INTERNATIONAL COURT OF JUSTICE

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

(REQUEST FOR ADVISORY OPINION)

Written Submission of
The Republic of Djibouti

1 March 2018

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INTRODUCTION

1. The Republic of Djibouti submits this statement pursuant to the Court's Order of 14 July 2017 in the advisory proceedings on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

2. On 22 June 2017, the General Assembly adopted resolution 71/292, in which it 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?"[1]

3. The right to self-determination is an *erga omnes* norm of concern to the international community as a whole. It is of particular concern to the Republic of Djibouti, a former colony and one of the 54 African States Members of the United

[1] GA res. A/Res/71/292.

Nations on whose behalf resolution 71/292 was introduced.[2] Djibouti therefore wishes to comment upon the request before the Court.

4. This submission is divided into three parts.

5. Part I explains that the Court has jurisdiction and should exercise its discretion to answer the questions before it. In particular, Part I explains that the Court has jurisdiction to give the Advisory Opinion requested of it because the General Assembly is authorized to seek an opinion from the Court and the request raises questions of a legal character. Part I further explains that there are no compelling reasons for the Court to decline to give the Advisory Opinion the General Assembly has requested.

6. Part II addresses the first question before the Court. It explains that the right of peoples to self-determination—and their associated rights to territorial integrity and to freely determine their political status—were established prior to the excision of the Chagos Archipelago in 1965. Part II further explains that, because the Chagos Archipelago was excised without the freely expressed consent of the people of Mauritius, the excision was carried out in violation of their right to self-determination. The decolonization of Mauritius was accordingly not lawfully completed when Mauritius was granted independence in 1968 following the separation of the Chagos Archipelago from Mauritius.

7. Finally, Part III addresses the second question before the Court. It explains that the United Kingdom's continued administration of the Chagos Archipelago constitutes a continuing wrongful act that, in consequence, must be brought to an

[2] 88th Plenary Session of the 71st General Assembly, Agenda Item 87, p. 5.

immediate end. It further explains that third States and international organizations must affirmatively facilitate the completion of the decolonization process.

Part I. The Court Has and Should Exercise its Jurisdiction

8. The United Nations Charter and the Statute and jurisprudence of the Court clearly indicate that the Court may and should give an Advisory Opinion in the circumstances at issue here.

A. The Court Has Jurisdiction to Give the Advisory Opinion Requested

9. Article 65(1) provides that 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".

10. In interpreting its competence, the Court has explained that it is a "precondition" that:

> the advisory opinion be requested by an organ duly authorized to seek it under the Charter, that it be requested on a legal question, and that, except in the case of the General Assembly or the Security Council, that question should be one arising within the scope of the activities of the requesting organ.[3]

11. In the circumstances of this case, two conditions must accordingly be met for the Court to exercise its advisory jurisdiction: (1) the request for an advisory opinion must be made by an organ authorized to request it; and (2) the questions presented the Court must be legal in nature. Both conditions are clearly met.

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[3] *Application for Review of Judgement No. 273 of the United Nations Administrative Tribunal*, *Advisory Opinion, I.C.J. Reports 1982*, p. 325, at 333-334, para. 21.

12. First, the United Nations Charter expressly authorizes the General Assembly to request an advisory opinion. Article 96 provides: "[t]he General Assembly … may request the International Court of Justice to give an advisory opinion on any legal question".[4]

13. Resolution 71/292 was validly adopted in accordance with the rules of the General Assembly by a vote of 94-15.[5] The first condition for the Court's exercise of its advisory jurisdiction is therefore met.

14. Second, the questions put to the Court are clearly of a legal character.

15. The Court has found that questions "framed in terms of law and rais[ing] problems of international law" are "susceptible of a reply based on law" and thus "appear (...) to be questions of a legal character".[6] It has also explained that "[a] question which expressly asks the Court whether or not a particular action is compatible with international law certainly appears to be a legal question".[7]

16. Both questions posed to the Court are framed in terms of law and expressly raise questions of international law: question 1 asks whether the process of decolonization of Mauritius was "lawfully completed" when Mauritius was granted independence in 1968; while question 2 asks the Court to explain the

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[4] United Nations Charter (1945), Article 96 ("[t]he General Assembly (…) may request the International Court of Justice to give an advisory opinion on any legal question").

[5] United Nations General Assembly, Seventy-first session, 88th plenary meeting, A/71/PV.88, p. 18.

[6] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996*, p. 226, at 233-234, para. 13 (quoting *Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 18, para. 15).

[7] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion, I.C.J. Reports 2010*, p. 403, at 414-415, para. 25.

"consequences under international law" arising from the United Kingdom's continued administration of the Chagos Archipelago.

