of 19 December 1967. Among them, resolution 2066 (XX), which was adopted by the General Assembly immediately after the separation of the Chagos archipelago from Mauritius, states that “any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of” the Declaration on the Granting of Independence to Colonial Countries and Peoples, and that the General Assembly “invites 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 “invites the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity”. In light of the above situation and China’s basic position of firmly supporting the General Assembly in discharging its function of decolonization, China understands that the General Assembly, if circumstances so require, may seek legal guidance from the Court on decolonization issues.

14. In the meantime, China also notes that a significant number of States,

in explaining their votes on General Assembly resolution 71/292, expressed their reservations on the General Assembly's request to the Court for an advisory opinion. They pointed out that the related matters essentially concern the dispute on territorial sovereignty between relevant States. China believes that these concerns deserve due attention.

15. Under international law, every State is free to choose the means of dispute settlement. The jurisdiction of any international dispute settlement mechanism over a dispute between States depends on the prior consent of the parties to the dispute. This is known as the principle of consent, born of the fundamental principle of sovereign equality under international law, enshrined in the Charter of the United Nations and the Statute of the Court, and confirmed in numerous international instruments, including the aforementioned Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, and the Manila Declaration on the Peaceful Settlement of International Disputes as contained in General Assembly resolution 37/10 of 15 November 1982.

16. As we can see from the cases of the Court, the advisory proceedings of the Court are different from contentious proceedings. The advisory jurisdiction of the Court is derived from Article 96 of the Charter of the

United Nations and Article 65 of the Statute of the Court. The giving of an advisory opinion by the Court, as the principal judicial organ of the United Nations, represents its participation in the activities of the United Nations, in order to provide legal opinion to the requesting organ of the United Nations, rather than decide a bilateral dispute between States. Therefore, no consent of any State concerned with relevant matters is required to establish the advisory jurisdiction. But this does not mean that the principle of consent has no relevance in the Court's advisory proceedings. Pursuant to Article 65 of the Statute of the Court, the Court "may" give an advisory opinion, affording the Court discretion whether or not to exercise the advisory jurisdiction. The Court should consider, in assessing the propriety of giving an opinion and deciding whether it should exercise such discretion, whether the principle of consent is violated by giving an opinion. As the Court clearly pointed out in *Western Sahara*,

the Court recognized that lack of consent might constitute a ground for declining to give the opinion requested if, in the circumstances of a given case, considerations of judicial propriety should oblige the Court to refuse an opinion. In short, the consent of an interested State continues to be relevant, not for the Court's competence, but for the appreciation of the propriety of giving an opinion. (*I.C.J. Reports 1975*, p. 12, at para. 32.)

The Court further stated that,

In certain circumstances, therefore, the lack of consent of an interested State may render the giving of an advisory opinion incompatible with the Court's judicial character. An instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction. (*ibid.*, at para. 33.)

17. In a series of advisory opinions touching upon bilateral disputes, the Court always took a cautious attitude and elaborated why giving an advisory opinion would not entail a breach of the principle of consent. These reasons include among others: that the issue was addressed as a "situation" rather than a "dispute" in the dealings of the United Nations organ that made a request (*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 para. 25.); that the request did not

touch the merits of these disputes, giving an opinion would not compromise the legal position of the parties to these disputes, or the opinion was solely concerned with the applicability of certain rules of international law, rather than the application of these rules (*Interpretation of Peace Treaties, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 72; *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at para. 42; *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion, I.C.J. Reports 1989*, p. 177, at para. 38.); and that the questions put to the Court “arose during the proceedings of the General Assembly”, “did not arise independently in bilateral relations” and were “located in a broader frame of reference than the settlement of a particular dispute” (*Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at paras. 34, 38; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at paras. 47, 50).

18. China hopes that the Court will pay due regard to the special circumstances in this case and strictly observe the relevant provisions of the Charter of the United Nations and the Statute of the Court in handling the case. While providing legal guidance to assist the General Assembly in fulfilling its function of decolonization, the Court should continue to uphold and respect the principle of consent when a purely bilateral

dispute is involved, thus to ensure that its opinion should not have the effect of circumventing or prejudicing this principle.

19. China hereby reiterates its principled position of firmly supporting the process of decolonization. At the same time, China encourages and calls upon States concerned to act in good faith, and seek appropriate solution to relevant issues through negotiation or any other peaceful means agreed to by both parties.