

**WRITTEN REPLY OF THE REPUBLIC OF
MAURITIUS TO JUDGE CANÇADO TRINDADE'S
QUESTION**

“As recalled in paragraph (a) of the U.N. General Assembly’s request for an Advisory Opinion of the International Court of Justice (General Assembly resolution 71/292 of 22.06.2017), the General Assembly refers to obligations enshrined into successive pertinent resolutions of its own, as from 1960, namely: General Assembly resolutions 1514(XV) of 14.12.1960, 2066(XX) of 16.12.1965, 2232(XXI) of 20.12.1966, and 2357(XXII) of 19.12.1967.

In the course of the present oral advisory proceedings, references were often made to such resolutions by several delegations of participants.

In your understanding, what are the legal consequences ensuing from the formation of customary international law, with the significant presence of *opinio juris communis*, for ensuring compliance with the obligations stated in those General Assembly resolutions?”

1. Mauritius understands the question to be concerned with the meaning and effects of the obligations referred to in resolutions 1514(XV), 2066(XX), 2232(XXI), and 2357(XXII). As many States, including Mauritius, and the African Union demonstrated in their written and oral submissions:
 - (i) the obligations expressed in those resolutions reflected obligations under customary international law, with the significant presence of *opinio juris comunis*, as at 1960, and thus as at 1965;
 - (ii) the obligations were addressed to all States, to Members of the United Nations, to all administering powers and, in certain cases, to

the United Kingdom in particular;

(iii) the United Kingdom is bound by those obligations, whether as a State, a Member of the United Nations, or an administering power;

(iii) because the Chagos Archipelago was detached from Mauritius in 1965 in violation of those obligations, the decolonisation of Mauritius was not and has not been lawfully completed, and the United Kingdom remains in breach of international law.

2. Resolution 1514(XV), which crystallised the customary international law on decolonisation, sets forth obligations for “all States”, including Members of the United Nations and administering powers. Paragraph 7 provides that:

“All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.”

3. The language is drafted in mandatory terms. The obligations are recognised to reflect obligations under customary law, and to have a peremptory and *erga omnes* character. The obligations include:

(i) The obligation (under paragraph 5 of resolution 1514) to take “[i]mmediate steps” 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”;

(ii) The obligation (under paragraph 6 of resolution 1514) not to dismember non-self-governing territories prior to their independence: “Any attempt aimed at the partial or total disruption

of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations”; and

- (iii) The obligation under Article 73 of the United Nations Charter to regard the interests of the people of the non-self-governing territory as paramount, and exercise authority in sacred trust for their well-being, until independence is attained in accordance with the freely exercised will and desire of those people.
4. The legal obligations reflected in resolution 1514(XV) are reaffirmed in resolutions 2066(XX), 2232(XXI) and 2357(XXII).
5. Resolution 2066(XX) specifically addresses the decolonisation of Mauritius and the obligations of the United Kingdom. It “[i]nvites the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV)” and to “take no action which would dismember the Territory of Mauritius and violate its territorial integrity.” The reference to resolution 1514(XV) – a resolution that sets out mandatory obligations – makes clear that compliance with resolution 2066(XX) is intended to be obligatory as a matter of international law.
6. Resolution 2232(XXI), concerning the decolonisation of certain non-self-governing territories, including Mauritius, “[c]alls upon the administering Powers to implement without delay the relevant resolutions of the General Assembly,” including obligations set out in resolution 1514(XV) and resolution 2066(XX).
7. Similarly, resolution 2357(XXII), dealing with the decolonisation of non-self-governing territories, including Mauritius, “[c]alls upon the administering Powers to implement without delay the relevant resolutions of the General Assembly.” These include resolutions 1514 (XV), 2066 (XX) and 2232 (XXI).

8. The breaches of the obligations set forth in these resolutions give rise to a number of legal consequences for the United Kingdom, as administering power, and for all other States and international organisations, including:

- (i) The obligation of the administering power to cease forthwith its internationally wrongful conduct. This means that the administering power must immediately terminate its unlawful colonial administration of the Chagos Archipelago, return the Archipelago to Mauritius in order to restore Mauritius' territorial integrity, and allow Mauritius to exercise sovereignty over its entire territory.
- (ii) The obligation of the administering power to cease to impair or interfere with Mauritius' exercise of its sovereignty over the Chagos Archipelago, including the implementation of Mauritius' desire to allow for the settlement or resettlement of the Mauritian people, including those of Chagossian origin, in the islands of the Archipelago.
- (iii) During the period prior to withdrawal of the unlawful colonial administration, which must be as brief as practically possible, the obligation of the administering power to treat the interests of the people of Mauritius, including those of Chagossian origin, as paramount, and to conduct all of its activities in sacred trust for their well-being.
- (iiii) In conformity with well-established rules of customary international law, as confirmed by the Court in its prior judgments and advisory opinions, the obligations for all other States and international organisations to not recognise the legitimacy of the existing colonial administration, either directly or indirectly, and not to aid or assist the United Kingdom in maintaining it, either directly or indirectly.