17. The Court's "long-standing jurisprudence" makes clear that questions posed to the Court retain their legal character whether or not they have "political aspects".[8] As indicated by the Court in its advisory opinion in the *Nuclear Weapons Case*, the fact that a question:

> has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' … Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially juridical task.[9]

18. Because the questions put to the Court invite it to discharge an "essentially juridical task", they are legal in nature, and the second and final condition under Article 65(1) of the Statute of the Court is therefore also met. The Court accordingly has jurisdiction and is competent to give the advisory opinion requested.

B. There Are No Compelling Reasons for the Court to Exercise its Discretion to Decline to Give the Advisory Opinion

19. The Court has found that, "[o]nce it has established its competence" to give an advisory opinion, Article 65(1) of its Statute leaves it "*discretion* as to whether

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[8] *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 155, para. 41.

[9] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996,* p. 226, at 234, para. 13. *See also Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 155, para. 41.

or not it will" do so.[10] In exercising that discretion, the Court been "mindful of the fact that its answer to a request for an advisory opinion 'represents its participation in the activities of the Organization, and, in principle, *should not be refused*'".[11] Thus, "only 'compelling reasons' should lead the Court to refuse its opinion in response to a request falling within its jurisdiction".[12] Indeed, "[t]he present Court has *never*, in the exercise of this discretionary power, declined to respond to a request for an advisory opinion".[13] Nor is there any reason the Court should do so here.

20. The Court is the principle judicial organ of the United Nations, and as the United Kingdom noted in its submission in the advisory proceedings on *Kosovo*, advisory opinions "have contributed much to the work of the Organization and to the development of international law".[14]

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[10] *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion, I.C.J. Reports 1996,* p. 226, at 234-235, para. 14 (emphasis added). *See also Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion, I.C.J. Reports 2010*, p. 403, at 415-416, para. 29; *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 156-157, para. 44.

[11] *Ibid*. (quoting *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase*, *Advisory Opinion, I.C.J. Reports 1950*, p. 65, at 71) (emphasis added).

[12] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, *Advisory Opinion, I.C.J. Reports 2010*, p. 403, at 416, para. 30 (quoting *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 156, para. 44). *See also Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, Advisory Opinion, I.C.J. Reports 1999,* p. 62, at 78-79, para. 29.

[13] *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 156-157, para. 44.

[14] *See* Annex to the Letter dated 1 October 2008 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the General Assembly, para. 3. A/63/461.

21. The questions posed to the Court by resolution 71/292 will provide the General Assembly with legal guidance on issues central to its role and to which it has long directed its attention. These include, *inter alia*, the principles of territorial integrity and sovereignty; decolonization generally;[15] and the decolonization of Mauritius in particular.[16] The extent of the international community's legitimate concern about the issues raised by the General Assembly in resolution 71/292 is reflected not only in the practice of the General Assembly itself, but also in that of other international organizations, including the African Union[17] and the Non-Aligned Movement.[18]

22. Moreover, the subject matter of the request before the Court concerns the "right of peoples to self-determination", which this Court has found "has an *erga omnes* character".[19] It accordingly cannot "be regarded as only a bilateral matter",[20]

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[15] *See, e.g.,* GA res. A/Res/1514.

[16] *See, e.g.,* GA res. A/Res/2066; GA res. A/Res/2232; GA res. A/Res/2357. The fact that resolution 71/292 was passed by an overwhelming number of States present and voting is further testament to the appropriateness of the Court's exercise of its advisory jurisdiction.

[17] *See, e.g.,* Council of Ministers of the African Union, Seventy-fourth Ordinary Session, "Decision on the Chagos Archipelago Including Diego Garcia", CM/Dec.26 (LXXIV) (5-8 July 2001), para. 1 ("CALLS UPON the United Kingdom to put an end to its continued unlawful occupation of the Chagos Archipelago and to return it to Mauritius thereby completing the process of decolonization").

[18] *See, e.g.,* 17th Summit of Heads of State and Government of the Non-Aligned Movement, "Chagos Archipelago", Final Document (17-18 Sept. 2016), NAM 2016/CoB/DOC.1 Corr.1, para. 336 ("The Heads of State or Government *reaffirmed* that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius").

[19] *East Timor (Portugal v. Australia)*, *Judgment, I.C.J. Reports 1995*, p. 90, at 102, para. 29.

[20] *Cf. Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 158-159, para. 49.

but is instead of concern to the international community as a whole. As was the case in the proceedings on the *Wall*:

> 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 particularly acute concern to the United Nations, and one which is located in a much broader frame of reference than a bilateral dispute.[21]

23. The issuance of an opinion by the Court would therefore not "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".[22]

24. In sum, the Court has competence to render the advisory opinion and there are no compelling reasons for it to decline to do so.

Part II. The process of decolonization of Mauritius was not lawfully completed when Mauritius was granted independence in 1968

25. As noted above, the first question before the Court asks whether the "process of decolonization of Mauritius [was] lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius (…)".

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[21] *Ibid*., at 159, para. 50. *See also Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 26, para. 38 ("Thus the legal questions of which the Court has been seised are located in a broader frame of reference than the settlement of a particular dispute and embrace other elements. These element, moreover, are not confined to the past but are also directed to the present and the future").

[22] *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 159, para. 50.

26. The Republic of Djibouti submits that it was not. As explained below, that is because (1) the right to self-determination and the associated rights of peoples to territorial integrity and to freely determine their political status were already established by the time the Chagos Archipelago was excised from Mauritius in 1965; and (2) the excision of the Chagos Archipelago was accomplished without the freely expressed consent of the people of Mauritius in violation of their right to self-determination.

A. The Right to Self-Determination Was Already Established by the Time the Chagos Archipelago was Excised from Mauritius in 1965

27. The principle of self-determination was implicit in the Mandate system of the League of Nations prior to its dissolution.[23] It was then made *explicit* in the United Nations Charter.

28. The English version of Article 1(2) of the Charter includes among the "Purposes" of the United Nations the development of "friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*".[24] The equally authoritative French text of Article 1(2) expressly refers to self-determination as a "right".[25]

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[23] *See, e.g.,* Article 22 of the Covenant of the League of Nations ("To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant").

[24] United Nations Charter (1945), Article 1(2) (emphasis added).

[25] *See* United Nations Charter (1945), Article 1(2) (referring to the "*principe de l'égalité des droits des peuples et de leur droit à disposer d'eux-mêmes*").

29. Other provisions confirm the foundational nature of self-determination under the Charter. Thus, Article 55 requires the United Nations to facilitate the "creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and *self-determination of peoples*",[26] while Article 56 commits all Member States to "to take joint and separate action in co-operation with the Organization for the achievement" of the purposes set forth in Article 55.

30. As the Court has noted, these "provisions have direct and particular relevance for non-self-governing territories".[27] Indeed, 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".[28]

31. The General Assembly repeatedly referred to self-determination as a "right" in the early years following the adoption of the Charter.[29] These resolutions culminated in the passage, by 89 votes to none, of the 1960 Declaration on the Granting of Independence to Colonial Countries and Peoples ("Colonial

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[26] United Nations Charter (1945), Article 55 (emphasis added).

[27] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 31, para. 54.

[28] *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 31, para. 52. Mauritius was, of course, a non-self-governing-territory prior to achieving independence in 1968.

[29] *See, e.g.,* GA res. A/Res/421(V), para. 6 (referring to the "right of peoples and nations to self-determination"); GA res. A/Res/545(VI), para. 1 ("*Decid[ing]* to include in the International Covenant or Covenants on Human Rights an article on the right of all peoples and nations to self-determination in reaffirmation of the principle enunciated in the Charter of the United Nations").

Declaration"). The Colonial Declaration not only referred to self-determination as a "right",[30] but also delineated certain associated rights, including, *inter alia*, that:

> (1) all peoples may "freely determine their political status and freely pursue their economic, social and cultural development"; that
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> (2) "[i]mmediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire (…) in order to enable them to enjoy complete independence and freedom"; and that
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> (3) "[a]ny 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".[31]

32. The Colonial Declaration was referenced in almost every subsequent discussion of the situation of Non-Self-Governing territories,[32] making clear that self-determination had unquestionably come to be seen a right.[33] Thus, Former President of the Court Rosalyn Higgins concluded in 1963 that the Declaration, "taken together with seventeen years of evolving practice by United Nations organs, provides ample evidence that there now exists a legal *right* of self-

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[30] GA res. A/Res/1514, para. 1.

[31] GA res. A/Res/1514, paras. 2, 5 & 6.

[32] SHAW, Malcom, *Title to Territory in Africa*, p. 80 (Clarendon Press Oxford 1986).

[33] For example, in 1963, the Security Council adopted, by 10 votes to none and with the affirmative vote of the United Kingdom, a resolution reaffirming "the interpretation of self-determination laid down in General Assembly resolution 1515(XV) as follows: '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'" SC Res. 183 (emphasis added). *See also, e.g.,* SC Res. 217 (adopted by 10 votes to none with the United Kingdom's affirmative vote).

determination".[34] The Court itself has referred to the Colonial Declaration as an "important stage" in the development of international law regarding Non-Self-Governing Territories,[35] as well as the "basis for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations".[36]

33. In sum, the right to self-determination had already crystalized before the Chagos Archipelago was excised in 1965. The corollaries of that right had crystalized as well. As expressed in the Colonial Declaration, those corollaries included the right to "territorial integrity"[37] and the right of peoples to "freely determine their political status"[38]—norms which the Court has suggested help "confirm and emphasize that the application of the right of self-determination requires a *free and genuine expression of the will of the peoples concerned*".[39]

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[34] HIGGINS, Rosalyn, *The Development of International Law through the Political Organs of the United Nations*, p. 104 (Oxford University Press 1963) (emphasis added).

[35] *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 31, para. 52.

[36] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 32, para. 57.

[37] GA res. A/Res/1514, para. 6 ("[a]ny 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".). The same principle was expressed repeatedly over the following years, including in relation to Mauritius. *See, e.g.,* GA res. A/RES/1654, Preamble ("*Deeply concerned* that, contrary to the provisions of paragraph 6 of the Declaration, acts aimed at the partial or total disruption of national unity and territorial integrity are still being carried out in certain countries in the process of decolonisation (...)"); GA res. A/Res/2232; GA res. A/Res/2357.

[38] GA res. A/Res/1514, para. 2.

[39] *Cf. Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 31-32, para. 55 ("The above provisions [of the Colonial Declaration], in particular paragraph 2, thus confirm and emphasize that the application of the right of self-determination requires a *free and genuine expression of the will of the peoples concerned*") (emphasis added). *See also, e.g.,* GA res. A/Res/1541, Principle VII ("Free association should be the result of a *free and voluntary* choice *by the peoples of the territory* concerned expressed through informed and democratic process")

34. The section that follows explains that the excision of the Chagos Archipelago from Mauritius was accomplished *without* the "free and genuine expression of the will of the peoples concerned" and in violation of the norms reflected in the Colonial Declaration. It therefore follows that it was carried out in violation of their right to self-determination as well.

B. The Excision of the Chagos Archipelago Was Accomplished Without the Freely Expressed Consent of Mauritians in Violation of Their Right to Self-Determination

35. The Chagos Archipelago was an integral part of Mauritius prior to its excision in 1965.[40] Consent to its detachment accordingly required the free and genuine consent of all Mauritians through a UN-supervised plebiscite. As Professor Franck has explained in relation to the Spanish Sahara:

> If a colony, in the process of independence, wished to alter its boundaries by joining a neighboring state or by splitting into several states, it could do so *only by the free vote of its inhabitants*—never in response to the pressures or claims of others. Indeed, where in the process of becoming independent there was an open question as to whether the territorial integrity of the colony should be altered in favor of a union or secession, it had become *virtually mandatory for the U.N. to be present during the elections or plebiscite in which that issue was to be determined*. Thus, the U.N.

(emphasis added); GA/Res/1541, Principle IX ("The integration should be the result of the *freely expressed wishes of the territory's peoples*") (emphasis added). UN-supervised plebiscites are the norm for determining that expression of will.

[40] *See, e.g.,* GA res. A/Res/2066, Preamble ("*Noting with deep concern* 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, and in particular of paragraph 6 thereof") (some emphasis added; some emphasis in original). *See also, e.g., The Chagos Marine Protected Area Arbitration (Mauritius v United Kingdom)*, Dissenting and Concurring Opinion of Judge James Kateka and Judge Rüdiger Wolfrum (18 Mar. 2015), para. 69 ("it is not appropriate to consider the Archipelago as an entity, somewhat on its own, which the United Kingdom could decide on without taking into account the views and interests of Mauritius") (emphasis added).

> supervised plebiscites that led to the merger of British Togoland with newly-independent Ghana in 1956, the merger of the British-administered Northern Cameroons with Nigeria in 1959 and 1961, the Southern Cameroons joining the Cameroon Republic in 1961, the division into two states of the Belgian territory of Ruanda-Urundi in 1961, and the free association between Western Samoa and New Zealand in 1962.[41]

36. No plebiscite was held in the process leading to the excision of the Archipelago. The excision was accordingly effected in violation of Mauritians' right to self-determination and territorial integrity for that reason alone.

37. Yet even if the Mauritian leadership could have given valid consent, no such consent was given. On the contrary, the pressure placed on the Mauritian representatives constituted duress sufficient to undermine the validity of the agreement purportedly reached.

38. The United Kingdom's attempts to obtain the "consent" of the Mauritian leadership were disingenuous from the beginning. A 23 September 1965 minute prepared by the private secretary of Prime Minister Harold Wilson concerning an upcoming meeting with Premier Ramgoolam reveals the coercive manner in which the United Kingdom attempted to obtain "consent":

> Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. *The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago.*[42]

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[41] FRANCK, Thomas and HOFFMAN, Paul, *The Right of Self-Determination in Very Small Places*, 8 N.Y.U.J. Int. L. & P. (1976) 331, p. 336-337 (emphasis added).

[42] Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius, 22 September 1965, PREM 13/3320 (emphasis added). [Annex 1].

39. In line with his instructions, Prime Minister Wilson fulfilled the "object" of the meeting. As he put it to Premier Rangoolam:

> in theory, there were a number of possibilities. *The Premier and his colleagues could return to Mauritius either with Independence or without it*. On the Defence point, Diego Garcia *could either be detached by order in Council or with the agreement of the Premier and his colleagues*. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.[43]

40. It is impossible to see these words, directed at a representative of a people on the verge of independence, as anything but a threat. That is exactly the conclusion reached by Judges Kateka and Judge Wolfrum—the only two Judges to consider the issue—in their Dissenting and Concurring Opinion in the Annex VII arbitration. In their words:

> *Mauritius had no choice*. The detachment of the Chagos Archipelago was *already decided whether Mauritius gave its consent or not*. A look at the discussion between Prime Minister Harold Wilson and Premier Sir Seewoosagur Ramgoolam suggests that the [*sic*] Wilson's threat that Ramgoolam could return home without independence *amounts to duress*.[44]

41. It is in these circumstances that the purported "agreement" of Mauritius' "representatives" was obtained. It was not a valid agreement at all, and it was certainly not one evincing what the Court has indicated the principle of self-

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[43] Record of a Conversation Between the Prime Minister and Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965, FO 371/184528, p. 3 (emphasis added). [Annex 2].

[44] *The Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, UNCLOS Annex VII Tribunal, Dissenting and Concurring Opinion of Judge James Kateka and Judge Rüdiger Wolfrum (18 Mar. 2015), paras. 76-77 (emphasis added).

determination requires: "a *free and genuine expression of the will of the peoples concerned*".[45]

42. In excising the Chagos Archipelago without the valid consent of the peoples of Mauritius, the United Kingdom violated their right to self-determination and territorial integrity. Those violations continue to this day. It follows that the answer to the first question before the Court is that the process of decolonization of Mauritius was not lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius.

Part III. The United Kingdom Must Immediately Complete the Decolonization Process and Third States and International Organizations Must Facilitate its Completion

43. As noted above, the second question before the Court asks it to explain the consequences under international law "arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago".

44. Two consequences are clear: (1) the United Kingdom's continued administration of the Chagos Archipelago is a continuing wrongful act that must be brought to an immediate end through the completion of the decolonization process; and (2) third States and international organizations are under an affirmative duty to facilitate the completion of that process.

45. Each of these consequences is discussed below.

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[45] *Western Sahara*, *Advisory Opinion, I.C.J. Reports 1975*, p. 12, at 31-32, para. 55 (emphasis added).

A. The United Kingdom's Continued Administration of the Chagos Archipelago is a Continuing Wrongful Act that Must be Brought to an Immediate End Through the Completion of the Decolonization Process

46. Article 14(2) of the International Law Commission's Articles on State Responsibility provides that "[t]he breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation".[46] The Commentary to Article 14(2) explicitly refers to the "maintenance by force of colonial domination" as a "continuing wrongful act".[47]

47. In its Advisory Opinion on the *Wall*, the Court noted that "[t]he obligation of a State responsible for an internationally wrongful act to put an end to that act is well established in general international law, and the Court has on a number of occasions confirmed the existence of that obligation".[48]

48. It is equally well established that continuing wrongful acts must be brought to an *immediate* end, including in the colonial context. Thus, in *Continued Presence of South Africa in Namibia*, Court found that "the continued presence of South Africa in Namibia being illegal, South Africa is under obligation to *withdraw its administration from Namibia immediately* and thus put an end to its occupation of the Territory".[49]

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[46] International Law Commission, Articles on State Responsibility, Article 14(2).

[47] International Law Commission, Articles on State Responsibility, Commentary on Article 14(2), para. 3.

[48] *Legal Consequences of the Construction of a Wall in the Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 197, para. 150 (internal citation omitted).

[49] *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, *Advisory Opinion, I.C.J. Reports 1971*, p. 16, at 58, para. 133 (emphasis added). *See also, e.g., United*

49. The same conclusion must be reached in this case. Because the United Kingdom's continued administration of the Chagos Archipelago constitutes a continuing wrongful act, it is "under obligation to withdraw" its administration from the Chagos Archipelago "immediately", transferring it to Mauritius and thereby completing the decolonization process.

B. Third States and International Organizations Have a Duty to Assist with the Decolonization Process

50. The United Kingdom's continued administration of the Chagos Archipelago gives rise to legal consequences for the international community as a whole. In particular, third States and international organizations are obligated not to assist or support the United Kingdom in its administration of the Chagos Archipelago. They are further obligated to *affirmatively promote* the decolonization process by facilitating the transfer of administration to Mauritius.

51. In *Continued Presence of South Africa in Namibia*, the Court made clear that States are under an obligation not to lend support or assistance to an unlawful colonial occupier:

> States Members of the United Nations are under obligation to recognize the illegality of South Africa's presence in Namibia and the invalidity of its acts on behalf of or concerning Namibia, and to refrain from any acts and in particular any dealings with the Government of South Africa implying recognition of the legality of,

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States Diplomatic and Consular Staff in Tehran, *Judgement, I.C.J. Reports 1980*, p. 3, at 44-45, para. 95; *Legal Consequences of the Construction of a Wall in the Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 197, para. 150.

> or lending support or assistance to, such presence and administration[.][50]

52. In the *East Timor* case, the Court recognized that the right to self-determination "has an *erga omnes* character" and is "one of the essential principles of contemporary international law".[51] The Court reiterated the *erga omnes* nature of that right in its advisory opinion on the *Wall*, concluding that:

> Given the character and the importance of the rights and obligations involved, the Court is of the view that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory (…). They are also under an obligation not to render aid or assistance in maintaining the situation created by such construction. *It is also for all States, while respecting the United Nations Charter and international law, to see to it that any impediment, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end*.[52]

53. In sum, the right to self-determination "gives rise to an obligation to the international community as a whole to permit and respect its exercise".[53] It is therefore incumbent on all States and international organizations to act in accordance with that obligation.

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[50] *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 58, para. 133.

[51] *East Timor (Portugal v. Australia), Judgement, I.C.J. Reports 1995*, p. 90, at 102, para. 29.

[52] *Legal Consequences of the Construction of a Wall in the Palestinian Territory*, *Advisory Opinion, I.C.J. Reports 2004*, p. 136, at 200, para. 159 (emphasis added).

[53] Draft Articles on State Responsibility, Commentary on Article 40, para. 5. *See also* GA res. A/Res/25/2625, Annex (24 Oct. 1970).

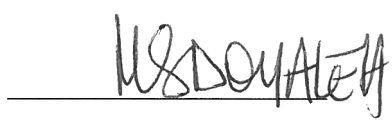
CONCLUSION

54. For the reasons explained above, the Republic of Djibouti respectfully submits that:

(1) The Court has jurisdiction and should exercise its discretion to answer the questions before it;

(2) The decolonization of Mauritius was not lawfully completed when Mauritius was granted independence in 1968 following the separation of the Chagos Archipelago from Mauritius; and

(3) The United Kingdom's continued administration of the Chagos Archipelago constitutes a continuing wrongful act that must be brought to an immediate end.



Mohamed Siad Doualeh

Permanent Representative to the United Nations

Ambassador to the United States and Canada

Certification

I have the honour to certify that each of the Annexes is a true and complete copy of the original.

Mohamed Siad Doualeh
Permanent Representative to the United Nations
Ambassador to the United States and Canada

LIST OF ANNEXES

Annex 1

Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius, 22 September 1965, PREM 13/3320

PRIME MINISTER

This is a poor brief, and [illegible] p.3 to be expanded, either by cutting off [illegible] re-typing on cards.

[illegible]

Mauritius

Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning. The object is to frighten him with hope: hope that he might get independence; Fright lest he might not unless he is sensible about the detachment of the Chagos Archipelago. I attach a brief prepared by the Colonial Office, with which the Ministry of Defence and the Foreign Office are on the whole content. The key sentence in the brief is the last sentence of it on page three.

I also attach a minute from the Colonial Secretary, which he has not circulated to his colleagues, but a copy of which I have sent to Sir Burke Trend. In it, the Colonial Secretary rehearses arguments with which you are familiar but which have not been generally accepted by Ministers.

[illegible]

September 22, 1965

Annex 1

SECRET

PRIME MINISTER

I am glad you are seeing Ramgoolam because the Conference is a difficult one and I am anxious that the bases issue should not make it even harder to get a Constitutional settlement than it is already. I hope that we shall be as generous as possible and I am sure that we should not seem to be trading Independence for detachment of the Islands. That would put us in a bad light at home and abroad and would sour our relations with the new state. And it would not accord well with the line you and I have taken about the Aden base (which has been well received even in the Committee of 24). Agreement is therefore desirable and agreement would be easier if Ramgoolam could be assured that:

(a) We would retrocede the Islands if the need for them vanished, and

(b) We were prepared to give not merely financial compensation (I would think £5,000,000 would be reasonable but so far the D.O.P. have only approved £3,000,000) but a defence agreement and an undertaking to consult together if a serious internal security situation arose in Mauritius.

The ideal would be for us to be able to announce that the Mauritius Government had agreed that the Islands should be made available to the U.K. government to enable them to fulfil their defence commitments in the area.

A.G.

Lancaster House

22nd September, 1965

SECRET

Copy sent to Sir B. Trend 22.9.

SECRET

NOTE FOR THE PRIME MINISTER'S MEETING
WITH SIR SEEWOOSAGUR RAMGOOLAM, PREMIER OF MAURITIUS

Sir Seewoosagur Ramgoolam (call him 'Sir Seewoosagur' - pronounced as spelt with accents on the first andthird syllables: or 'Premier' his official title. He likes being called 'Prime Minister').

Born Mauritius 1900. Hindu. Locally educated, studied medicine at University College Hospital, London. L.R.C.P., M.R.C.S. Leader of the Mauritius Labour Party, the largest Mauritius political party, which polled 42% of the electorate at the 1963 General Election. In politics since 1940. Knight Bachelor, June 1965, dubbed last Saturday, September 18th, his 65th birthday.

Getting old. Realises he must get independence soon or it will be too late for his personal career. Rather status-conscious. Responds to flattery.

The Defence Facilities Proposals

The proposal is that the whole of the Chagos Archipelago (population about 1000), shall be detached from Mauritius: and three islands from Seychelles. In developing defence facilities, the British would be responsible for providing the sites, including compensation, removal and resettlement of population, etc., and the Americans for construction, with joint British-American user of the facilities. Neither the American nor the British defence authorities can accept leasehold. At present no more than an airfield and communications installations will be constructed.

Cost

On the British side, the total cost might be up to £10m., of which Mauritius and Seychelles would each receive about £3m. compensation for detachment, while costs of compensation to land-owners, resettlement of displaced population and other contingencies might about to £3-4m. /The U.S. Government has secretly agreed to contribute half these costs indirectly, by writing off equivalent British payments towards Polaris development costs./

NOT FOR MENTION

The Mauritius reaction

The proposals have been discussed, first in Mauritius by the Governor with the Council of Ministers, and more recently in London by the Secretary of State with the four main Mauritius party leaders and a leading Independent Minister. Their reaction has been that, while in principle they are anxious to co-operate in western defence, they cannot contemplate detachment but propose a long lease, and that they would require concessions from the Americans as regards U.S. purchases of Mauritius sugar and Mauritius purchases of

/U.S.

Annex 1

U.S. rice and wheat on favourable terms, and also as regards emigration to the U.S. The unsurmountable difficulties of securing these concessions from the Americans, especially as regards sugar (which the Mauritians regard as the most important) have been explained to Mauritius Ministers at length, and they have heard the arguments direct from the Economic Minister at the U.S. Embassy. When offered lump-sum compensation for detachment of the order of £2m., they brushed it aside as a drop in the ocean of Mauritius requirements, returned to their proposals for trade and immigration concessions from the U.S., and suggested as an alternative that they should receive what the Mauritians calculate is the money value of these concessions, viz. up to £7m. per annum for twenty years and £2m. per annum thereafter. (They appear to think that we ought to persuade the Americans to pay this. The Premier at one stage said he was not trying to "sting" Britain for this).

There is thus deadlock as to compensation for detachment. In discussion however, Mauritius Ministers have made it clear that, since the Americans are involved, their desire is for trade concessions from the Americans, and that, if it were simply a matter of helping Britain, they might consider providing the sites as a gesture of co-operation - though whether with or without the £2m. compensation is not clear. The discussions have also shown that agreement that the islands should revert to Mauritius when no longer required for defence facilities might help.

In the course of discussion, the Secretary of State hinted that, if Mauritius Ministers persisted in their demands, it might be necessary for H.M.G. either to call the whole thing off or to consider whether the facilities could be provided entirely on Seychelles islands. On their side, Mauritius Ministers are well aware that H.M.G. wishes to continue to enjoy the use of H.M.S. Mauritius, a £5m. communications station, and Plaisance air-field, both in the island of Mauritius itself and both of strategic importance.

The Mauritius Constitutional Conference

The gap between the parties led by Sir S. Ramgoolam wanting independence, and the Parti Mauricien and its supporters who seek continuing association ith Britain, will not be closed by negotiation. H.M.G. will have to impose a solution. The remaining conference sessions will be devoted to bringing the position of all parties on details of the constitution as close together as possible and, in particular to securing the agreement of all parties to the maximum possible safeguards for minorities. The Secretary of State's mind is moving towards a decision in favour of independence,

/followed

followed by a General Election under the new Constitution before Independence Day, as the right solution, rather than a referendum to choose between independence and free association, as the Parti Mauricien have demanded.

Sir S. Ramgoolam's present position

The Premier heads an All-Party Government - hence the negotiations on defence facilities with the leaders of all parties. It is thus difficult for him to come to any final agreement on the defence facilities without consulting his colleagues. The Premier should not leave the interview with certainty as to H.M.G's decision as regards independence, as during the remaining sessions of the Conference it may be necessary to press him to the limit to accept maximum safeguards for minorities.

Handling the interview

The Prime Minister might say that he has heard of the progress of the Conference and knows that the Secretary of State is impressed by the difficulties of the proposals for a referendum and free association, and the strength of the case for independence. If the ultimate decision is in favour of independence, the Premier will understand the necessity to include in the Independence Constitution maximum safeguards for minorities, especially as regards the electoral system, so as to remove as far as possible their legitimate fears. With the Conference approaching its end it would be regrettable if difficulties should arise over the defence facilities question. The Premier has asked for independence but at the same time has said that he would like to have a defence treaty, and possibly to be able to call on us for assistance in certain circumstances towards maintaining internal security. If the Premier wants us to help him in this way, he must help us over the defence facilities, because these are in the long term interests both of Britain and Mauritius. He must play his part as a Commonwealth statesman in helping to provide them.

Throughout consideration of this problem, all Departments have accepted the importance of securing consent of the Mauritius Government to detachment. The Premier knows the importance we attach to this. In the last resort, however, detachment could be carried out without Mauritius consent, and this possibility has been left open in recent discussions in Defence and Overseas Policy Committee. The Prime Minister may therefore wish to make some oblique reference to the fact that H.M.G. have the legal right to detach Chagos by Order in Council, without Mauritius consent, but this would be a grave step.

Colonial Office, September 22nd 1965.

Annex 2

Record of a Conversation Between the Prime Minister and Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 A.M. on Thursday, September 23, 1965, FO 371/184528

CO Sir B. Trend
FO CRO Enter
M/Def ... Soon

RECORD OF A CONVERSATION BETWEEN THE PRIME MINISTER AND THE PREMIER OF MAURITIUS, SIR SEEWOOSAGUR RAMGOOLAM, AT NO. 10, DOWNING STREET, AT 10 A.M. ON THURSDAY, SEPTEMBER 23, 1965

Present:-

The Prime Minister
Mr. J.O. Wright

The Premier of Mauritius,
Sir Seewoosagur Ramgoolam

After welcoming the Prime Minister of Mauritius, the Prime Minister said how glad he was to see him in London: the Queen had told him at his audience the previous Sunday of the honour she had bestowed on him on his 65th birthday. The Prime Minister then asked Sir Seewoosagur how the conference was going. Sir Seewoosagur Ramgoolam said that the conference was going reasonably well. He had had a discussion with his colleagues the previous evening and they were now thinking over what he had said. He himself felt that Independence was the right answer; the other ideas of association with Britain worked out on the lines of the French Community simply would not work. There was also some difference of opinion over the future of the electoral pattern in Rhodesia.

The Prime Minister said that he knew that the Colonial Secretary, like himself, would like to work towards Independence as soon as possible, but that we had to take into consideration all points of view. He hoped that the Colonial Secretary would shortly be able to report to him and his colleagues what his conclusion was. He himself wished to discuss with Sir Seewoosagur a matter which was not strictly speaking within the Colonial Secretary's sphere: it was the Defence problem and in particular the question of the detachment of Diego Garcia. This was of course a completely separate matter and not

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bound up with the question of Independence. It was however a very important matter for the British position East of Suez. Britain was at present undertaking a very comprehensive Defence Review, but we were very concerned to be able to play our proper rôle not only in Commonwealth Defence but also to bear our share of peace-keeping under the United Nations: we had already made certain pledges to the United Nations for this purpose.

Sir Seewoosagur Ramgoolam said that he and his colleagues wished to be helpful.

The Prime Minister went on to say that he had heard that some of the Premier's colleagues, perhaps having heard that the United States was also interested in these defence arrangements, and seeing that the United States was a very rich country, were perhaps raising their bids rather high. There were two points that he would like to make on this. First, while Diego Garcia was important, it was not all that important; and faced with unreasonableness the United States would probably not go on with it. The second point was that this was a matter between Britain and Mauritius and the Prime Minister referred to recent difficulties over taxi-drivers at London Airport.

Sir Seewoosagur Ramgoolam said that they were very concerned on Mauritius with their population explosion and their limited land resources. They very much hoped that the United States would agree to buy sugar at a guaranteed price and perhaps let them have wheat and rice in exchange. The important thing was not so much to have a lump sum but to have a steady guaranteed income.

The Prime Minister said that Britain would of course continue with certain aid and development projects. The money for the airfield at Diego Garcia would also come from Britain and would come in the form of a flat sum. Moreover that flat sum would not be very much more than the Secretary of State had already mentioned. While he could make no commitment at the moment, the Prime Minister thought that we might well be able to talk to the Americans about providing some of their surplus wheat for Mauritius. As for Diego Garcia, it was a purely historical accident that it was administered by Mauritius. Its links with Mauritius were very slight. In answer to a question, Sir Seewoosagur Ramgoolam affirmed that the inhabitants of Diego Garcia did not send elected representatives to the Mauritius Parliament. Sir Seewoosagur reaffirmed that he and his colleagues were very ready to play their part.

The Prime Minister went on to say that, in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.

Sir Seewoosagur Ramgoolam said that he was convinced that the question of Diego Garcia was a matter of detail; there was no difficulty in principle. The Prime Minister

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said that whilst we could make no open-ended commitment about the defence of Mauritius, our presence at Diego Garcia would, of course, make it easier to come to Mauritius's help when necessary.

On leaving, Sir Seewoosagur Ramgoolam said that the one great desire in Mauritius was that she should retain her links with the United Kingdom. Mauritius did not want to become a republic but on the contrary wished to preserve all her present relationships with the United Kingdom. The Prime Minister said that he felt that the Commonwealth had a much more important rôle to play in the future than it had even in the past as a great multi-racial association. The last Prime Ministers' meeting had been a very exciting one and he looked forward to seeing Sir Seewoosagur at the next one.

As Sir Seewoosagur was leaving, the Cabinet was assembling outside the Cabinet Room and the Prime Minister introduced Sir Seewoosagur to a number of members of the Cabinet.

September 23, 1965